

Personal Laws Vs. Uniform Civil Code: Challenges And Prospects Of Uniform Civil Code In Tribal Areas Of North-East India

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Abstract:

Directive Principle of state policy under Article 44 lays down the principle of Uniform Civil code. Implementation of this principle has been a continuously debated issue, due to the different challenges that its implementation can result in. the implementation of Uniform civil code in North- East India presents a unique challenge due to regions distinct cultural identity, ethnic and religious diversity. The introduction of Uniform civil code in this region raises concern about the preservation of indigenous identity and the potential erosion of traditional legal practices. While the Uniform civil code aims to promote equality and national integration by providing a common legal framework for all citizens, its application in North- east India must be approached with sensitivity to the region's unique socio- cultural context.

Keywords: Uniform Civil Code, Cultural Autonomy, legal uniformity, customary law.

Introduction:

The Directive Principle of State Policy is laid down in Part IV of the Indian constitution, though it is not justiciable in nature but are still considered fundamental for the governance of the country. The Directive Principles of State Policy under Article 44 of the constitution consists of the Uniform Civil Code to be introduced throughout the territory of India, the term Uniform civil code denotes a small field of civil law (Sen, 2004). It amounts for equal laws for all sections of the society. It is considered a primary importance to establish a Uniform Civil law replacing personal laws i.e. separate laws for different religious communities.

India is known for its diversity, it consists of population belonging to different caste, community, religion etc. and it has been somehow successful in establishing a sense of unity amidst the diversity. Different indigenous tribal communities are also present in India, which are governed based on their traditional customary laws, covering diverse issues in order to ensure smooth functioning of the society. From marriage laws to property laws every possible aspect is tried to be covered through the customary laws of the land. These customary laws are often unwritten but are still passed down through generations and continues to exist even after the emergence of varied laws. The issue of Uniform Civil Code has been a continuous topic of debate in the Indian society. It is often feared that Uniform civil code might marginalize the minority population, who have their respective personal laws. But if we look at the deeper aspect then we can see that Uniform civil code is essential component for a country like India. Moreover, it will not be a new concept for India, countries such as Germany, Canada, Japan etc have successful functioning Uniform civil code. Goa is the only state in India which has a Uniform civil code, it follows the Portuguese civil code of 1867. Hence Uniform civil code has been practiced in Goa from even before Independence and even before it become a part of the territory of India in 1961.

The law commission report of 2018 mentioned that “various aspects of prevailing personal laws deprived women (Law Commission’s Recommendation on Changes in Personal Laws: A Critique, n.d.). With the introduction of a Uniform civil code, it is believed that it helps in solving the issues which arise time and again due to the presence of different personal laws of different communities, which are often seen to have been used as an excuse for discriminatory acts, for example discrimination of women in a patriarchal society. Hence it is believed that with the implementation of Uniform civil code social justice, gender equality etc could be established.

Majority of the tribe in North- East India have not yet assimilated with the lives and ways of the other people in these states, they still have their roots in their own culture, customs, and civilization. It is home to numerous indigenous tribes and communities, each with its own customs, traditions and personal laws governing marriage, inheritance, and other civil matters. These customs are deeply rooted in the social fabric and are protected under different constitutional provisions.

Prominent case laws on UCC:

- **Shah Bano:** Shah Bano case of 1985 showed the importance of having a Uniform civil code. The court emphasized that personal laws must align with the constitution, the judgement called for the implementation of a Uniform civil code to ensure that all citizens are governed by the same set of laws irrespective of their religion, thereby upholding secularism(The Press in India: The Shah Bano Judgment and Its Aftermath on JSTOR, n.d.).
- **Sarla Mudgal:** Sarla Mudgal case of 1995 underscored the inconsistencies and inequalities in the application of personal laws across different regions of India, the case also brought attention to the misuse of religious conversion to evade legal obligations under the law of the land(Upholding Gender Equality: Analyzing the Sarla Mudgal v. Union of India Case, n.d.).
- **Lily Thomas:** Lily Thomas case of 2000, reinforced the legal and social discussions about the need to reform in personal laws and the possible implementation of a Uniform civil code in India. This case made it clear that law would not tolerate misuse of religious conversion to circumvent personal laws, particularly in matters related to marriage. The judgement contributed to the broader discourse on the need for a Uniform civil code to ensure uniformity in legal rights and obligations across all citizens, regardless of religion(Lily Thomas, Etc. Etc. vs Union Of India & Ors. on 5 April, 2000, n.d.).
- **Shabnam Hashmi:** Shabnam Hashmi case (2014), highlighted the importance of working towards a Uniform civil code by making it clear that irrespective of personal laws of different communities, they have the right to adopt a child under the secular law provided by the Juvenile Justice (Care and Protection of Children) Act, 2000. The court held that this law is secular and applies uniformly to all citizens, thereby allowing adoption across all religions, who were traditionally governed by personal laws that did not recognize adoption(M/S Shabnam Hashmi vs Union Of India & Ors on 19 February, 2014, n.d.).

Constitutional provisions for tribes in the North – East region of India in order to ensure their autonomy:

Sixth Schedule of the Indian Constitution: It is constituted under Article 244 (2) and Article 275 (1) of the Indian

constitution, it contains provisions related to the administration to be carried out in the tribal areas in the states of Assam, Meghalaya, Tripura, and Mizoram. The provisions guaranteed under the sixth schedule are as follows: (i) tribal areas in above mentioned states of Assam, Meghalaya, Tripura and Mizoram will be administered as Autonomous Districts and Autonomous Regions (ii) the Governor of the state will have the power to determine the area or areas as administrative units of the Autonomous Districts and Autonomous Regions (iii) the Governor is provided with the power to create new Autonomous Districts and Autonomous region or alter the name of any Autonomous District or Autonomous regions(Singh & Jain, n.d.).

The sixth schedule of the Indian constitution recognizes the special status of tribal areas in certain states, granting them autonomy in managing their affairs through District and Regional councils, hence councils have the authority to enact laws related to land, marriage, divorce and social customs, ensuring that the unique identity of the tribal communities are preserved from getting eroded(Agnihotri, 1994).

Article 371 A (1): this article is for the state of Nagaland, it states that no Act of the Parliament in respect of (i) religious or social practices of the Nagas (ii) Naga customary law and procedure (iii) administration of civil and criminal justice involving decisions according to Naga customary law, (iv) ownership and transfer of land and its resources, shall apply to the state of Nagaland unless legislative Assembly of Nagaland so decides(Article 371A(1) in Constitution of India, n.d.).

Article 371G: This Article is for the state of Mizoram, it was added by the 53rd constitutional amendment act of 1986. This Article states that no Acts of the Parliament in respect of (i) religious or social practices of the Mizo's (ii) Mizo customary law and procedure (iii) Administration of civil and criminal justice, involving decisions according to Mizo customary law (iv) ownership and transfer of land, shall apply to the state of Mizoram unless legislative assembly of Mizoram so decides(Article 371G, n.d.).

Uniform civil code and tribal community in North East India:

The constant debate surrounding the issue of Uniform civil code also needs to be studied from different lens, focus must also be given to the possible impacts of introduction of

Uniform civil code on tribal population. North-East India has a number of tribal communities, each group has their respective personal laws being followed since generations, it is their identity, being framed based on their customs and tradition.

- As the tribal communities have their own respective customs and traditions, passed on through generations adopting Uniform civil code gives rise to the fear of the possibility of hampering the indigenous customs in general and eventually hampering the cultural identity of the community. With the implementation of Uniform Civil code throughout the territory of India will have no prominent place for tribal laws and hence might eventually lead towards the erosion of tribal customs. This is particularly significant in matters like marriage, inheritance, land ownership etc. where tribal customs often differ from the mainstream legal framework. Fear of getting alienated and marginalised will grow. Uniform civil code could potentially encroach upon the customary laws, and replacing the traditional customary law with a Uniform civil code might lead to the emergence of the feeling of getting alienated from their customs and traditions and marginalised.
- India is a secular country; the Preamble of the Indian Constitution declares itself to be a secular i.e. it does not have any state religion and respects and allows the practice of different religions equally. Having a Uniform civil code in a country which believes in secularism might go against the very spirit of secularism.
- Indigenous tribal community always have a constant fear looming around them, which is the fear of losing their tribal identity, time and again different tribal groups are seen to be raising their voices demanding an autonomous status in order to ensure the protection of their cultural identity from getting encroached or diluted with passing time, such demands often take the violent shade. Introducing a Uniform civil code might fuel up the already present issue of autonomy, as the fear of losing their customary identity will enlarge. Tribal communities in India, particularly those in North- Eastern part of India, have been granted a

degree of autonomy under the Sixth schedule. The Uniform civil code could potentially encroach upon this autonomy by overriding customary laws with a Uniform civil code. This could weaken the power of District and Regional Councils, leading to a sense of alienation and marginalization among tribal communities

- Some tribal societies are ingrained with moral laws which have stood out, which often seems to be far ahead of their time, merely introducing a Uniform civil code, will ruin such important traditional knowledge base of the society. One of the primary arguments in favour of Uniform civil code is the promotion of gender equality. However, the imposition of Uniform civil code could conflict with the tribal customary laws that, in some cases, favour women more than the general law. For example, in certain tribes matrilineal succession is practiced, where property is inherited through the female line. The Uniform civil code could potentially override these customs, leading to a loss of rights for women in such communities.
- Many tribal communities have their own dispute redressal mechanism, introduction of a Uniform civil code might hamper this traditional management mechanism and the hope for ensuring faster delivery of justice through uniformity of laws might lead to the failure of the justice delivery system as the local community management system are often in a better position in ensuring the management as they are familiar with the local environment and the newly implemented laws might feel alien to them and hence difficult to be accepted and abided.
- Indigenous community often practice community management of resources and implementation of Uniform civil code might hamper this community governance and ownership structure. Land is a crucial aspect of tribal life, with many tribes practicing collective ownership and management of land resources. The Uniform civil code may prioritize individual property rights, which could disrupt the communal land ownership patterns prevalent in tribal areas. This could lead to conflicts over land, displacement, and further marginalization of tribal communities

- Political parties might use this issue for mere political gains, which can further deteriorate the condition and lead to increased feeling of polarization of the tribals. Tribal groups might mobilize politically to oppose the Uniform civil code, potentially leading to tensions between the state and tribal communities. This could impact the tribal state relations and lead to increased demand for autonomy or special protections

Importance of UCC in tribal areas of North- East India:

- UCC is considered to be the need of the hour, in order to bring in a common set of laws for every individual. Having different set of laws might have a negative consequence, it can create confusion and can lead to discrimination. Hence, Uniform civil code will help in ensuring equality before law, it can bring legal uniformity and reduce ambiguities in the law, this might offer clearer legal protections, particularly in areas where the customary laws are not well defined.
- Having different set of laws for different groups might create confusion and difficulty to deliver justice as different issues have different ways to be resolved, an issue which is given serious punishment might be treated lightly in some other community. All this results in confusion. Uniform civil code can help in simplifying the legal process, by simplifying the multiple personal laws with uniform laws.
- Tribal personal laws were framed long back, which was apt for that period of time. with growing development of the society such laws might not fit in with the current pace of the society and might feel the need for change so that the laws could be framed based on the contemporary situation aligning them with contemporary values and human rights standards which can match with the modern progressive society.
- Uniform civil code will help in building national integration.
- Law commission report of 2018 pointed out the issue of discriminatory personal laws against women and addressed the need for amendments in the existing personal laws of the varied communities, it addressed the importance of ensuring gender equality in a community before working towards establishing equality between communities. In case where tribal

customs are patriarchal or discriminatory towards women, a Uniform civil code could potentially offer greater protection and equality for women in tribal communities.

- Uniform civil code can contribute to economic development by providing a clear legal framework for property rights, leading to land ownership and investments in tribal areas.
- Tribal communities are often seen to be exploited in the name of laws, presence of a Uniform civil code can help the tribal communities by ensuring that they are subject to the same legal protections as other citizens, reducing the likelihood of unfair practices or misuse of religion to bypass certain legal obligations. Having a Uniform civil code can minimize legal conflicts arising from the coexistence of multiple personal laws, leading to a more consistent legal environment, as having multiple personal laws results in complications and legal loopholes that arise from the existence of multiple personal laws.
- Introduction of a Uniform civil code can help in ensuring better governance and administration by making it easier for the government to implement and enforce laws uniformly across the country.

The debate around Uniform civil code has been going on since a long time, one section fears its implementation in a secular country for the fear of getting marginalised in their own land and another section wants the successful implementation of Uniform civil code in order to promote national integration and unity by ensuring uniformity in laws for every section of the territory. The section of the society which faces the worst fear from the Uniform civil code are the tribal populations. In order to remove the fear it has been contended that the tribal areas can be excluded from the Uniform civil code, so that it doesn't destroy their customary practice. But excluding a chunk of the population from a regulation which will be implemented in the entire territory of the country can create further problems, firstly, other communities might also try to get themselves excluded from such jurisdiction, which will further increase the workload and tension of the government and moreover the very spirit of the Uniform civil code won't have any real meaning as a major chunk of the population will not be covered by it and hence Uniform civil code will only be a mere

terminology without any real meaning in the absence of real uniformity in laws throughout the territory of India.

Conclusion:

The impact of Uniform civil code on tribal population would likely to be complex and multifaceted. While it could lead to greater legal uniformity and potential benefits in terms of gender justice, it also risks undermining the cultural identity, autonomy and traditional customary practices of tribal communities. The success of a Uniform civil code in this context could depend on how sensitively it is implemented, with provisions to protect the unique rights and customs of the diverse tribal population. Uniform civil code must be introduced gradually, instead of bringing in a sudden change, as people need sufficient time to accept the changes in the surrounding, bringing a sudden overall change might put them in a difficult spot (Sen, 2004). As Goa is the only state which currently has a Uniform civil code, hence, gradually it must be introduced in states rather than introducing it in the entire territory all at once. Equal respect and attention must also be given to the personal laws of different communities for ex most tribal communities of North east India have some laws which promotes and practices laws which are far more advanced and have been practicing governance since time immemorial which the government are trying to introduce as a reform in the contemporary laws, many tribal groups in North East India have been practicing matriliney which is a very new concept in the contemporary period. Hence, it is important to learn the good from the customary personal laws of the tribal community. The introduction of Uniform Civil code should not be done in the name of civilizing the nation, as the British tried to do, the goal should be reformation of the personal laws rather than transformation of the tribal communities. It is important to study the functioning of Uniform civil code in different countries and particularly in Goa, this will help in understanding the future prospect of implementation of Uniform civil code and will it suit the Indian social system. India has been functioning even in the absence of a Uniform civil code, so it can invest its time in understanding it to the core instead of hastily introducing it just for the sake of introducing it, for that time being reforms can be introduced in the existing personal laws of the community and gradually with time Uniform civil code can be introduced. Balancing the goals of legal uniformity with the need to respect and preserve the diverse cultural heritage of the North- East is crucial. An

inclusive dialogue involving tribal communities and policymakers is essential to address these complexities. Any move towards implementing the Uniform civil code in North-East India should consider the regions pluralistic nature, ensuring that rights and traditions of indigenous people are protected while striving for broader legal reforms across the country.

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