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Talking Uniform Civil Code



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In its intent, the UCC can not be faulted. But the present Uttarakhand UCC law is full of holes.



Illustration: Pariplab Chakraborty

“On principle it is quite wrong to try founding a theory on observable magnitude alone. In reality the very opposite happens. It is the theory which decides what we can observe.”
~ Albert Einstein

On February 5, 2024, chief minister of Uttarakhand Pushkar Singh Dhama tabled a Uniform Civil Code (UCC) Bill . The rather complex document (with seven schedules and 392 sections) was passed by the House the very next day. Uttarakhand thus becomes the first state in independent India to pass a common law on marriage, divorce, inheritance and even live-in relationships between two consenting adults. The hurry with which the Bill was brought and passed on the eve of the 2024 elections clearly indicates a similar passage for the Bill in all other states, should the Bharatiya Janata Party win with a large majority, of which they seem very sure. And

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when that is done we will have a pan-Indian civil society the BJP wishes to build.



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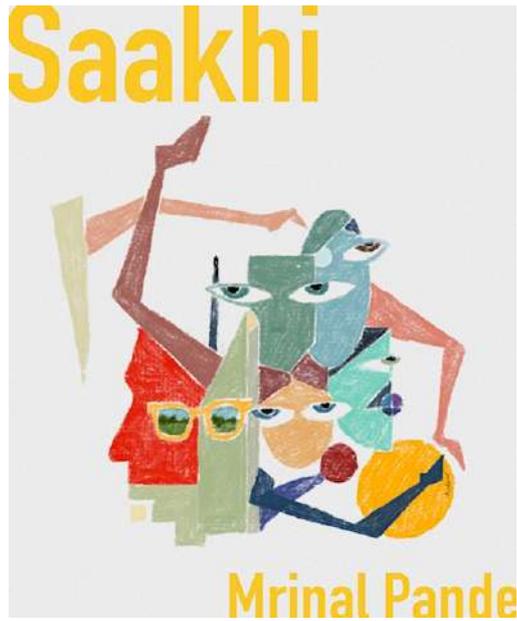


Illustration: Pariplab Chakraborty

According to a swiftly released press note from a group of Uttarakhandi women as soon as the contents of the Bill became public, the women of Uttarakhand had protested and rejected the draft in toto. According to the note which seems to have been disregarded, the Bill was built along the patriarchal Hindu

law template and retained several discriminatory aspects that would deny women an equal agency. The leaders of the Muslim community have also protested over the UCC overtaking Muslim personal laws. The new law lacks clarity for both groups and that may cause heavy snarls when it is implemented. It does not, for example, distinguish between ancestral or self-acquired property. It seems to promote intrusive moral policing and may result in discriminatory harassment of adults in a relationship that has been considered autonomous and consensual. Some of the rules may become clearer when gazetted but the compulsory registration of live-in relationships is full of explosive landmines.

In 2005, when the Hindu Succession (Amendment) Act was passed thus giving daughters equal coparcenary rights in ancestral property, the then law minister was asked by the distinguished lawyer Fali Nariman whether his government would follow this with a Uniform Civil Code binding on all Indians. He said, "We can't speak for all communities unless they are ready." This care for the sentiments and reservations among the actual stakeholders was mostly lacking in the preparation and the hasty passage of the UCC.

Coming to the grassroots reality, was even the Hindu community of Uttarakhand prepped and well informed about the various provisions of the new law? Does it know that the 1.89% Scheduled Tribe population has been kept out of the purview of the Bill, and has (according to a report based on

the NFHS survey 2021) a higher percentage of men marrying more than one wife than the Muslims in the state? So far as one knows, there was no well publicised and wide dialogue between citizens' groups (especially the women whom it impacts the most) and the creators of the draft. Due care was also not taken to depoliticise the Bill by placing it in the state assembly not before but after the general elections. Can we then pooh-pooh women's groups and the Muslim minority seeing it as a political move to consolidate majority votes?



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It is obvious, as the press note from the dissenting group of women says, that the State can now reach deep inside personal spaces, even invade the privacy of citizens' bedrooms. Supporters deem the UCC a progressive step that would protect women in live-in relationships against domestic violence and confer legitimacy and property rights on any children born out of wedlock. But these provisions already existed under the federal laws such as the Domestic Violence Act. And the Supreme Court has already ruled that live-in relationships are not criminal. Goa has had a pre-independence UCC that protects such unions. Did the draft makers even consult that?

What is more unsettling is that the government has not only not created widespread awareness about the hows and whys about new provisions of the UCC, it has also not produced necessary documentation to pass around among citizens. This means that many people, especially the young men and women, may find that they are law violators in the eyes of the State because they have not submitted necessary documentation to a registrar within 30 days of their union. This failure may subject them to heavy penalties and even long jail sentences, without being told in clear terms how and why. In a state with a small but diverse population following various faiths and personal laws, with a sizeable rural population living in remote areas, any information needs time to reach and be absorbed by the locals. A sudden imposition of a UCC can trigger immediate and unforeseen social, political, legal and constitutional implications for Uttarakhandis. With the prolonged vituperative talk against 'love jihad' and repeated underlining in media messages about

how the law will free Muslim women of *halala*, *iddat* and bigamy, it is clear that the intent is more political than reformist and protective of women's rights.

In its intent, the UCC can not be faulted. It proposes to standardise the minimum age of marriage for all (already standardised for most citizens), outlaw extra-judicial marital norms that exploited women, prohibit polygamy and promise equal inheritance to both men and women. Given how women have been exploited along these issues, there is no denying the UCC is in itself a good idea. But the present UCC law is full of holes. Take the mandatory registration (within 30 days) of the relationship and the punitive proceedings that will follow swiftly in case of failure to do so. The lack of public awareness about the new laws can easily hand the State a new tool and if it so desires, to cherry pick political dissenters and minorities to harass them.

When the Centre opposed same-sex marriage in the Supreme Court, it did so on the grounds that the concept of marriage is inherently connected to religious and cultural norms. Why has this autonomy for religio-cultural norms suddenly been discarded in favour of a registrar criminalising live-in relationships because the couple may have come to him not within the mandated period? Also it is unclear when couples go to him how he will verify the details provided by them. He may choose someone who can "conduct enquiry to establish validity of the relationship". The use of phrases to describe prohibited relationships under titles like 'legitimate blood', 'half blood' and 'uterine blood' and 'full blood' in an actual legal document is mind boggling to say the least. Who can the registrar summon when judging a case of live-in relationship? An angry parent? A cousin with a score to settle? An RWA uncle who brought it to the notice of the registrar who maintains the register of all such couples? The local Thanadhyaksh ji? Is the registrar allowed to share this register of couples in live-in relationship with the local police station? Is it a public register anyone can access like other registers listed in the new law (Part 1, Chapter 2) pertaining to marriages, divorces etc.? If it is, what prevents the local moral policing groups from intruding into the bedrooms of 'suspected' citizens?

It is time to recall that the State has not created either the institution of marriage or live-in relationships. Society and the changing times have. Each law is a society's text, a reflection of its rational mind. But our judiciary, legislature, executive and the media are all glaringly minority and female deficient. So even if we believe in the milk of human kindness flowing in the State's veins, the State must show proof of its

sincerity in recognising the enormity and complexity of the task of giving us a just and fair UCC.

Saakhi is a Sunday column from Mrinal Pande, in which she writes of what she sees and also participates in. That has been her burden to bear ever since she embarked on a life as a journalist, writer, editor, author and as chairperson of Prasar Bharti. Her journey of being a witness-participant continues.

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