
CULTURAL PLURALISM V. LEGAL UNIFORMITY: EXAMINING UCC'S IMPLICATIONS FOR TRIBAL COMMUNITIES

Yuvina Goyal¹ & Vedansh Goyal²

ABSTRACT

A nation's diversity is its strength, not a problem to be solved with uniformity. This paper examines the cultural and legal conflict between the Uniform Civil Code and the customary practices of tribal communities in India. Tribes, as defined by their shared language, culture, and social systems, possess the constitutional right to preserve their distinct heritage. UCC, while intended to promote uniformity and gender equality, undermines the deeply entrenched customary laws of tribes, violating their fundamental rights to cultural preservation and self-governance. While the UCC aims to promote equality, its rigid enforcement disregards the lived realities of indigenous groups, undermining their right to self-governance and cultural preservation. The paper also critiques the UCC's inconsistency with both national and international legal standards, arguing that its rigid application fails to account for the unique socio-cultural realities of marginalized communities. This paper explores how the UCC's blanket approach violates tribal rights and argues for a more nuanced, inclusive legal framework that respects India's diverse cultural landscape. As such, the imposition of the UCC is seen as unconstitutional, necessitating a more flexible approach that respects the diversity of India's indigenous population.

¹ Assistant Professor, UILS, Panjab University, Chandigarh.

² Pursuing B.A.LL.B.(Hons), School of Law of SVKM's NMIMS, Chandigarh.

Introduction

The Uniform Civil Code, herein after referred to as 'UCC', is a constitutional directive under Article 44 of the Constitution of India that aims to establish a common set of laws governing personal matters such as marriage, divorce, inheritance, and adoption, thereby transcending religious boundaries in family law jurisprudence.³ The framers of the Constitution, while cognizant of India's pluralistic social fabric, envisioned the UCC as a progressive goal to harmonize diverse personal laws in a secular legal framework, reflecting the ideals of justice, dignity, and gender equality.⁴

Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single Government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent.⁵ In the *Dictionary of Anthropology*, tribe has been defined as 'a social group, usually with a definite dialect, cultural homogeneity, and unifying social organisation.'⁶ These tribes have a right to conserve their distinct language, script or culture. This right is also substantiated by a corresponding duty of every citizen of India to value and preserve the rich heritage of our composite culture.⁷ The tribal communities in India have a right to seek justice within their own traditional or customary laws.⁸ The Panchayat (Extension to Scheduled Areas) Act has been hailed as perhaps the most progressive law passed since independence, granting tribal communities radical powers to preserve their traditions and customs⁹, besides entrusting them with the authority to manage their community resources.¹⁰ Moreover, it has been provided that any habitation or hamlet comprising a community and managing its affairs in accordance with traditions and customs

³ UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER Author(s): Shabbeer Ahmed and Shabeer Ahmed Source: The Indian Journal of Political Science, JULY - SEPT., 2006, Vol. 67, No. 3 (JULY - SEPT., 2006), pp. 545-552 Published by: Indian Political Science Association Stable URL: <https://www.jstor.org/stable/41856241>

⁴ Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press, 1999.

⁵ *State of Karnataka v. Chandramohan*, (2004) 3 SCC 429.

⁶ K.L. BHOWMIK, TRIBAL INDIA: A PROFILE IN INDIAN ETHNOLOGY.

⁷ INDIA CONST. art. 51 A.

⁸ A SPECTRE HAUNTING INDIA, THE ECONOMIST (17 August 2006), http://www.economist.com/world/asia/displaystory.cfm?story_id=7799247.

⁹ Abha Chauhan, Sustainability through Self-Governance in Tribal Areas of India: A Gender Perspective (1998) (paper presented to the International Sociological Association).

¹⁰ Vidhya Das, PESAA REALITY CHECK (Aragamee, 2005), http://www.agramee.org/newinitiatives_pesa.htm.

¹¹could now exercise limited self-government. The basic unit of administration in an alternative structure should continue to be a community that manages its affairs in accordance with shared traditions and customs.¹²

Custom is a long-established, locally-prevalent rule of law aligns with the tribal communities' systems of customary law. The Privy Council's liberal approach to recognizing and upholding these customs emphasizes their legitimate place in the legal framework. Disregarding these customs through the UCC would violate this well-established judicial precedent. Customary law refers to rules that are transmitted from generation to generation through social inheritance.

A. UCC is against the customary practices of Tribes

In a close-knit simple tribal society, the people themselves want to live according to customs backed by social sanctions; to save them from objection and social ridicule of the society.¹³ It has also been stated that if tribal customary laws are reduced into formal, technical, strait-jacket frame, then it is likely to rob it of its vitality and strength.¹⁴ It will expose the innocent, gullible tribal to the machinations of touts, middlemen etc. It is recommended that a proper study of customary codes of the tribals should be made and the same may be codified properly.¹⁵ The customary practices and distinct cultural identity of India's tribal communities are inalienable and inviolable rights, firmly grounded in principles of natural justice, precedent, and international human rights law. Any attempt to supersede these time-honoured traditions through the imposition of a Uniform Civil Code would constitute a flagrant violation of the fundamental freedoms and self-determination of these indigenous populations.

Furthermore, the jurisprudential recognition of customary law as a legitimate and locally-prevalent source of legal authority is a well-established tenet of India's legal framework. The criteria for valid custom, including reasonableness, consistency with fundamental rights, and continuity over time, are unequivocally fulfilled by the practices and traditions of tribal

¹¹ Panchayat (Extension to Scheduled Areas) Act, 1996, § 4(b), No. 40, Acts of Parliament, 1996 (India).

¹² Apoorv Kurup, *Tribal Law in India: How Decentralized Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better*, 7 INDIGENOUS LAW JOURNAL 87, 119 (2008).

¹³ Chapter III, Report on Codification of Customary Laws and Inheritance Laws in the tribal Societies of Orissa by Dr. Bhupinder Singh and Dr NeetiMahanti of Jigyansu Tribal Research Centre, sponsored by Ministry of Welfare, Government of India and submitted on 19-5-1995, p.1.

¹⁴ Report on Codification of Customary Laws and Inheritance Laws in the Tribal Societies of Orissa by Dr. Bhupinder Singh and Dr NeetiMahanti of Jigyansu Tribal Research Centre, sponsored by Ministry of Welfare, Government of India and submitted on 19-5-1995, p.1.

¹⁵ S.K. GHOSH, LAW ENFORCEMENT IN TRIBAL AREAS 89 (Ashish publishing house).

societies. Disregarding these customs in favour of a uniform code of civil law would therefore be a direct transgression of established legal principles and the precedents set by authoritative judicial pronouncements.

That the cultural diversity and pluralism that have long defined the Indian nation-state are inextricably linked to the preservation of tribal identities and customary practices. Any attempt to erode these distinct characteristics in the name of uniformity would not only constitute a fundamental breach of constitutional guarantees and international human rights norms but would also betray the very essence of India's national ethos and heritage.

B. Brazen violation of the fundamental rights

The Constitution of India, under the aegis of Article 25, unequivocally guarantees the fundamental right to freedom of religion, which, by extension, encompasses the inalienable right of individuals and communities to profess, practice, and propagate their religious faith and associated cultural traditions.¹⁶ For instance, let us assume that there is a community that religiously practices the custom of levirate marriage, whereby a widow is expected to marry her deceased husband's brother, is deeply rooted in their religious beliefs and cultural identity, forming an integral component of their collective ethos and social fabric. By failing to recognize and provide due legal protection to this cherished practice, the rigid and inflexible application of the UCC undoubtedly infringes upon this community's constitutionally enshrined right to cultural and religious freedom. For instance, a particular tribal community, as a distinct and historically marginalized tribal group, has a long-standing and revered tradition of levirate marriage, which is intrinsic to their cultural and social fabric. By denying legal validity to this practice and subjecting the said community to a uniform legal framework that fails to accommodate their customary norms, the UCC effectively discriminates against this community, subjecting them to disparate treatment vis-à-vis the mainstream population, whose marital practices and familial structures are duly recognized and protected under the Code. Furthermore, Article 29 of the Constitution of India explicitly provides for the protection of the distinct language, script, and culture of the minority and tribal communities residing within the state.¹⁷ Henceforth, various recognized and historically marginalized tribal communities are unequivocally entitled to the preservation and promotion of their unique cultural traditions and

¹⁶ INDIA CONST. art. 25.

¹⁷ INDIA CONST. art. 29.

practices, including the institution of levirate marriage. The indiscriminate imposition of the uniform civil code without adequate safeguards and accommodations for such deeply entrenched customary practices inevitably violates this fundamental constitutional guarantee.

Therefore, the rigid and uncompromising application of the UCC in a manner that fails to recognize and accommodate the rich customary practices and inherent cultural norms of the such tribal communities, including the deeply entrenched practice of levirate marriage, is unconstitutional and a flagrant violation of the fundamental rights and freedoms guaranteed to these marginalized groups under the Constitution of India.

C. Disregard for international human rights standards

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which India is a signatory state, expressly recognizes the right of indigenous communities to maintain and strengthen their distinct cultural institutions, traditions, and practices. Indigenous peoples—the original inhabitants of a given region are also called “first peoples”, tribal peoples, aboriginals and autochthons.¹⁸ There are certain rights that have been vested with these indigenous people by virtue of Declaration on Rights of Indigenous Peoples. They have the right to maintain and strengthen the distinct political, economic, social and cultural characteristics, as well as their legal systems.¹⁹ They also have a right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.²⁰ Moreover, Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.²¹ Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.²² Furthermore, the rights of indigenous peoples to maintain and strengthen their distinct cultural, political, economic, and legal systems are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, to which India is a signatory. Undermining the organic vitality and self-regulatory mechanisms of tribal customary law

¹⁸ H.O. AGGARWAL, HUMAN RIGHTS, (Central Law Publications).

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples, art 5, Sep. 13, 2007.

²⁰ United Nations Declaration on the Rights of Indigenous Peoples, art 9, Sep. 13, 2007.

²¹ United Nations Declaration on the Rights of Indigenous Peoples, art 11, Sep. 13, 2007.

²² United Nations Declaration on the Rights of Indigenous Peoples, art 15, Sep. 13, 2007.

through the implementation of a Uniform Civil Code would amount to a grave violation of these internationally recognized indigenous rights. Thereafter, it is of the utmost legal and moral imperative that the rights of tribal communities to conserve and celebrate their rich cultural traditions be steadfastly safeguarded, without compromise or encroachment, in any discourse surrounding the implementation of a Uniform Civil Code.

D. Need for a Contextualized and Flexible Approach

The unique circumstances, customary practices, and deeply entrenched cultural norms of marginalized tribal communities, must be duly recognized, respected, and accommodated within the framework of the UCC, to ensure that the fundamental rights and cultural autonomy of these historically disadvantaged groups are effectively safeguarded and protected. The rigid and inflexible application of the UCC, without adequate consideration for the customary practice of tribal communities, is unconstitutional and a flagrant violation of the fundamental rights and freedoms guaranteed under the Constitution of India.

Conclusion

India's rich diversity is its defining strength, and any legal framework that seeks to impose uniformity must account for the complexities of its pluralistic society. The imposition of a one-size-fits-all legal regime disregards these unique socio-cultural realities and undermines their fundamental rights to cultural preservation and autonomy. A more nuanced and inclusive approach is necessary- one that upholds gender justice and legal certainty while respecting the rights of indigenous communities. Instead of enforcing uniformity through legal compulsion, a more flexible legal framework should be developed, one that recognizes and accommodates tribal customary laws within the broader constitutional framework. The future of India's legal system lies not in forced uniformity but in harmonizing diversity with equality, ensuring that no community is left disenfranchised in the pursuit of legal reform.