

A code neither considerate nor reformist

Gender justice is often the foundation on which arguments for a uniform civil code are mounted. But the recent Uttarakhand law actually hinders it



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[Saumya Saxena](#)

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The Uttarakhand state's draft of a uniform civil code gained presidential ascent and became a law recently. While the Act significantly resembles the Hindu Marriage Act, its few new additions raise serious concerns. More than gender equality, the Act addresses the popular and damaging sentiment that 'at least something is done'. The idea that something is better than nothing promotes carelessness and hides negligent drafting. In a bid to 'get things done', we end up with a law that embodies the discrimination it was ostensibly meant to address.

Here, I limit my critique to three brief points. One, the dealing of Muslim personal law. Second, its understanding of live-in relationships, and, relatedly, its contribution to gender equality.

The Act places undue emphasis on the supposed disabilities created by Muslim personal law. In some sense, Muslim personal law is offered as bait to prompt state intervention, and significant media attention is deployed to highlight its obscurantism.

Practices like *nikah halala*, which were neither common nor legal, often end up in petitions before courts.

Often dismissed and rarely made by the victims, they serve the purpose of stirring up a conversation about Muslim personal law rather than looking at the specificities of the case, where there is usually an individual criminal operating without religious sanction. A reasonable comparison would be to blame Hindu personal law for an individual case of sati—a practice already banned, criminalised and, in popular imagination, no longer associated with the Hindu way of life. Bigamy becomes another argument over which Muslim personal law is brought to focus, although any conversation over polyamorous practices in other religions are treated as occurring rarely but illegal.

The code grants exemptions to tribal groups that constitute around 3 percent of state population. Focusing on tribal exceptions is important precisely as it offers a valid and significant argument against uniformity. Where the Northeast region is involved, it is even more convenient to turn a blind eye as it lays bare the true antagonism between federalism and uniformity. It highlights that discrimination, not difference, must be the basis for reform.

Gender justice is often the foundation on which many arguments for uniformity are mounted. Many aspects of the current Act not only fail to promote gender justice, but they actively hinder it. Provisions in the Special Marriage Act like the 30-day notice period already encourage surveillance and local procedures such as seeking on affidavit a ‘no objection’ before parties register their marriage have also emerged. The UCC Act takes it a step further, seeking even live-in couples register their relationship. The code not only retains restitution of conjugal rights, a colonial inheritance that forces couples into cohabitation even when its accompanied by discrimination or violence, but also leaves intact the marital rape exception and maintains different ages of marriage for men and women.

In other words, Uttarakhand is extremely keen to keep couples together whether married or otherwise, but not necessarily address the violence or inequality within marriage. It encourages

an alliance that is heterosexual and intra-religious, where men are older than their wives.

This sentiment of surveilling love is a common one frequently deployed in courts and codes. The Gujarat government in mid-2023 considered including a mandatory parental consent in all love marriages to be registered in the state. This is not new and even the 1954 debates on the Special Marriage Act witnessed speeches where it was treated as a way to contain the 'rebels'. Multiple anecdotes were cited to forward the argument that the fate of inter-religious marriages was to end in doom. Nevertheless, the Act became an enabling piece of legislation that only stands to be undone by laws proposed by Uttarakhand's UCC.

On occasions where live-in relationships have remained consistent for a long time, the Supreme Court judgement in the case of *Dhannu Lal vs Ganeshram* in 2015 already offers such couples protection, treating their relationship as marriage. And this assessment of whether a live-in relationship is like a marriage is done on a case-to-case basis. The Uttarakhand law has introduced punitive action for not registering a live-in relationship (within a month), which shows the extent to which it is divorced from contemporary context where such relationships occur precisely because couples may not feel ready for marriage.

In response to being questioned on the unreasonableness in the provisions, a member from the Committee responded saying if couples are in live-in relationships, 'then own it'. If one were to enter multiple such relationships and register them or 'own them' each time, would the state guarantee such records would 'protect' women and not perpetuate social stigma against multiple relationships? Would it guarantee these records could remain private? Would it also guarantee multiple registrations made by individuals with different people would not invite police harassment? Would every breakup between a couple need adjudication by state authorities? The stigma of multiple relationships would disproportionately affect women.

It is well established that heterosexual marriages are often premised upon compromises women make in their lives as many leave the workforce, others are disproportionately burdened with childcare or elderly care. In making live-in relationships akin to

marriage, we end up also reinforcing gender stereotypes that married women have battled.

Living together without marrying avoids some of the trappings of marriage, like having to build a relationship with in-laws who could be conservative, more firmly of the belief that their children should marry people of their own faith, or could have expectations for children. But registration of a live-in relationship would make negotiations between two people now subject to public scrutiny and parental intervention.

Although it may entail significantly more effort, codifying personal laws separately may ensure greater compliance by religious communities and also accommodate for regional differences. To say that one sort of difference is acceptable (tribal) and even worth preserving while any other kind (religious) is perpetuating inequality shows the biased premise on which the argument for uniformity is mounted.

By enacting a legislation in the name of 'taking action', the state claims credit; but in the process, social movements lose momentum and the original demand for reform remains entirely unaddressed. Therefore, there is more harm done through such interventions that are not benign steps towards progress they are made out to be.

(Views are personal)

Saumya Saxena | Associate Professor, O P Jindal University