
PRESERVING IDENTITY AMIDST LEGAL UNIFORMITY: A STUDY OF UNIFORM CIVIL CODE'S IMPACT ON THE RUNG COMMUNITY (TRIBAL) IN UTTARAKHAND

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ABSTRACT

Implementing a Uniform Civil Code (hereinafter as UCC) on tribal communities in India presents a complex challenge that necessitates a nuanced and inclusive approach. The UCC is based on the idea of fairness, equality and secularism. The researcher explores key considerations for the implementation of UCC on Rung Community, a Bhotiya Tribe in Uttarakhand which consist of three valleys i.e. Darma Valley, Vyas Valley and Chaudas Valley. To make one set of rules for all tribes in India, we need to do it carefully. We have to emphasize upon the importance of consultation, respecting their customs, which involves talking with tribes and educating them about the new rules and making sure the new code respects their traditions. This paper focuses on the process which should happen gradually while protecting tribal rights and including safeguards for vulnerable groups. It's important to work together with tribal leaders, government and experts to make sure the transition is fair and respectful.

Keywords: Tribal Community, Uniform, Practices, customs, civil, equality, secularism

INTRODUCTION

India is a diverse country with many cultures, languages, ethnic groups, and religions. India is celebrated for its diverse groups, each with its distinct identity. The harmonious coexistence of these groups is what sets India apart and makes it extraordinary. Embracing this religious and cultural diversity has been a fundamental aspect of India throughout its history, shaping its national identity. The country's religious tolerance and values have a significant impact on its culturally diverse society.

In the diverse tapestry of India, the Rung community, a tribal group inhabiting the picturesque hills of Uttarakhand, holds a distinct cultural identity deeply rooted in their traditions, customs, and way of life. As the nation grapples with the concept of a Uniform Civil Code (UCC), aimed at providing a common legal framework for personal matters regardless of religious or cultural affiliations, it becomes imperative to examine its potential impact on communities like the Rung, whose identities are intricately intertwined with their unique socio-cultural practices.

The Rung community, known for their vibrant folk traditions, rich oral literature, and close-knit social structure, represents a microcosm of India's cultural diversity. Their customs and rituals, passed down through generations, shape their sense of identity and belonging, reflecting a harmonious coexistence with nature and a reverence for their ancestral heritage.

Against this backdrop, the proposal of a Uniform Civil Code raises questions about the preservation of the Rung community's distinct identity amidst legal uniformity. While proponents argue that a UCC could promote social cohesion, gender equality, and justice by eliminating discriminatory practices, critics raise concerns about the potential erosion of cultural autonomy and the imposition of external norms on indigenous communities.

Unveiling the Uniform Civil Code

Article 44 of the Indian Constitution suggests that the government should work to have the same set of rules, called a Uniform Civil Code, for everyone in India, no matter their religion or background. Article 44 of the Constitution of India affirms that the “State shall endeavor to secure for every one of its citizens a uniform civil code all over the India”.¹ It is commonly known as “One Nation-One Law”. However, the enforcement of this rule is restricted by Article

¹ INDIA CONSTI. art. 44

37, which explains that these guidelines are meant to guide state policies rather than being legally required.²

The idea of a Uniform Civil Code (UCC) is closely tied to India's social and political situation, showing the country's efforts to unite despite its diversity. Essentially, the UCC aims to have one set of laws for personal matters like marriage, divorce, inheritance, and adoption, no matter a person's religion, caste, or beliefs. This idea of having the same laws for everyone is meant to bring people together, promote equality between genders, and ensure fairness, even across religious or cultural variations. The Uniform Civil Code is designed to fulfill the goals outlined in Article 44 of the Indian Constitution. This article emphasizes the importance of the state's efforts to establish a common set of rules that all citizens must follow across the entire country.³

Tracing the Genesis and Significance of the Uniform Civil Code

The Uniform Civil Code (UCC) in India can be traced back to the drafting of the Indian Constitution in the late 1940s. In India finds its roots in colonial India, where the British government recognized the need for uniformity in Indian law. As early as 1835, the British government advocated for a unified legal framework for crimes, evidence, and contracts, while leaving personal laws of Hindus and Muslims outside this codification.

The call for a UCC gained momentum during the later years of British rule due to the proliferation of legislations concerning personal matters. In 1941, the B N Rau Committee was established to codify Hindu law, prompted by the increasing complexity of legal issues. This committee, guided by Hindu scriptures, recommended a codified Hindu law that granted equal rights to women. Consequently, the 1937 Act was revisited, and the committee proposed a civil code addressing marriage and succession matters for Hindus, aiming to bring about uniformity and equality in personal laws.

Countries like the United States, Canada, Australia, the United Kingdom, and Russia have adopted the Uniform Civil Code (UCC) to improve their society and culture by making fair laws that treat everyone equally, regardless of their background. India also agreed to follow the rules of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on July 9, 1993. One of the rules, Article 5(a) of the CEDAW, says that countries

² M.S Ratnaparkhi, *Uniform Civil Code: An Ignored Constitutional Imperative* 45 (Atlantic Publishers and Distributors Pvt Ltd, India, 1st edn., 2019)

³ Business Standard <https://www.business-standard.com/about/what-is-uniform-civil-code> (last visited on february 06, 2024)

should change their social and cultural ways to stop unfair ideas about men and women. To do this in India, we need to have a Uniform Civil Code.

Necessity of a Uniform Civil Code

The reason we need a Uniform Civil Code (UCC) in India is to make sure everyone is treated fairly under the law, irrespective of their religion or culture. At present, our legal system has different rules for people based on their religion and beliefs, which leads to unfairness and inequality. If we have a UCC, it will bring all these different rules together and make sure everyone is treated the same way. This will help bring people together and stop unfair practices. The Potential of the Uniform civil code for achieving the unity and integrity of the nation as well as equality and gender justice in society.⁴ There are many reasons why we need a UCC. For example, when it comes to treating men and women equally, different personal laws often give men and women different rights in things like marriage, divorce, and inheritance. This isn't fair and goes against women's rights. Also, when people from different religions get married, it can be complicated because their religions might have different rules. Having a UCC will make things simpler and fairer for everyone.

As the world changes and becomes more modern, our laws need to change too. We want India to be seen as a fair and progressive country, and having a UCC will help us do that. It will make sure our laws are in line with the values of equality and fairness, and treat everyone the same, no matter their background.

Many people, like legal experts, women's rights activists, and policymakers, have been calling for a UCC for a long time. They believe it's important to have one law that treats everyone equally and upholds the values of our Constitution. The Law Commission of India has also recommended having a UCC to fix the unfairness in our current laws and make sure everyone gets equal treatment.

Development of the Uniform Civil Code

The making of the Uniform Civil Code (UCC) in India has been shaped by big things like court cases, advice from the Law Commission of India, and lots of talks among the public. Take for example the Shah Bano case in 1985, where the Supreme Court said a Muslim woman had the right to get money from her husband after they split up. This got people talking about how everyone should have the same rules, no matter what religion they follow. Also, the Law

⁴ Dr. Ranjan Kumar, The need for a uniform civil code (Pilgrims Publishing, varanasi, 2017)

Commission of India has said many times that we should have a UCC to make sure everyone is treated fairly under the law, especially when it comes to things like marriage and family.

In many cases, the Indian courts have shown they support the idea of having a Uniform Civil Code (UCC).⁵ A crucial legal case that highlighted the UCC issue was the 1985 *Shah Bano Begum*⁶ case. In this case, the Supreme Court of India ruled in favor of Shah Bano, a Muslim woman seeking maintenance from her husband after their divorce. The court's decision sparked widespread debates and discussions about the rights of women under different personal laws and the need for a common legal framework that would ensure gender equality and justice for all citizens, irrespective of their religious affiliations. In the *Sarla Mudgal*⁷ case, the Supreme Court pointed out that the government hasn't been able to make a Uniform Civil Code (UCC). The Court noticed that most people, about 80%, already follow laws that are written down, especially Hindu Law. It didn't make sense to have different rules for the rest of the people. The Court talked about a big problem where a Hindu man could avoid punishment for having more than one wife by converting to Islam and marrying many women at the same time. This seemed really unfair.

Apart from court cases, the Law Commission of India has been important in making the UCC. This commission looks at laws and suggests changes to make them better. They've written many reports saying we should have one set of rules for everyone, so everyone is treated fairly. These reports have helped lawmakers decide if India should have a UCC.

Ushering in Change: Uttarakhand's Implementation of the Uniform Civil Code

The Uniform Civil Code (UCC) bill was passed in Uttarakhand on 7th February and after passing the UCC Bill in the Assembly, it had become the first legislature in independent India to pass a Bill that imposes common rules for all communities — except Scheduled Tribes — on marriage, divorce, inheritances, and live-in relationships.⁸ The bill aims to make the laws the same for everyone, no matter their religion, in the state. It brings some important changes, like giving women equal rights in marriage, divorce, and inheritance, regardless of their religion. It also deals with issues around marriages between people from different religions by having one

⁵ VC Shukla & Vivek, The uniform civil code and judicial activism, Bar and Bench (feb. 07,2024 9:45 PM) <https://www.barandbench.com/apprentice-lawyer/the-uniform-civil-code-judicial-activism>

⁶ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

⁷ Sarla Mudgal v. Union of India, 1995 SCC (3) 635

⁸ Ishita Mishra, “Uttarakhand Assembly ‘creates history’ by passing Uniform Civil Code: Pushkar Dhami” , The Hindu, (Feb.07, 2024, 07:04 PM), <https://www.thehindu.com/news/national/uttarakhand-assembly-passed-the-uniform-civil-code-bill/article67821740.ece>

set of rules for them. But some people are worried about the bill, saying it might affect religious freedom and cultural traditions. They think that certain parts of the bill might not consider the different needs of all communities in Uttarakhand. Even with these concerns, passing the UCC bill is a big step towards fairness and justice in the state's legal system. People hope that by talking more about it and making changes, the bill will work well for everyone in Uttarakhand.

Key features of Uttarakhand's UCC:

The Uniform Civil Code bill in Uttarakhand makes sure that everyone, regardless of their gender or how they were born, gets equal rights to inherit property. It treats all children the same, whether they are adopted, born through surrogacy, or born naturally. After someone passes away, both the spouse and children get an equal share of their property, which is different from before when only the mother had rights to it. The main goal of the bill is to create fair and equal laws for everyone in the state, regardless of their religious beliefs, when it comes to marriage, divorce, land ownership, property rights, and inheritance. This means that everyone will be treated the same way under the law, promoting fairness and consistency for all citizen⁹. Another important aspect of the Uniform Civil Code of Uttarakhand, 2024 is that it requires the compulsory registration of live-in relationships.¹⁰ In Uttarakhand, even if people are in a live-in relationship but live outside the state, they must inform the state's registrar about it. Those currently in a live-in relationship or planning to be in one have to give a statement about it to the registrar. The registrar will then check into the relationship, which might involve asking for more information from the couple or even summoning them for verification. Within 30 days of getting the statement, the registrar will either register the relationship and give a certificate or refuse to do so, letting the partners know in writing if it's denied. The registrar also has to send a statement about the live-in relationship to the local police station for record-keeping. If either partner is under 21 years old, the registrar also has to inform their parents or guardians about the relationship. According to the bill, live-in relationships will not be registered if they are against public morality, if one partner is married or in another relationship, if one partner is a minor, or if the consent of a partner to live in was obtained by force or fraud.¹¹ The new law

⁹ Ankit Sharma, "Ban on polygamy, child marriage': Features of Uttarakhand's Uniform Civil Code bill", India Today, (Feb. 05, 2024, 09:20 AM), <https://www.indiatoday.in/law/story/uniform-civil-code-bill-passes-uttarakhand-cabinet-key-features-pushkar-singh-dhami-2497570-2024-02-04>

¹⁰ Omar Rashid, "Uttarakhand Set to Pass UCC: Jail Time for Unregistered Live-in Relationship; Exemption for Tribals", The Wire, (Feb. 08, 2024, 08:29 PM), <https://thewire.in/government/uttarakhand-tables-ucc-jail-time-for-unregistered-live-in-relationship-exemption-for-tribals>

¹¹ Manjiri Chitre, "Uttarakhand Uniform Civil Code bill: Live-in couples must register or face jail", The Hindustan Times, (Feb. 06, 2024, 04:16 PM), <https://www.hindustantimes.com/india-news/uttarakhand-uniform-civil-code-bill-jail-term-provision-for-live-in-couples-101707206754947.html>

prohibits having multiple spouses at the same time and getting married before reaching adulthood, and it makes the practice of nikah halala a crime. It also recommends a uniform marriage age for men and women across religions, while also listing “degrees for prohibited relationship”. The marriageable age for men and women remains 21 and 18, respectively.¹²

Inequality in UCC Implementation: Balancing Justice and Cultural Sensitivity in Tribal community (Rung Community)

Excluding tribal people, especially Scheduled Tribes (ST), from applying the Uniform Civil Code (UCC) brings up important questions about fairness and justice. Some believe the UCC is fair because it makes the same rules for everyone, no matter their culture or religion. Also, women in tribal groups have been treated unfairly in the past, like in cases of bigamy. Having the UCC might help fix these unfairness's and make sure everyone, including women in ST communities, gets treated the same under the law.

However, the situation is not as straightforward. The Rung community, which belongs to the ST community, has a history of practicing bigamy and polygamy, as well as child marriages. While it is true that such practices may not be as prevalent today, but in future some individuals justify these acts in the name of custom or culture and violets the rights of the tribal women.

The Rung community, comprising approximately 10,000 members, may seem small in number, but this should not detract from the significance of addressing historical practices that have adversely impacted its members, particularly women. The prevalence of child marriages and polygamous unions within this community has inflicted untold suffering upon women, who often endured such injustices silently due to a lack of awareness about their rights. Many chose not to confront these issues, finding solace in the presence of their husbands and children, despite enduring mental anguish, societal scorn, and the stigma associated with being labeled as the "divorcee."

The historical backdrop of such discriminatory practices casts a long shadow, but the landscape is evolving. Today, a significant portion of the Rung community is educated and resides outside Uttarakhand for educational and professional pursuits. However, those who remain in the continue to witness and, to some extent, some may accept these practices in future, perpetuating

¹² Neelam Pandey, “Uttarakhand UCC Bill proposes ban on polygamy & child marriage, criminalisation of ‘nikah halala’”, The Print, (Feb. 06, 2024, 06:54 PM), <https://theprint.in/india/uttarakhand-ucc-bill-proposes-ban-on-polygamy-child-marriage-criminalisation-of-nikah-halala/1955994/>

the cycle of inequality and injustice. It is imperative to implement stringent laws against bigamy within the Rung community to prevent such practices from persisting into the future.

Excluding Scheduled Tribe (ST) women from the ambit of the Uniform Civil Code (UCC) evokes apprehensions regarding the perpetuation of inequity and the deprivation of fundamental rights enshrined in the Constitution. This exclusion implies that these women are devoid of the same legal safeguards as their counterparts, potentially exacerbating their marginalization and discrimination within the legal milieu. The implementation of the UCC in tribal enclaves such as the Rung community necessitates a nuanced equilibrium between espousing egalitarianism and venerating cultural pluralism. While the UCC endeavors to standardize legal norms across the populace, it must judiciously deliberate upon the idiosyncratic cultural milieu and historical legacies of tribal societies. Engaging in substantive discourse and consultations with ST communities, especially women, becomes imperative to ensure that any legal overhauls uphold the precepts of rectitude and parity while venerating cultural ethos and traditions. By assiduously addressing apprehensions and assimilating diverse viewpoints, the execution of the UCC can aptly cater to the welfare of all constituents, fostering inclusivity and equity within the legal framework.

Instead of outright exclusion, there should be efforts to engage with tribal communities in dialogue and consultation to ensure that any legal reforms are sensitive to their needs and perspectives. This requires recognizing the historical context and cultural traditions of tribal communities and finding ways to incorporate their voices and concerns into the implementation of the UCC.

CONCLUSION

Implementing the UCC on tribal communities like the Rung community necessitates addressing underlying socio-economic disparities. It is essential to provide access to quality education, healthcare, and livelihood opportunities to empower tribal communities economically and socially. By investing in these areas, we can challenge entrenched discriminatory practices and promote gender equality more effectively.

By enacting laws that expressly prohibit polygamous marriages and provide legal recourse for victims of such injustices, we can ensure that the rights and dignity of women within the Rung community are safeguarded. Education and awareness campaigns must also be undertaken to empower individuals with the knowledge of their rights and the tools to advocate for themselves. Only through concerted efforts to address these issues can we create a future where

every member of the Rung community, especially women, is treated with dignity, equality, and respect, free from the shackles of archaic and discriminatory practices.

In conclusion, while the implementation of the UCC on tribal communities presents inherent challenges, it also offers a significant opportunity to advance justice and equality. By addressing discriminatory practices and promoting gender equality, the UCC can protect the rights and dignity of ST women and ensure that all citizens, irrespective of their cultural background, have equal rights and protections under the law. However, achieving this goal requires a sensitive approach that respects the cultural diversity and traditions of tribal communities while actively engaging them as equal partners in the process of legal reform. Only through such collaborative efforts can the UCC truly fulfill its objective of promoting justice and equality for all segments of society.