

How just is the idea of Uniform Civil Code for India's Adivasis and Indigenous Peoples?

JULY 27, 2023

"UCC is being protested by all the tribals in the country, as it's a threat to tribal existence. The UCC will dilute the tribal customary laws and rights that have been provided to us by the Indian constitution," says Geetashree Oraon Adivasi, a member of Samanwai Samiti and former Jharkhand minister.

Ahead of the Lok Sabha elections in 2024 the Modi regime has raked up the issue of Uniform Civil Code (UCC) anew. As is customary and even obligatory in a participatory democracy, the opinions of the all sections of citizens and civil society on the issue have been sought. There is a vocal (even vertical) division in the responses, one section strongly advocating "merits" of the UCC (without necessary clarity on any details of its gender dimensions), and another side pitching in with the drawback. Unlike the decades of the 1980s and 1990s when the issue was seen and protested largely through a Hindu-Muslim lens, this time the opposition has been diverse, with extremely vocal opposition also coming from India's Adivasis and indigenous populations.

For large sections of Indians, Muslims, Christians and other minorities and even those who believe in India as a secular democratic republic, the idea behind the UCC is yet one more step towards achieving the Rashtriya Swayamsevak Sangh (RSS) aim of pushing India towards becoming a Hindu Rashtra.

Adivasis, India's indigenous populations, already targeted and marginalised as a result of non-democratic governance, facing mass displacement are in strong opposition to the UCC. For them,

the UCC is seen as yet another tool that will deprive them of the special identity guaranteed by the Constitution.

The concept of a Uniform Civil Code is included in Part IV of the Indian Constitution comprising Directive Principles of State Policy. [Article 44](#) states, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

In the year 1973, the landmark case of [Keshvananda Bharti vs State of Kerala](#) in its judgement resonated the concept, "*desirable as it is, the Government has not been able to take any effective steps towards the realisation of this goal. Obviously, no Court can compel the Government to lay down a uniform civil code even though it is essentially desirable in the interest of the integrity, and unity of the country.*"

Since then, many references have been made to the "need for a UCC". The recent development is the Law Commission's notice on June 14, 2023 soliciting the views of the public on UCC.

The UCC envisions a common law for all citizens, regardless of faith, in the country, law that governs marriage, inheritance, divorce, adoption. Such a code is "replace" personal laws as well as laws relating to marriage, inheritance, adoption, child custody, alimony, polygamy, and succession. Many Adivasi/tribal groups fear that the implementation of such a code will violate their fundamental rights by impinging on their customs and traditions, many of which are protected by existing laws.

Serious Adivasi concerns:

- **UCC will violate their fundamental rights to freedom of religion, culture and expression, which are guaranteed by the Constitution of India. Social practices among North-Eastern tribal groups differ from community to community. They fear UCC will impact their traditional system, their way of life and customs–**

While the tribal community flags many concerns over the implementation of the UCC but the major one is tampering of their ethnic customs, traditions, and identity, fearing that it may damage their traditional identity and autonomy. The UCC is a proposal to replace personal laws based on scriptures and customs of each major religious community in India with a single

body of rules that governs all citizens. Adivasis/Tribals in India have so far governed themselves and decided their own customs through special constitutional rights. They have their own customary laws that regulate their marriages, inheritance, property rights, etc. These laws vary from tribe to tribe and region to region and reflect their diverse traditions and beliefs.

The twin issues of UCC and “de-listing” have always been dear to the RSS. Hence, it is not unreasonable to believe that these are a ruse devised by the Sangh Parivar to undermine Adivasi culture, customs, and traditions, as well as to deprive them of their right to self-governance. Will the Adivasis survive if their culture, customs, traditions, and right to self-government are destroyed? This is the key question being raised by Adivasis.

Articles 342 (1) and (2) give the central government the authority to add or remove communities from the Scheduled Tribes (STs). Once UCC comes into force, what would be the basis for exercising this right? How would the Adivasis get the special rights they are entitled to?

- **UCC will undermine their self-governance and local democracy, which are essential for their empowerment and development-** The UCC has also been rejected by tribal groupings and church bodies in Meghalaya and Nagaland. Mizoram’s state assembly approved a resolution against the UCC earlier this year. Concerns about the UCC in tribal majority north-eastern states come from a fear that it may erode the constitutional protection of their autonomy in legislation regulating customs and practises. [Article 371-A](#) of the Constitution states that no parliamentary law dealing to customary laws, religious and social practises, or land transfer can apply to Nagaland unless approved by the state legislative assembly. [Article 371-G](#) contains a similar language that grants Mizoram the same autonomy over the same issues.

Adivasi groups in Jharkhand, for instance, are concerned about the UCC replacing the *Chota Nagpur Tenancy Act and the Santhal Parganas Tenancy Act*, both of which specifically preserve tribal land rights by preventing the transfer of tribal land to non-tribals. Similarly, the Nagaland Tribal Council (NTC) claimed that the UCC would weaken the provisions of [Article 371A\[i\]](#) of the Constitution, which states that no act of Parliament will apply to the state in matters pertaining to Naga religious or social practises or interfere

with Naga customary laws.

In Arunachal Pradesh, community-based dispute resolution processes are deemed more democratic than what a modern-day court might do. In Arunachal Pradesh, the Adi community uses the Kebang system to settle conflicts. In the Kebang system, unlike the conventional legal system, everyone wins.

- **Most tribes in India have a patrilineal line of succession–**

Hence the worry that non-tribal people and people of other religions may trap their women to grab land if daughters are allowed to claim father's property.

Way forward

The 21st Law Commission addressed these concerns while declaring that a UCC was neither essential nor desirable. It did, however, urge that certain special characteristics of the Hindu inheritance and succession law be removed, which any UCC must include. It specifically called for the abolition of coparcenary property ownership as well as the concept of a Hindu Undivided Family (HUF). Abolishing coparcenary property would mean that millions of Hindus would suddenly find themselves bereft of their ancestral property shares, which would now belong entirely to the family patriarchs.

Likewise, those who have planned their taxes around the concept of a HUF would find their businesses upturned because of the abolition of this concept. Unfortunately, the 21st Law Commission did not go into the potential chaos that these moves could bring while recommending them.

Nonetheless, the UCC will have to abolish or, more outrageously, impose these practises on communities that have never practised them in the first place. In either case, it will be a formula for disaster for family-owned farms or companies.

The 21st Law Commission conducted extensive state-wide discussions before deciding that it was preferable to change each set of family laws separately rather than replace them with a single legislation. While addressing concerns about gender equity, the 21st Law Commission maintained that in the context of family laws, it was possible to maintain variety while still protecting human rights. It even included a plan for doing so.

Adivasis in central and eastern India as well as tribal populations in the north-eastern states, have not modified their minds about the UCC in the last five years. So one has to question what the 22nd Law Commission is trying to accomplish by resuming the debate at this juncture.

Likewise, the potential for economic chaos for Hindus to be triggered by the abolition of unique features of Hindu succession law should give pause to this exercise as well.

As the 21st Law Commission inferred: "...a 'united' nation need not necessarily have 'uniformity'".

(The author is an intern with www.cjp.org.in)

Footnotes

<https://www.eastmojo.com/opinion/2023/07/16/how-uniform-civil-code-impacts-customary-laws-in-northeast-india/>

<https://www.deccanherald.com/national/explained-why-tribal-groups-are-concerned-about-the-ucc-1233840.html>

<https://indianexpress.com/article/political-pulse/jharkhand-governor-c-p-radhakrishnan-interview-8831225/>

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