

Juxtaposing Uniform Civil Code with Tribal Customary Laws of North-East India

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Abstract: With the aim of unifying the myriad personal laws prevalent in India, efforts are being made both at central as well as state levels to implement a Uniform Civil Code. However, this poses a complex challenge when juxtaposed with the tribal customary laws in vogue in the North-Eastern States of India. Several tribes residing in these states have their diverse and distinct customs and traditions that govern several facets of their lives and as such comprise a unique case for consideration. Customary laws in the North-Eastern States significantly differ from the mainstream religion-based personal laws prevalent in the rest of the country. Thus, the Uniform Civil Code's objective to implement the same set of laws across the country and communities could have a significant impact on the preservation of these indigenous legal systems that are considered integral to the identity and autonomy of tribal communities. In this background, this article attempts to shed light on the nuanced interplay between the Universal Civil Code and the customary laws of tribal communities prevalent in North-East India. Through the analysis of constitutional and legislative provisions, judicial decisions, and socio-political dynamics, the article seeks to analyse the inherent complexities in reconciling national uniformity with regional diversity.

Keywords: Uniform Civil Code; Customary Laws; North-East India; Constitution of India; Tribes; Tribal Rights

1. Introduction

Of the innumerable promises that were made by the ruling party during the 2019 elections, three received unprecedented attention from all quarters, *viz.*, the construction of the Ram temple in Ayodhya, legislation on triple talaq and enactment of a Uniform Civil Code [1]. The first two were fulfilled in 2019 itself. While the path to the first was paved by a unanimous decision of the Supreme Court decision in the Ayodhya Temple case [2], the second was achieved through the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019. The third one is the only one that remains to be fulfilled and ongoing developments suggest that the government is gearing towards realization of the third one as well with the same being reiterated during the 2024 elections [3].

Amidst the onslaught of information and discussion surrounding the Uniform Civil Code, what has slipped popular attention is a resolution passed by the Mizoram Legislative Assembly vis-a-vis Uniform Civil Code. The Mizoram Legislative Assembly unanimously passed an official resolution on February 14, 2023 just a week after it was submitted by Pu Lalchamlia which states "That this House unanimously resolves to oppose any step taken or

proposed to be taken for enactment of Uniform Civil Code in India [4].” However, before pondering over the intention of the Mizoram Legislative Assembly as well as the legal basis of such a resolution, it is pertinent to first gain conceptual clarity on Uniform Civil Code and, then, to decipher the reasons that warranted such an unequivocal step by the Mizoram Legislative Assembly.

Hence, this paper seeks to understand the contours of Uniform Civil Code in India by analysing constitutional, legislative as well as judicial endeavours towards its realization starting from the discussions held in the Constituent Assembly to legislative initiatives and judicial directives in contemporary times. Further, the paper delves into the intricacies of the intersectionality between Universal Civil Code and the customary laws of tribal communities prevalent in North-East India in the light of special status accorded to several regions and states in North-East India under the Constitution.

2. Materials and Methods

A plethora of material including both primary and secondary sources of data have been utilized in this article such as several constitutional and legislative provisions, judgements, books, articles, and web resources. Apropos methods, the normative as well as descriptive and analytical methods of legal research have been adopted in this article. Further, qualitative analysis of data has been undertaken in this article.

3. Results and Discussion

3.1. Understanding the Contours of Uniform Civil Code in India

Article 44 of the Constitution provides that “the State shall endeavour to secure for the citizens a uniform civil code throughout the Indian territory.” The essence of this provision is to effect integration by providing a uniform set of laws to govern all irrespective of their religious affiliation [5]. It is premised around the understanding that there should be no connection between religion and personal law in a civilised society [6].

When it was being discussed by the Constituent Assembly, it was vociferously opposed by a section of the members on grounds that it was an affront to freedom of religion and that it would be a tyrannical imposition on the minority population [7]. On the other hand, there were members who countered this opposition on grounds that uniformity of laws had already been achieved in several areas, that personal laws though diverse were not sacrosanct, that uniformity of law would promote national unity, that activities covered by personal laws should be divorced from religion and most importantly, that personal laws would not be forcibly amended by the Legislature in the face of public opposition [8]. In order to placate the aspersions cast by the opposing members as well as to cater to others who wanted its inclusion, a middle path was adopted whereby it was made a non-justiciable directive principle instead of a justiciable fundamental right [9].

Time and again, the Supreme Court has also urged the Union Government to enact Uniform Civil Code which it has envisaged as the panacea to all evils plaguing the currently existing personal laws in several notable cases. While it was the lack of uniformity in grounds of divorce and the absence of irretrievable breakdown of marriage and mutual consent as grounds of divorce from most personal laws in *Jordan Diengdeh’s* case [10], in case of *Sarla*

Mudgal [11] it was about Hindu married men converting to Islam to take another wife and circumvent criminal liability under s. 494 of the IPC. Shah Bano's case [12] arose out of a husband's refusal to pay a meagre amount of Rs. 179.20 per month to his divorced wife of over four decades citing personal law saying that section 125 of the CrPC cannot prevail over it.

Apart from a slew of statements coming from various quarters including the legislature, executive, judiciary, academia, media, *inter alia*, regarding the need of a Uniform Civil Code, in a span of four years i.e., from 2018 to 2022, four private member bills have been introduced in the Parliament surrounding the Uniform Civil Code. While one of these bills has lapsed, the others are pending, one in the Rajya Sabha and the other two in the Lok Sabha. While the bills introduced by Chandrakant Bhaurao Khaire [13], Krupal Balaji Tumane [14] and Dr. Kirodi Lal Meena [15] are verbatim reproduction of each other, Sushil Kumar Singh [16] has incorporated provisions on marriage, divorce, succession. The three identical bills seek the constitution of the "National Inspection and Investigation Committee" for preparation of Uniform Civil Code and its implementation throughout the territory of India. The bill introduced by Sushil Kumar Singh mirrors the existing provisions of the Hindu Law apropos marriage and divorce and that of Christian Law apropos succession.

Apropos the Ministry of Law and Justice, the Ministry has stated that it has no plans to implement the Uniform Civil Code as of now but has also stated that States are free to do so as the matter falls within the domain of the Concurrent List [17] in the light of steps being taken by states such as Uttarakhand [18], and Gujarat [19] by setting up committees to investigate the modalities of implementation of Uniform Civil Code as well as states such as Assam, Madhya Pradesh, Haryana, Maharashtra, and Uttar Pradesh who have expressed their intention to form such committees [20]. It is to be noted that Uttarakhand has already enacted the Uniform Civil Code, Uttarakhand, 2024 [21]. Apart from this, in response to a plea seeking uniformity of personal laws, the Ministry has also told the Supreme Court that it is the Parliament's sole prerogative to enact or not to enact a Uniform Civil Code [22]. The Ministry has also requested the 22nd Law Commission of India to take Uniform Civil Code into consideration and continue the work done by its predecessor [23].

Pursuant to a reference made by the Ministry of Law and Justice, in 2016, the 21st Law Commission of India released a questionnaire on Uniform Civil Code [24] eliciting responses from the public at large to understand how reforms could be introduced in personal laws without affecting the diversity and plurality of the nation. A Consultation Paper on Reform of Family Law [25] followed thereafter in 2018 wherein the Law Commission extensively deliberated upon the discriminatory provisions existing in the religion based personal laws apropos marriage, divorce, maintenance, adoption, guardianship, custody, succession and inheritance [26]. However, the consultation was completely bereft of any discussion on the provisions existing in the customary laws governing tribal communities which merited reforms.

3.2. Uniform Civil Code vis-à-vis Tribal Customary Laws of North-East India

There is another facet to the discussion on Uniform Civil Code arising within the contours of the Indian Constitution that merits discussion given its implications on any efforts to introduce changes in customary laws governing tribes of North-East India. It is to be noted that a variety of tribes inhabit the North-Eastern States who are governed by their distinct customary laws and not by their religion based personal laws. For example, a Christian Khasi

is not governed by the Christian Law but by the Khasi customary laws. Another point worth noting is that the customary laws governing each tribe is unique and different from the other even when the tribes are inhabitants of the same State. For example, the customary laws of the Garos is entirely different from that of the Khasis and the Jaintias despite the fact that they all reside in Meghalaya.

Apropos the North-Eastern States, while the proponents of the Uniform Civil Code stress on the need to bring uniformity in line with the idea of one nation, one law stating that it is the only way to ensure equality by doing away with the inegalitarian provisions contained in the prevalent customary laws; the opponents rely upon the ethos of relativism and diversity stressing that uniformity is not necessarily egalitarian and that it flies in the face of preservation of the cultural identity of communities. For instance, the customary laws are replete with gender biased provisions such as the need for a Mizo unmarried daughter to be the main bread earner of the family to be her father's heir while the same is not the case for her brothers or the preference of unmarried daughters and sons over married daughters in terms of inheritance of property [27]. One could argue that the Uniform Civil Code will do away with such inequality. On the other hand, the Khasis being a matrilineal society are vociferously opposed to the Uniform Civil Code citing that it could affect the matrilineal nature of the Khasi society thereby impinging upon their identity.

Pursuant to Article 244(2) of the Constitution of India, several States (Meghalaya and Mizoram) and regions (within Assam and Tripura) have been accorded special status under the Sixth Schedule to the Constitution. This special status is not just limited to Mizoram's inclusion in the Sixth Schedule but extends to those special provisions as well which have been accorded to Mizoram under Article 371G of the Constitution. Nagaland, similarly, has been accorded special status under Article 371A of the Constitution.

Articles 371A(1)(a)(ii) and 371G(a)(ii) of the Constitution have made special provisions for the states of Nagaland and Mizoram respectively which are mirror images of each other. The provisions state that any law enacted by the Indian Parliament pertaining Naga and Mizo customary laws and procedures shall be applicable to Nagaland and Mizoram only subject to resolutions being adopted by the Legislative Assemblies of Nagaland and Mizoram to that effect.

It is worth noting that subjects falling under the realm of personal laws such as marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition etc. are listed in the Seventh Schedule to the Constitution of India under Entry 5 of the Concurrent List. In other words, as per Article 246(2) of the Constitution, both the Parliament and State Legislatures are empowered to legislate on these subjects. In case there are conflicting legislations, the general rule is that the central law that prevails. However, due to the special status enjoyed by Nagaland and Mizoram, the same is not true in the case of application of the said central law in these States.

Coming to the special status enjoyed by areas under the Sixth Schedule, several autonomous district councils have been established in the states of Assam, Meghalaya, Mizoram and Tripura pursuant to which they are endowed with law making powers. In the context of the Sixth Schedule areas, Paragraph 3(1) empowers the respective autonomous district councils to enact laws on a plethora of subjects which include personal law subjects such as marriage, divorce and inheritance of property.

Apropos Meghalaya, Paragraph 12A(1) states that in the event of a conflict between the laws made by the District Council and those made by the Meghalaya Legislative Assembly, the latter shall prevail. But, in the case of Tripura and Mizoram, Paragraphs 12AA and 12B respectively state that any law made by their State Legislatures would not apply within the jurisdiction of their autonomous district councils unless so notified by the said district councils.

To put it succinctly, assuming that the Indian Parliament enacts a Uniform Civil Code, until the Nagaland and the Mizoram State Legislature adopt a resolution accepting the same or the District Councils publicly notify to that effect, there shall be no implementation of Uniform Civil Code in these areas.

4. Conclusions

One remembers watching the old version of “Mile Sur Mera Tumhara”, the phenomenal national integration song, on Doordarshan as children and searching for people from the North-Eastern States only to realize that the people of the North-Eastern States, except Assam for a fleeting moment, were all shown together in one scene. It, in a sense, also mirrors the national understanding that as North-Eastern States are clubbed together, they must also have the same views on any given topic. Nothing could be farther away from the truth. Both the intra-state as well as inter-state differences among these States is tremendous. For instance, while the government of Assam has shown its eagerness to explore the idea of implementing Uniform Civil Code, Mizoram has adopted a resolution in its Legislative Assembly opposing the same. Therefore, any attempts being made to enact a Uniform Civil Code should duly consider the plethora of customary laws governing tribes in the North-East and ensure their involvement in the ensuing discussions. As there is a dearth of material, both primary and secondary, exploring this intricate intersectionality between the Uniform Civil Code and the tribal customary laws prevalent in the North-Eastern States, this paper could add this much needed dimension in the contemporary discussions surrounding Uniform Civil Code.

Multidisciplinary Domains

This research covers the domains: (a) Tribal Studies, and (b) Constitutional Law.

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Conflicts of Interest

The authors declare no conflict of interest.

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