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THE INTERSECTION OF CUSTOMS AND LAW: EVALUATING THE EFFECTS OF THE UNIFORM CIVIL CODE IN NORTHEAST INDIA

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I. ABSTRACT

This paper will examine the effects of the Uniform Civil Code (UCC) in Northeast India, a region where personal laws are regulated by different customary laws or tribal practices. The UCC aims to promote the proper standardization of laws in the country, but it may be questioned by the people of the tribal communities as their laws are used to preserve their unique culture in society. The paper will further focus on the customary laws of Nagaland, Meghalaya, and Mizoram (based on adoption, marriage, guardianship, inheritance, etc) to reflect the importance of the preservation of their cultural diversity. The detailed comparative analysis between the UCC and the personal laws in Northeast India will denote the potential merits of the application of UCC accompanied by its parallel challenges including resistance from indigenous communities and conflicts with constitutional provisions such as Articles 244 and 244-A, Constitution of India, 1950. Moreover, the function of our judiciary has also been showcased in determining the balance between uniformity and cultural diversity. The paper also examines the framework for certain legal reforms, emphasizing the UCC and its adoption to achieve a balance between personal rights and community identities. Specifically, it underscores the significance of taking into account the cultural diversity in Northeast India, where tribal customs are an integral part of the social fabric. The conclusion prescribes that although the uniform civil code will enhance equality and national unity it should be followed with the scope of some flexibility that will not ultimately hinder the customary laws, practices, or the traditions of the tribal communities residing in Northeast India.

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II. KEYWORDS

Uniform Civil Code, Customary Laws, Cultural Diversity, Northeast India

III. INTRODUCTION

India is a tremendously diverse nation, with distinct states having different legal systems, cultural customs, and religious beliefs. The diversity in India is quite obvious to notice as it lies on the surface and is visible to all through the traits of the people residing. In the Northeastern states of India, personal laws are generally based on customary practices and tribal traditions co-existing with the national legal frameworks.

Every society, from the close-knit village councils of Nagaland to the matrilineal societies of Meghalaya, has developed its own unique justice and governance system based on its particular requirements and values. Amidst such heterogeneity, there is unity in diversity in India, and the proposal of the Uniform Civil Code under Article 44² The Indian Constitution, of 1950 becomes more concerned here. A Uniform Civil Code consists of laws that remain applicable to all people universally irrespective of their social status. It is not legally enforceable since it falls under the Directive Principles of the State Policies.

The aim of incorporating UCC under the Constitution of India is to strengthen the National Integrity and Unity in Diversity for the people throughout the nation. Conversely, personal laws are those that apply specifically to a community and are not generally applicable to everyone. After being freed from Portuguese rule in 1961, Goa maintained its common family law, known as the Goa Civil Code, and is the only state in India with a UCC.³

Goa was also described as the "Shining example of UCC" by the Supreme Court in its Jose Paulo Coutinho (2019) ruling. Now, Uttarakhand also has UCC where the President of India has given her assent for the execution of the same by approving the

² The Constitution of India, art. 44.

³ Drishti IAS, <https://www.drishtias.com/daily-updates/daily-news-editorials/just-uniform-civil-code> ((last visited 21th December, 2024).

State's UCC Bill, 2024⁴. The main intent of the Uniform Civil Code is to ensure proper equality among the citizens of India to avoid any religious conflicts.

In the case of "*Mohd. Ahmed Khan v. Shah Bano Begum*"⁵, the Supreme Court decided that in case of any conflict, Muslim Personal Law would be superseded by Section 125 under the Cr.P.C. Moreover, it was also recommended by the Supreme Court that a Uniform Civil Code should be set up code as it will lead to the end of the "conflicting ideologies under the disparate loyalties to laws."

This will further enhance our National Unity even more. The Uniform Civil Code was not categorized under Part III (Fundamental Rights) because the State did not have enough funds to apply it and society was also not prepared to accept that during the time of adoption of the Constitution. Thus, it was decided that the Uniform Civil Code in the future would be inserted in the category of fundamental rights when society becomes prepared to accept it.

Some people think this would make things fairer and simpler, but others worry it might erase the unique traditions of places like Northeast India. This paper will look at the UCC and how it compares to the special laws in Northeast India.

IV. EXISTING PERSONAL LAWS IN NORTHEAST INDIA

In India, there are different personal laws for the people falling under the different communities such as Hindus, Muslims, Christians, etc. Matters regarding adoption, divorce, and marriage are used to vary concerning different religions, for example, The Hindu Marriage Act, of 1955 which applies to all Hindus prohibits polygamy marriage.⁶

Furthermore, the Apex Court has also ruled that a marriage under Hindu Law would remain invalid if all the essential ceremonies or rites have not been done during the marriage such as 'Saptapadi.' For Muslims, there is the Muslim Personal Law (Shariat) Application Act, of 1937 which also enshrines the laws relating to divorce, adoption,

⁴ The Hindu, <https://www.thehindu.com/news/national/president-approves-uttarakhands-ucc-bill/article67947099.ece> (last visited 21st December 2024).

⁵ *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945

⁶ Hindu Marriage Act, 1955, s. 5(1).

gift (hiba), marriage, and succession, which would remain operative to the only people practicing Islam.

Likewise, the Northern-East States such as Arunachal Pradesh, Mizoram, Nagaland, Assam, Manipur, Tripura, Sikkim, Meghalaya, etc also follow their customary laws based on their culture, traditions, or the practices derived from their religious texts. In Nagaland, the Naga tribes govern themselves through the Nagaland Village Council Act, of 1978. The act deals with the composition, and powers of the village council, grounds for the disqualification of the members for the successful administration of Justice.

Article 371A⁷ The Constitution of India (13th Amendment Act, 1962) also protects the customary laws made for Nagaland. It gives the status to the State of Nagaland to safeguard the interest of tribal communities residing within it. This legal pluralism acknowledges the importance of preserving the unique cultural identities of the indigenous communities. Since, tribal communities have different cultures and outlooks, Articles 244 and 244-A also isolated certain political and administrative actions from them⁸.

In Meghalaya, the three major tribes namely Khasi, Jaintia, and Garos also used to follow their customary tribal laws. The Khasi, Jaintia, and Garo tribes in Meghalaya follow a matrilineal system, where inheritance and lineage are traced through women. The Khasi Hills Autonomous District (Administration of Justice) Rules, 1953, and other regional laws govern these practices.

Divorce under the Jaintia tribe happens in the presence of the village official known as "Wasan" who takes eight anna paise from either husband or wife and gives it to one of them as per the situation. Once both are divorced then remarriage cannot take place as per their law. Also, if the wife is pregnant with a child, then she cannot be divorced during that period.

⁷ The Constitution of India, art. 371A.

⁸ Thangzakhup Tombing, "Marriage and Divorce Law among Indigenous North East Tribes of India: Comparative Study of Mizoram and Meghalaya" 2 NLU Law Review, 8 (2017)

In Mizoram, customary traditions and statutory regulations are blended to represent both traditional values and contemporary legal standards in the “Mizo Marriage, Divorce, and Inheritance Act, 2014” followed by the Mizo society. Some tribal communities in Assam are protected to follow their customary laws based on their traditional practices. The 6th schedule of the Indian Constitution addresses the unique requirements for the governance of the tribal regions of Meghalaya, Mizoram, Assam, and Tripura.

V. UNIFORM CIVIL CODE AND ITS IMPACT IN NORTHEAST INDIA

To understand the implications of the UCC in the Northern-East states of India, it is pretty imperative to emphasize the comparative analysis between the civil code and the respective personal laws of the different regions. The Nagaland Assembly, however, has unanimously passed a motion requesting that the state be exempt from the Uniform Civil Code. The Chief Minister & BJP MLAs support the proposal.⁹

In the Northeast region of India, Marriage is often viewed as the social institution that used to be governed through Tribal rituals) instead of the legal contract. In the Northeast region comprising the Khasi tribe in the Meghalaya, the marriages are matrilineal, with inheritance passing through the female line whereas Divorce does not include any legal proceedings, it could be initiated by either of the parties.

If UCC comes into practice then it may promote the legal frameworks in the matters of marriage and divorce because it aims to ensure that the laws should be applied universally to all people regardless of social status. The inheritance laws are also governed through customary laws. In Nagaland, the land ownership system is strictly followed as per their customary laws and practices which are transmitted from one generation to another.

⁹ Bikash Singh, *It should contain flexible provisions to accommodate the unique culture of the tribal communities*, THE ECONOMIC TIMES, (24th December 2024, 1:07 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/nagaland-assembly-adopts-a-resolution-to-exempt-the-state-from-uniform-civil-code-ucc/articleshow/103611727.cms?from=mdr>

The Tangkhul Nagas used to follow their customary law of the Tangkhul Naga Long in case of inheritance.¹⁰ The patriarchal nature of Tangkhul society clears that only male ancestors are allowed to inherit property, primarily landed estates.¹¹ If the Uniform Civil Code governs such matters of inheritance, then the property may devolve to all genders. Thus, there will be equal inheritance rights for all genders through the UCC.

In the Northeast, community consensus is generally the basis for the adoption and guardianship arrangements rather than official legal registration. For instance, a childless couple can adopt a kid from inside the community in the Mizo tribe without going through any legal formalities. Sections 96–100 of the Mizo Customary Law on Adoption stipulate that destitute, abandoned, and orphaned children may be adopted by normal, sound-minded agreements between couples who are at least 21 years old.¹²

The couple's freedom to exercise their adoption rights may be terminated with the implementation of the UCC. It would rather promote the legal framework to be incorporated in the matters of adoption and guardianship. It might require the communities to navigate the legal bureaucracies, which may be unfamiliar and less accessible.

VI. REVEALING THE POSSIBLE ADVANTAGES OF ADOPTING A UNIFORM CIVIL CODE

The UCC aims to standardize all the laws and to guarantee proper uniformity. This may give rise to certain benefits if it gets into practice in the northern-east states of India. The successful execution of the UCC may end the complexities of different personal laws across the nation to support the legal uniformity and formality for the administration of justice. It would further make our legal system more accessible and convenient to avoid any conflicts.

¹⁰ Ringkahao Horam, "Inheritance and Succession Custom of the Nagas", 9 Journal of Emerging Technologies and Innovative Research, 157 (2014).

¹¹ *Ibid*

¹² Sharon Rodingliani, Perception of Child Adoption in Aizawl, Mizoram (2016) (Unpublished M. Phil. Thesis, Mizoram University, Aizawl).

The dispersion of justice may comparatively turn out to be easier due to uniformity in the laws. The implementation of a UCC could enhance access to justice for marginalized groups that often face challenges when dealing with complicated personal laws. A uniform legal framework would offer more straightforward paths for pursuing justice and guarantee that all individuals are treated impartially under the law. This improved accessibility is crucial for empowering people, especially women and children, who frequently face disadvantages in current legal frameworks.

Secondly, gender equality will be greatly focused on by a uniform civil code where women will also be getting the same rights that are exercised by men. The UCC seeks to promote gender equality by guaranteeing that all people, irrespective of their gender, possess the same legal rights. In many existing personal laws, women face discrimination in areas such as inheritance and divorce.

The historic ruling in *Mohd Ahmed Khan v. Shah Bano Begum* makes this very evident in which the Supreme Court has given overridden effect to the Cr.P.C. over the Muslim personal law and allowed the Divorced Muslim women to seek maintenance from their husbands even beyond the iddat period. It was laid in the judgment that the Code of Criminal Procedure is a secular act and it applies to all the citizens of the country.

Furthermore, it would act as a catalyst for national integration ensuring unity in diversity among the different communities in India. Certain constitutional provisions protect the interest of the tribal communities in the northeast regions under the sixth schedule. If UCC is implemented, then it should be exercised in a manner that the autonomy of the tribal councils and the provisions of the Sixth Schedule should be respected.

VII. FUNCTION OF THE JUDICIAL SYSTEM IN MAINTAINING UNIFORMITY AND CULTURAL DIVERSITY

The judiciary has consistently played a crucial role in interpreting laws to balance national uniformity with cultural diversity. Landmark rulings such as *Mohd. Ahmed Khan v. Shah Bano Begum* highlighted the necessity of a Uniform Civil Code (UCC)

to further gender equality, while the courts have frequently acknowledged the significance of maintaining cultural traditions.

For instance, the Supreme Court upheld tribal councils' independence under the Sixth Schedule in the case of the State of Nagaland v. Ratan Singh. The Additional Deputy Commissioner dismissed the challenge, stating that the Criminal Procedure Code did not apply because the Naga Hills District lacked Courts of Session. He claimed that the Rules for the Administration of Justice and Police in the Naga Hills District, 1937, would be followed, and that committal proceedings and trials before a Sessions Court were therefore not possible. For the sake of brevity, they will be called the 1937 Rules. Other notable decisions by the judiciary illustrate this balance.

Chief Justice YV Chandrachud rendered the verdict in "*Mohd. Ahmed Khan v. Shah Bano Begum*", wherein Mohd. Ahmed Khan's plea was dismissed and the Supreme Court maintained the High Court's earlier ruling on February 3, 1981. It was decided that the Muslim wife is covered under section 125 (B). As to Section 125 of the Cr.P.C., the "wife" is a divorced woman who has not remarried. As a result, a Muslim wife is also called a "wife" in formal terms, as defined by Section 125. It is hence secular.

The Supreme Court decided that to prevent discrimination, it overrides Muslim personal law. This instance highlighted the necessity for consistency in maintenance laws and the advancement of gender neutrality while taking local customs into account. The court also suggested that a UCC could help resolve conflicts arising from disparate personal laws, thus enhancing unity in the nation and individual rights.

In the case of "*Shayara Bano v. Union of India*"¹³, the Supreme Court ruled that the practice of instant triple talaq is unconstitutional, emphasizing that personal laws must be consistent with constitutional principles regarding equality and non-discrimination. This ruling underscored the judiciary's role in ensuring that personal laws do not infringe upon fundamental rights, thereby contributing to a more uniform legal framework while respecting cultural practices.

¹³ *Shayara Bano v. Union of India*, AIR 2017 SC 4609

In the "*Indian Young Lawyers Association v. State of Kerala*"¹⁴, the entry of women into the Sabarimala temple got recognition, which was restricted based on traditional practices. The Supreme Court ruled that such restrictions were discriminatory and violated the rights of women under Article 14 (right to equality). This judgment emphasized that personal laws or customs cannot override constitutional rights, thereby supporting a move towards uniformity in legal standards.

The Former CJL, Dipak Misra stated that any laws that discriminate against and undermine women's dignity will be deemed invalid since they contravene Articles 14 and 15. Furthermore, Justice D.Y. Chandrachud noted that the societal exclusion of women, based on biological aspects like menstrual status, mirrors a form of untouchability, anchored in notions of "purity and pollution," which stigmatizes people and cannot be justified within constitutional frameworks, especially as it is explicitly forbidden by Article 17¹⁵.

VIII. LEGAL PLURALISM: A BRIDGE BETWEEN UCC AND TRIBAL LAWS

The coexistence of several legal systems inside a single jurisdiction is known as legal pluralism, and it is a fundamental component of India's heterogeneous socio-legal structure.¹⁶ This principle is especially important in Northeast India, where tribal groups adhere to traditional laws that stem from their distinct cultural and social customs.

The Sixth Schedule of the Constitution acknowledges these legal systems, allowing autonomous district councils to create laws regarding personal issues like marriage, inheritance, and land rights. This recognition highlights the significance of maintaining tribal legal identities while existing alongside the national legal system.

¹⁴ *Indian Young Lawyers Association v. State of Kerala*, AIR ONLINE 2018 SC 243

¹⁵ Megha Singhal, *Indian Young Lawyers Association v. The State of Kerala [Writ Petition (Civil) No. 373 of 2006]*, LawBhoomi, September 10, 2022, available at <https://lawbhoomi.com/indian-young-lawyers-association-v-the-state-of-kerala/> (last visited on 27th December, 2024).

¹⁶ Mayuri, *Navigating Legal Pluralism: Personal Laws And The Uniform Civil Code*, Manupatra, Jul 19, 2024, available at <https://articles.manupatra.com/article-details/NAVIGATING-LEGAL-PLURALISM-PERSONAL-LAWS-AND-THE-UNIFORM-CIVIL-CODE> (last visited on 27th December, 2024).

The introduction of the UCC offers a chance to align tribal and national laws while respecting the cultural independence of tribal communities.

By adopting the pluralistic perspective, the UCC can guarantee that tribal customary laws remain essential to cultural preservation, while also pursuing wider objectives of gender justice and equality. Moreover, it is essential to conduct thorough consultations with tribal communities. Involving tribal leaders and representatives in the formulation of the UCC ensures their viewpoints and concerns are effectively considered.

This inclusive approach nurtures a feeling of belonging and acknowledges diversity, which are core values in a multifaceted society. One possible strategy is to include exceptions in the UCC that respect and protect the customary laws of tribal communities. This method would enable these communities to preserve their practices, thereby protecting their cultural identity.

Furthermore, the UCC can benefit from the positive features of tribal customary laws, especially those that foster gender justice and equality. For example, some tribal communities in Northeast India practice matrilineal systems that empower women regarding their rights. By integrating such forward-thinking aspects into the UCC, its potential to advance social justice can be significantly enhanced.

IX. POSSIBLE CHALLENGES TO ENFORCING THE UNIFORM CIVIL CODE IN NORTHEAST INDIA

There could be certain challenges that a UCC may face in the northeast region of India. The indigenous communities in Northeast India may likely resist the practice of the UCC for the procurement of their culture and tradition. The tribal communities are well-versed in their respective customary laws because they used to follow them. The presence of UCC here may lead to ambiguity or confusion for them related to the laws based on inheritance, succession, marriage, divorce, adoption & guardianship, etc.

While UCC aims to promote gender equality, it must balance this goal with the preservation of cultural diversity. Many customary laws in the Northeast, although patriarchal, are deeply embedded in the social fabric. The challenge lies in reforming

these laws to ensure gender justice without undermining cultural heritage. The economic implications of a UCC could be significant, particularly in terms of land ownership and inheritance.

Tribal land ownership systems, which often emphasize communal rights, may be prevented by a uniform code which may lead to economic dislocation and potential conflicts over land resources. The imposition of the uniform civil code may raise a conflict with Article 371, 371A of the Constitution of India which is meant for specific states like Nagaland. Articles ranging from 25 to 29 under the Constitution of India, 1950 which enshrines the right to religion and preserving the culture may also pose a challenge to the applicability of UCC.¹⁷

X. VISION FOR JUSTICE: A FRAMEWORK FOR LEGAL REFORMS

As conversations about the Uniform Civil Code (UCC) move forward, it is vital to explore future legal reforms that honor both individual rights and community identities. Involving local leaders, legal professionals, and community members will foster a more inclusive conversation about the best ways to implement the UCC while preserving cultural diversity. This is particularly important in Northeast India, where tribal customs and traditions are deeply embedded in society.

Future reforms should focus on creating a flexible legal system that accommodates varied practices while safeguarding fundamental rights. This might involve including provisions for community-specific adaptations within a larger uniform code or creating mechanisms for conflict resolution that acknowledge local customs. Additionally, the implementation of the UCC must include extensive educational initiatives to inform communities regarding their rights and the forthcoming changes. It will further help reduce opposition arising from misconceptions or fear of losing cultural identity.

¹⁷ GK Today, <https://www.gktoday.in/article-23-to-30-constitution-of-india/> (last visited 27th December 2024).

Policymakers should explore pilot programs in certain communities to evaluate the effects of implementing the UCC before a broader deployment. Such a strategy would allow for modifications based on actual feedback and ensure that the distinct needs of various communities are addressed. Ultimately, the aim should be to cultivate an atmosphere where legal uniformity complements cultural diversity, advancing justice and equality while preserving the rich traditions of Northeast India's varied populations.

XI. CONCLUSION

Ensuring consistency in law is the goal of the Uniform Civil Code, which is provided by Article 44 of the Indian Constitution, 1950. As India is a diverse country that has several cultural practices, the UCC should be promoted by respecting the unique customs of the various communities. The benefits of the Uniform Civil Code include national integration, gender equality, and making the legal system more accessible to the public at large.

The law commission also seeks opinions from the people about the UCC. However, the challenges against the civil code are also there which could put the question in the applicability of it. Resistance could be made by indigenous communities about their customs as the variation in the economic dislocations or the land ownership, and the inheritance laws could change through the implementation of the uniform civil code. It should contain flexible provisions to accommodate the unique culture of the tribal communities.

Therefore, a uniform civil code is the best approach to guarantee that the laws are properly uniform or standardized, but it must also live with the traditions of the tribal groups of India's northeastern states. Therefore, the execution of the Uniform Civil Code should be considered carefully and with sensitivity, especially in regions such as Northeast India, where various cultures and traditions are deeply established. Although the UCC presents a chance to enhance inclusivity, equality, and national unity, it is crucial to acknowledge that legal uniformity should not undermine cultural identity and autonomy.

A thoughtfully designed framework that harmonizes national interests with regional uniqueness can aid in reconciling modern legal principles with traditional practices. Policymakers need to engage in extensive discussions with tribal leaders, scholars, and local communities to ensure that the UCC respects their heritage while encouraging progressive changes.

By promoting collaboration and understanding, the UCC can serve as a means for peaceful coexistence, preserving the vibrant cultural diversity of Northeast India while meeting current societal needs.