

KAFILA – COLLECTIVE EXPLORATIONS SINCE 2006

CULTURE, FEMINISM, GOVERNMENT, ISLAMOPHOBIA, RELIGION, RIGHT WATCH

Uttarakhand Women's Groups' Statement on the Uttarakhand UCC Draft Bill

08/02/2024 | [ADITYA NIGAM](#) | [LEAVE A COMMENT](#)

[We are publishing this response of the Uttarakhand Women's Groups to the Uttarakhand Draft for initiating further debate.]

- **The Uttarakhand women's groups and representatives reject this Bill in toto, in the form introduced in the State Assembly.**
- **A Bill criminalizing constitutional behaviour, and introducing moral policing is unacceptable.**
- **The Bill which is predominantly a cut paste from the Hindu family laws, does not remove inequalities in family across the spectrum of religious and secular laws, but criminalises the Muslim minority and autonomous, consensual behaviour of adults.**
- **Demands that it is sent to the Standing Committee for further deliberations.**

On a perusal of the draft Uniform Civil code (UCC) Bill presented at the Uttarakhand Legislative Assembly, it is apparent that the rhetoric that the Chief Minister of Uttarakhand and his Government were mouthing has been actualized through the draft. Therefore, while seemingly being uniform across religions, the Bill is actually criminalizing and regulating constitutionally acceptable behaviours, like adult consenting cohabitation, called "live in", reducing autonomy and choice, which the women in this country have attained through concerted struggles, inside the homes and on public platforms. Moral policing measures have been introduced in this regard. What is shocking is that this law is applicable even to those living outside Uttarakhand, apart from being applicable on all residents of the state including those who do not have a domicile. Interestingly there is a glaring silence about the rights of queer and transgender persons within a family and the rights of transgender and same sex persons to marry.

Majorly it seeks to introduce changes in the provisions that are perceived as defective in the Muslim law, such as unequal inheritance, polygamy and the practice of *halala* (by which a person can only remarry his divorced spouse after she has married someone else, consummated the marriage and thereafter obtained a divorce). In one sense the Bill has terminated the application of Muslim family law and has further criminalised the Muslim man and woman. Ironically, the Bill has not incorporated positive and progressive aspects of Muslim law such as the compulsory payment of *mehr* by the husband to the wife which provides financial security of the wife, *nikahnama* (marriage contract) which allows for the spouses to add legally binding conditions that are mutually acceptable, and a 1/3 limit rule for willing away property. Had the intention of the Bill genuinely been to bring about gender justice, such provisions could have been extended to women of all communities.

The discrimination that Hindu women face in the family, and which stands unaddressed in the various family laws prevalent in the country, be they the religious personal laws or the Special Marriage Act have not been addressed at all. So also, there is a total silence on addressing the issues of discrimination against women within the Hindu Joint Family or rather the provisions are so drafted that they cannot be applied to the Hindu Joint Family and coparcenary property owned by it. The 2005 amendment to the Hindu Succession Act, provided daughters right to coparcenary property on par with sons, but excluded other female members of the HJF such as widows, wives and mothers. The Hindu Joint Family is premised, even after the 2005 amendment, on descendants (male and female) from a common **male** ancestor. These glaringly patriarchal and gender discriminatory provisions have been left untouched by the Bill.

The Bill is completely silent on the application of Christian family law and Parsi family law as well as other religious communities, which, apart from being legally untenable, means that these personal laws also have been terminated in the state without any consultation with the said communities.

The five Tribal communities of the state have been excluded, giving preference to customary law, however, other communities that work with customary law cannot seek intervention there as it has been set aside and termed illegal.

The critical aspect of any law is that every stakeholder in the law should be able or should have the space to access the law. In the prevailing climate where minorities are being targeted, it will make it difficult for women from minority communities to access any uniform law, howsoever progressive it is made, (which is not the case in this retrograde law), when its basic objective is to show one upmanship over minorities, especially Muslims.

To illustrate how the Code Bill follows the Hindu law template, it is important to note that the existing realities that make equal provisions of inheritance in the Hindu law unrealisable, have not been factored. For instance, the reality that property is by and large purchased in the name of the man, is not factored. This means that after the male expires, the property will be inherited by his parents (but not by his wife's parents), along with *his* Class I heirs, in the same share. That, according to the Bill, her property will also be inherited by her husband along with *her* parents as Class I heirs, has no meaning in a society that by and large does not purchase property in the name of females. In other ways the structural discrimination against Hindu females has been kept intact. The concept of matrimonial property has not been introduced, despite the Law Commission of India's recommendation in this regard. Similarly, the positive provisions from the Muslim law or the Goa law, such as the restrictions on making a will to render equal inheritance rights to naught, have not been considered in the framing of this law.

The Bill has retained restitution of conjugal rights as a matrimonial remedy at a time when its constitutional validity has been challenged in the Supreme Court. This is a regressive provision with colonial origin, that legally compels unwilling spouses to live together in the name of consortium, companionship and conjugality. In the case of a wife, she may be subjected to rape and forcible pregnancy by the husband.

Criminalising the violation of compulsory registration of marriage without a provision in the law for creating awareness and facilitating documentation, in effect will mean that people will be rendered law violators for no fault of their own, and be subject to penalties. In a state with poor socio- educational status of women, the ramifications are bound to be more adverse for women.

There is a function creep in this law, in that this Bill is intended to target political dissenters and those who are minoritized, which includes, the minoritized with the Hindu community as well. Therefore, in the guise of establishing non-registration of a live-in relationship, the State will have the power to enter the home and surveil. Criminalisation of adults in consensual live-in relationships, who may have deliberately decided to avoid marriage and its legal consequences, appears to be overshadowing other intentions.

Fundamental rights are either denied or taken away by this law. Even the existing provision of right of women to reside in their matrimonial homes, has been taken away. Thus rights to equality, right to live and livelihood and to live with dignity, right to freedom of speech and expression, freedom of conscience and right to freely profess, practice and propagate religion, have become casualties under this Bill.

There is also total silence on areas pertaining to custody, guardianship and adoption of children, which are critical areas around which there has been much gender-based discrimination.

No special provisions have been brought in to safe guard the rights of queer and transgender persons within a family and the rights of transgender persons to marry. Similarly, same sex marriages are not envisaged or recognised under the draft Code. The concerns addressed by persons with disability, that required special provisions to safeguard the rights are also not addressed in the Bill.

In this form, this Bill should be referred to a Standing or a Select Committee for wider deliberations, as the Bill, which has much import for the people of Uttarakhand and also for the rest of India as a precedent setter, needs to be discussed and people's, including diverse women's, queer and trans communities' responses from Uttarakhand need to be taken into account.

The Uttarakhand women's groups and representatives of organisations, reject this Bill in toto, in the form introduced in the State Assembly.

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**◀ MUSLIM PERSONAL LAW ◀ UNIFORM CIVIL CODE ◀ UTTARAKHAND MAHILA MANCH ◀
WOMEN'S PROPERTY RIGHTS**