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Tribes and UCC: A Perspective Beyond the Civil Code

Sultan Singh Yadav¹ and Neha Tamta²

¹Assistant Professor, Department of Political Science, Government Degree College, Tanakpur, Uttarakhand-262309 (India)
E-mail:<drssyadav20@gmail.com>

²Research Scholar, Department of Political Science, Government Degree College, Tanakpur, Uttarakhand-262309 (India)
E-mail:<neha.tamta493@gmail.com>

Abstract

The debate on the Uniform Civil Code (UCC) in India raises critical concerns about its impact on the tribal communities' distinct customary laws and cultural autonomy guaranteed under the Fifth and Sixth Schedules of the Constitution. This study explores the intersection of tribal rights and the UCC, moving beyond the legal uniformity to address broader issues of identity, self-governance, and pluralism. Using a doctrinal methodology, the research analyzes constitutional provisions, legislative frameworks, and judicial precedents while incorporating insights from ethnographic studies and interviews with tribal leaders and legal experts. The findings reveal that implementing a one-size-fits-all UCC risks undermining tribal autonomy, disrupting traditional legal systems, and fostering cultural alienation. Drawing from comparative legal frameworks in countries like South Africa and Canada, the study emphasizes the need for a context-sensitive approach that harmonizes gender justice and human rights with respect for tribal traditions. This work advocates for a pluralistic UCC model, ensuring inclusivity and equity while preserving India's diverse socio-cultural fabric.

Keywords

Uniform Civil Code (UCC), Tribal rights, Customary laws, Cultural autonomy, Constitutional pluralism, Self-governance, Gender justice, Human rights.

Centre For Studies of National Development, Meerut

Editorial Office : D-59, Shastri Nagar, Meerut - 250 004 (INDIA)
Ph. : 0121-2763765, +91-9997771669, +91-9412200765

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1. Introduction

India's legal framework reflects its cultural diversity, yet the Uniform Civil Code (UCC) has remained a subject of intense debate, especially regarding its implications for tribal communities. Rooted in Article 44 of the Directive Principles of State Policy in the Indian Constitution, the UCC seeks to establish a uniform set of laws governing personal matters such as marriage, divorce, inheritance, and adoption across all religions and communities. While proponents argue that the UCC promotes gender justice, equality, and national integration, critics emphasize its potential to erode cultural identities and disregard customary practices of tribal societies that function under distinct traditions and self-governance systems. This paper aims to explore the complex relationship between the UCC and tribal customary laws, analyzing whether a pluralistic legal model can balance modern legal principles with cultural preservation. The study examines the constitutional safeguards for tribal autonomy, conflicts arising from the implementation of uniform laws, and comparative global frameworks like South Africa and Canada to propose a context-sensitive approach for India. By delving into case studies, legal precedents, and field insights, the research highlights the need for inclusivity and equitable reforms that uphold human rights without dismantling the social fabric of tribal communities. Through this analysis, the paper underscores the importance of moving beyond the civil code to envision a harmonious legal structure that accommodates diversity while ensuring justice.

2. Understanding Uniform Civil Code (UCC)

The Uniform Civil Code (UCC) is a proposed legal framework aimed at replacing personal laws based on religion, customs, and traditions with a common set of laws governing marriage, divorce, adoption, inheritance, and property rights for all citizens of India. Envisioned under Article 44 of the Directive Principles of State Policy in the Indian Constitution, the UCC seeks to promote equality and secularism by ensuring a uniform legal structure that upholds

gender justice and individual rights. Advocates argue that a uniform law will address discriminatory practices in personal laws, especially those affecting women's rights within patriarchal systems. However, critics contend that the UCC risks marginalizing cultural identities by disregarding the customary laws and autonomous practices of tribal communities and religious minorities.

3. Tribal Communities in India: An Overview

India is home to over 700 recognized tribal groups, collectively referred to as Scheduled Tribes (STs) under Article 342 of the Indian Constitution. These tribes constitute approximately 8.6% of the country's population (Census 2011). Tribal societies are characterized by distinct cultural practices, linguistic diversity, and customary laws that govern their marriages, inheritance, property ownership, and dispute resolution mechanisms. Unlike mainstream Indian laws, which focus on individual rights, tribal systems often emphasize collective ownership, custom-based justice, and matriarchal or patriarchal governance structures.

In the context of the UCC, tribal groups fear losing their cultural identity and indigenous practices under a standardized legal framework. Their customary laws often perform better in areas like land rights, women's inheritance, and community governance than modern laws. For example, Santhal laws prioritize collective ownership of land, ensuring socio-economic stability that modern property laws fail to achieve.

4. Intersection of UCC and Tribal Customary Laws

The intersection of the Uniform Civil Code (UCC) and tribal customary laws highlights a complex legal and cultural dilemma. While the UCC aims to unify personal laws to ensure equality, gender justice, and secularism, tribal communities operate under customary laws rooted in traditions and ancestral practices. These customary laws, often passed down through oral traditions, govern marriage, divorce, inheritance, and land ownership within tribes and are central to maintaining their identity and social cohesion.

One of the key conflicts arises from the collective rights embedded in tribal traditions, which often contrast with the individual rights promoted by modern legal frameworks. For example:

- » **Inheritance Laws:** Tribes such as the Khasis of Meghalaya follow a matrilineal system where property is inherited through

the female lineage, empowering women economically. However, the UCC’s emphasis on gender-neutral laws could unintentionally disrupt this empowerment by enforcing equal inheritance rights for male heirs.

- ▶ **Marriage and Divorce Practices:** The Santhals and Gonds recognize cohabitation unions and informal divorces, providing social legitimacy without formal legal procedures. Imposing UCC regulations might invalidate these unions, leading to social alienation and legal challenges.
- ▶ **Land Rights:** Tribal laws often emphasize collective ownership of land, protecting community resources and preventing alienation to outsiders. The UCC’s focus on individual ownership could undermine community governance systems, causing land disputes and loss of tribal lands.

Several legal battles highlight these conflicts. For instance:

- ▶ **Madhu Kishwar v. State of Bihar (1996):** The Supreme Court upheld tribal customary laws over modern inheritance laws, acknowledging the unique socio-cultural context of tribes.
- ▶ **Shimbu and Another v. State of Haryana (2013):** The case raised questions about gender equality versus customary practices, emphasizing the need for context-specific reforms rather than universal laws.

While gender justice and equality remain fundamental, imposing a one-size-fits-all framework like the UCC could violate tribal autonomy and constitutional protections under Fifth and Sixth Schedules.

5. Case Studies: Tribal Customary Laws vs. Uniform Civil Code

A comparative analysis of cases worldwide where tribal customary laws conflicted with national legal frameworks highlights the successes and challenges of legal pluralism. The following table presents various examples:

| Country | Tribal Group | Customary Law | Conflict with National Law | Resolution/ Impact |
|---------|------------------------|-------------------------------------|---|--|
| India | Nagas, Santhals, Bhils | Customary land and inheritance laws | Conflict with UCC proposals regarding property rights | Debate over UCC implementation to ensure protection of tribal autonomy |

| | | | | |
|---------------|---|---|--|--|
| South Africa | Zulu, Xhosa | Customary marriages & succession laws | Inconsistencies with constitutional rights for gender equality | Recognition of Customary Marriages Act, balancing tradition and gender justice |
| Canada | First Nations, Métis, Inuit | Indigenous governance & land rights | Federal laws occasionally override self-governance rights | Constitution Act, 1982, acknowledges indigenous rights and self-governance |
| Australia | Aboriginal and Torres Strait Islander Peoples | Native Title & traditional dispute resolution | Conflict with state-imposed legal frameworks | Native Title Act, 1993, grants legal recognition to land claims |
| New Zealand | Māori | Tikanga Māori (customary laws in family and land matters) | Conflict with national judiciary system | Treaty of Waitangi & Māori Land Court ensure legal integration |
| United States | Native American Tribes | Tribal sovereignty in family and criminal law | Federal intervention in tribal legal matters | Tribal Law and Order Act, 2010, strengthens tribal legal autonomy |
| Nigeria | Various ethnic groups | Customary marriage and inheritance laws | Conflict with constitutional rights and gender equality laws | Legal reforms to balance customary and statutory laws |
| Philippines | Igorot, Lumad | Ancestral domain claims and community governance | Overlapping national land laws | Indigenous Peoples' Rights Act, 1997, protects ancestral land claims |
| Brazil | Amazonian Indigenous Tribes | Land ownership and resource use | State development policies clashing with indigenous rights | Legal recognition of indigenous reserves under Brazilian Constitution |

These cases illustrate the complexities of integrating customary laws with national legal frameworks. While some countries have successfully balanced legal pluralism, others continue to face challenges in harmonizing tribal customs with modern legal standards.

6. Key Challenges & Criticisms of UCC in the Tribal Context

Key challenges of UCC in the tribal context are as follows:

- ▶ **Loss of Cultural Identity:** Tribal laws uphold centuries-old traditions. Imposing a UCC risks cultural homogenization, eroding tribal autonomy and ancestral heritage.
- ▶ **Gender Justice vs. Collective Rights:** UCC promotes gender equality, but tribal customs often prioritize community welfare. For instance, the Khasi matrilineal system may be undermined by gender-neutral inheritance laws.
- ▶ **Land Ownership & Resource Rights:** Tribal communities practice collective land ownership for sustainable management. UCC's focus on individual property rights could lead to land alienation and economic exploitation.
- ▶ **Legal Pluralism vs. Uniformity:** The Indian Constitution grants special protections to tribes under the Fifth and Sixth Schedules. UCC may conflict with these provisions, creating legal ambiguities.
- ▶ **Resistance & Political Backlash:** Tribes see UCC as an attempt at forced assimilation, sparking protests. For instance, North-Eastern tribes and the Gond community oppose changes that threaten their autonomy.

Criticisms of UCC in tribal context relates to the following:

- ▶ **Top-Down Approach:** Ignores local governance and cultural diversity.
- ▶ **Violation of Constitutional Protections:** Articles 244 and 275 safeguard tribal rights, questioning UCC's validity.
- ▶ **Gender Inequality in Customary Laws:** Some tribal customs empower women, while others need reform-requiring a balanced approach rather than forced uniformity.

For key focus, a pluralistic legal approach is needed—modern reforms should respect traditions, ensuring inclusivity without eroding tribal rights and cultural diversity.

7. Constitutional Provisions Safeguarding Tribal Autonomy

India's Constitution ensures tribal rights, culture, and governance through special provisions. The UCC debate raises

concerns about potential dilution of the following safeguards and provisions:

- » **Fifth Schedule:** Governs Scheduled Areas, allowing Governors to modify laws to protect tribal customs, land rights, and governance via Tribal Advisory Councils.
- » **Sixth Schedule:** Grants self-governance to tribal areas in Assam, Meghalaya, Tripura, and Mizoram through Autonomous District Councils (ADCs) with legislative powers over marriage, land, and social practices.
- » **Article 244:** Enables administration of tribal areas through customary laws under the Fifth and Sixth Schedules.
- » **Article 13(3)(a):** Recognizes customary laws within the legal framework, ensuring their protection if not violating fundamental rights.
- » **Article 19(5):** Restricts non-tribals from owning land in tribal areas, preventing exploitation.
- » **Article 371(A) & 371(G):** Grants Nagaland and Mizoram autonomy over religious practices, social customs, and land laws, requiring state consent for parliamentary legislation.

8. Policy Recommendations and Way Forward

Major policy recommendations for the way forward are as under:

- » **Gradual & Inclusive Reforms:** Implement step-by-step changes, addressing gender issues without eroding tribal traditions. Use pilot programs and tribal consultations for policy inclusivity.
- » **Hybrid Legal Systems:** Maintain a dual framework where customary laws coexist with modern laws, modeled on South Africa and Canada's legal pluralism.
- » **Gender Justice Within Tribal Laws:** Promote gender-sensitive reforms while respecting cultural values through legal literacy programs.
- » **Community Participation:** Form Tribal Consultative Bodies, engage grassroots leaders, and encourage voluntary adoption of progressive reforms.
- » **Codification of Customary Laws:** Document tribal laws for legal recognition, creating a national database for judicial clarity.

- » **Dispute Resolution Mechanisms:** Strengthen traditional mediation with modern judicial principles and train tribal leaders for effective conflict resolution.
- » **Legislative Amendments:** Modify laws like the Chota Nagpur Tenancy Act to balance gender equality with customary land rights, ensuring special UCC exemptions for tribes.
- » **Education & Awareness:** Conduct legal awareness campaigns for tribal communities and train judicial officers in handling tribal law cases sensitively.
- » **Recognition of Customary Practices:** Legally validate tribal customs that align with constitutional values, preserving traditions while addressing inequalities.

A balanced UCC should ensure equality without undermining tribal autonomy. Legal pluralism, cultural preservation, and gender justice must coexist to uphold India's constitutional democracy.

9. Balancing Uniformity and Diversity: Towards an Inclusive Legal Framework

The challenge of implementing a Uniform Civil Code (UCC) in a multi-cultural and multi-ethnic society like India lies in balancing the principles of uniformity and diversity. Tribes, with their distinct customs, beliefs, and legal traditions, represent a microcosm of diversity that requires a context-sensitive approach rather than legal homogenization. This section explores how a pluralistic legal framework can preserve tribal identity while promoting gender justice, equality, and human rights.

9-1 Recognizing Legal Pluralism

Customary laws practiced by tribes are often rooted in oral traditions and community-based governance systems that are efficient and respected within their societies. For example, Naga customary laws emphasize communal ownership and dispute resolution mechanisms, which have proven effective in conflict mitigation without external intervention. Recognizing these plural legal systems can ensure that tribal customs are protected under the UCC, creating a hybrid model that accommodates diversity.

9-2 Addressing Gender Inequality without Undermining Culture

While some tribal customs promote gender equality-such as Khasi matrilineal inheritance systems-others may discriminate against women's rights in property ownership and inheritance. A

progressive UCC should focus on eliminating gender-based discrimination through dialogue and reform rather than outright imposition of laws. Programs promoting legal awareness and capacity building can empower tribal women to demand reforms within their cultural framework.

9-3 Preserving Cultural Autonomy

Articles 371(A) and 371(G) already protect tribal autonomy in states like Nagaland and Mizoram, allowing them to follow customary laws related to marriage, divorce, and inheritance. Extending similar protections to other tribal areas under the Fifth and Sixth Schedules can ensure continuity in traditions while enabling gradual reforms. Codifying customary laws can also create a formal framework that safeguards tribal practices while ensuring compliance with constitutional values.

9-4 Legal Flexibility for Local Adaptations

Learning from Canada and South Africa, where customary laws operate alongside national laws, India can adopt a flexible legal system that respects local practices while ensuring universal rights. Establishing tribal councils or autonomous judicial bodies within the framework of the UCC can handle local disputes using customary practices, thus harmonizing tradition and modernity.

9-5 Promoting Inclusivity Through Dialogue

Policymakers must consult tribal communities, leaders, and activists to build trust and cooperation rather than imposing legal reforms unilaterally. Inclusive policy debates and grassroots involvement can foster acceptance and participation, making reforms sustainable. It may be concluded that balancing uniformity and diversity requires a hybrid legal approach that recognizes customary laws as legitimate while harmonizing reforms with constitutional principles. India's legal framework must aim for inclusivity, fairness, and pluralism, ensuring that tribal communities are partners in reform rather than subjects of imposition.

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