



The Uniform Civil Code (UCC) is a concept in Indian constitutional law that aims to replace personal laws based on religious traditions with a common set of laws governing various aspects of civil life such as marriage, divorce, adoption, and inheritance. The objective behind the UCC is to promote gender equality, secularism, and the fundamental rights guaranteed by the Indian Constitution.

The debate surrounding the implementation of a Uniform Civil Code has been a contentious issue in Indian politics and society. Advocates argue that a UCC would help in achieving true equality before the law and eliminate discrimination based on religious grounds. It is also seen as a way to promote modernization and provide uniformity in civil matters.

However, opponents of the UCC argue that it may infringe upon religious freedom and cultural diversity. They fear that imposing a common code may not take into account the diverse religious and cultural practices prevalent in the country.

In contrast to the rest of the country where the debate over the Uniform Civil Code often centres around religious considerations, in the North East states, implementing a UCC, clashes with the established customary rights of various communities. These customary rights hold significant sway, particularly in the Sixth Schedule areas (Article 244) of the North East states, and are safeguarded by Article 371 of the Constitution, granting special status to states in matters of legislation.

The stance of women in the discussion between customary rights and a uniform civil code is of paramount importance, as a majority of the issues at hand disproportionately impact them. Whether it is matters of property rights through inheritance or issues related to marriage and divorce, women living under customary laws have long faced discrimination. The influence of patriarchy is deeply ingrained in the social structures of the diverse communities in the North Eastern states, whether governed by customary laws or standard constitutional provisions. In fact, due to the extremely limited involvement of women in the traditional leadership systems dictated by customary practices, women's rights are scarcely represented. Whether it be in the Village Councils of Nagaland or the Durbars (traditional village councils) of Meghalaya, women's participation in decision-making is a rare occurrence. Even within communities with matrilineal ties, such as the Khasis and Lalungs, it is evident that in matters of property rights, women are mere custodians and not the ultimate decision-makers regarding land use or disposal.

It's argued that customary practices serve to safeguard community lands from external appropriation. However, the nature of the relationship between tribal communities and land and resources is evolving. Individual ownerships and commercial interests are increasingly gaining prominence. In this context, under customary practices, women stand to miss out on opportunities afforded by modern developments. While the usual tendency is to either

romanticize the customs of various communities (especially indigenous ones) as being superior and liberating, or to criticize them as not conforming to mainstream norms, it's crucial to acknowledge the diversity and evolving nature of these practices. At times, women seek recourse in the courts to overcome the barriers posed by customary rights. For example, the Naga Mothers' Association has pursued legal avenues to assert women's right to political participation.

Therefore, determining whether women in this region would be better served by customary laws or by the potential implementation of a Uniform Civil Code necessitates inclusive discussions and a deeper understanding. When it comes to the customary rights of diverse communities in the North East states, it is imperative to reflect on and welcome changes that promote gender equity. Customary rights are deeply intertwined with their way of life, deeply rooted in the land and nature. However, intervention from the legislature or judiciary in establishing enforceable guidelines for customary laws based on principles of gender equity would be a positive step forward. This is because achieving change from within will be a protracted struggle, where women and other gender identities are consistently placed at a disadvantage.

### **INPUTS FROM DIFFERENT NE STATES ON “CUSTOMARY MARRIAGE AND DIVORCE LAWS VS. UNIFORM CIVIL CODE: PERSPECTIVES FROM NORTH EAST INDIA”**

#### **Meghalaya**

The implementation of a Uniform Civil Code (UCC) in Meghalaya has raised concerns about potential interference with the distinctive matrilineal societies of the state. There is an appeal to the Law Commission not to enforce the UCC in scheduled areas of Meghalaya. It is argued that the UCC, if applied in Meghalaya, could potentially disrupt the unique and cherished matrilineal norms that characterize the society in the state. The speaker emphasized that any legal framework introduced by the nation should not only protect the interests of minorities but also safeguard the rich and time-honoured heritage of the tribal communities in the Northeastern states of the country. Khasi and Garo customary laws have deep roots in the socio-cultural fabric of Meghalaya. These customary laws govern various aspects of civil life, including marriage, inheritance, and property rights, and are distinct from the broader legal framework in India.

For instance, the Khasis regard *Ka Ing* (a number of families or -ing that belong to the *sam jaid*, subdivisions of a clan) as a fundamental and crucial functional entity within their social structure. It serves as a religious unit responsible for safeguarding ancestral property and participating in shared religious rituals. This institution plays a pivotal role in the overall organization of Khasi society. Emphasizing maternal solidarity, *Ing* membership is determined through the maternal line. In Khasi marriages, a husband, who is the son of one clan (*kur*), joins in matrimony with a daughter from another clan, ensuring that there are no blood relations between them. Consequently, Khasi marriages involve the union of two clans; it creates a connection between a man and a woman, specifically between the *kur* of a man and the *kur* of a woman, both originating from different ancestral mothers and distinct clans. It is noteworthy that marrying within the same clan is strongly condemned, termed as '*ka snongsang*,' due to

concerns about incest and deviations from the established principles of *Tip kur*. As a result, Khasis approach marriage proposals with great care, the responsibility on maternal uncle is significant.

Among the Khasis, divorce is not socially encouraged but is allowed in specific situations, particularly when a couple fails to have children. The belief is that marriage is a means of procreation and expanding one's family (expressed as "Bar pyniar ia tnum en tyndai"). When a marriage remains childless, it affects both the couple and their respective families, often leading to separation. This separation is termed 'Ka ia-pyllait san shyng' and is conducted in the presence of senior community members, preferably the Ki Kseangs who officiated the marriage ceremony.

There are also instances where the husband and wife mutually agree that living together is no longer feasible, leading to divorce with their consent. Importantly, divorce must be a mutual decision and requires legal approval from representatives or spokespeople ('Kseangs') from both sides, similar to the marriage process. Until the divorce is finalized, neither the husband nor the wife can remarry. Violating this rule incurs a penalty known as 'Bai mynrain Khmat,' involving fines or compensation for breaking the marital contract.

The youngest daughter (*khatduh*) of the family is bequeathed the full share of the ancestral (or the clan's) property. The *khatduh* becomes the "custodian" of the land and assumes all responsibility associated with the land. Property The *khatduh* cannot sell the property, without permission of her mother's brother (maternal uncle) - since he technically belongs to the mother's clan, through which descent is traced. This inheritance tradition applies only to ancestral or clan/community property, which has been with the family for years. The self-acquired property can be distributed equally among siblings. In this traditional set-up, if a couple does not have any daughters, then the property goes to the wife's elder sister, and her daughters. If the wife does not have sisters, then the clan usually takes over the property.

The clash with the Uniform Civil Code (UCC) arises from the fact that the UCC seeks to establish a common set of laws that would replace personal laws based on religious and customary practices. If implemented in Meghalaya, the UCC could potentially infringe upon the established customary laws of the local communities.

## **Nagaland**

State of Nagaland was represented by consultants from three tribes viz. Ao Nagas, Lotha Naga and Phom Naga. The consultants gave an overview of the marriage and divorce customary practices of their respective tribes and articulated their concerns in implementing UCC in Nagaland.

### Ao Naga Tribe:

The Ao Nagas are one of the 17 officially recognised tribes of Nagaland majorly concentrated in the district of Mokokchung, but are also inhabitants of other districts. In 2021 the Government of Nagaland came up with a report titled "Survey on the Number of Villages in Nagaland 2021", which estimated the number of villages and hamlets in Mokokchung as 99. The Aos are divided into two major groups- the Chungli and the Mongsen. This categorization is done based on the villages in the Ao region who speak the two major dialects known by the

same names. The Ao Nagas are not homogenous, in the sense that the tribe is constituted of many clans and sub-clans, and plays the determining role when it comes to affairs of marriage, as the customary law of the Ao Nagas strictly prohibit intra-clan marriage and is considered a taboo.

The Aos follow clan exogamy. Two persons from the same clan cannot marry. Additionally, persons belonging to clans which share the same ancestor also cannot marry. An Ao Naga man can only take one wife at a time. Bigamous relationships were dealt with severely under customary law. The prohibited degree of relationship from both sides is up to third degree. In other words, marriage between third cousins is permissible. The Ao Naga marriage is a blend of the written law governing Christian marriages and customary rules and procedures. However, the Indian Christian Marriage Act of 1872 is applicable only as far as the solemnization of marriage in the Church by an ordained priest or minister, who is commonly known as the Pastor. Apart from this, every other aspect of marriage, pre-marriage or post-marriage is largely governed by customary law. There are instances of court marriage as well, but the traditional method of being solemnized in a Church is more common. Ao women therefore do not take on their husband's last name even after marriage and retains her father's clan name/surname. Even though after marriage, the couple is referred to as 'Mrs. And Mr...' with the name of the husband, for official purposes or where the wife has to individually represent herself, she uses her maiden name. This is a tradition that is not seen among many Naga women upon marriage.

When it comes to divorce, it is usually the last resort among most Naga tribes but among the Ao Nagas, it is even rarer. For the Ao Nagas, reconciliation is always advised and preferred. If it is a case of adultery, domestic violence, etc., the Village Council having customary authority imposes customary fines (eg: 'the payment of 'Kilamet' which translates to 'the payment of pigs as fines' where the guilty party gives pigs as fine – the number of pigs depend on the status of the wrong-doer). But even in such cases, there is always an effort for forgiveness and reconciliation. If either of the couple decides that they can no longer reconcile with their partner and he or she insists on divorce, that person leaves the marriage empty-handed. But when we say "empty-handed", the wife is at a disadvantage because while the wife leaves completely empty-handed and all of her property, especially immovable property, goes to her husband but when it comes to the husband leaving the marriage, his immovable property does not go to the wife. Rather, it goes to the male heir. So, the wife does not get a right over the immovable property. This is because in Ao Naga community, marriage is not just about two people, it also involves the clans and villages which the couple hails from. Since it is a very close-knit society, divorce is frowned upon so as to not break the communal bond that has been formed or created through that marriage. If a wife rejects the idea of reconciliation and she insists on getting a divorce, a stigma forms around her that she is a woman who does not possess the qualities of tolerance, as is expected from women in Naga society.

Taka Ra and Nok Ra are two exceptions to the general rule that divorce is the last resort. Taka Ra means 'permanent disability caused by domestic violence or abuse' and Nok Ra means 'death or bloodshed caused through domestic violence or abuse' which leads to the clans of the

husband and the wife becoming enemies. The above two mainly act as deterrents to the husband and ensures that the husband is treating his wife properly during marriage.

In most severe cases where the couple asks for divorce, six months cooling off period is given to the couple so that they can rethink their decisions. This shows that divorce really is the last option. Ao women have no right to ancestral property. When it comes to self-acquired property and division of property during divorce, whether the wife gets those self-acquired properties or not depends on whether they got married under customary bindings or had a civil marriage. If they had a holy marriage in the church with customary oaths administered, the wife will only get the property that has been registered under her name alone. If it has been bought by the couple together and the wife happens to have paid more than her husband, even then, if the property has been registered under the husband's name, the wife does not get a share of the self-acquired property. It goes to the husband.

Maintenance and inheritance are inherently attached to the concept of marriage and divorce and cannot be viewed in isolation. These are strictly governed and regulated by customary law. As the Ao Nagas, like the rest of the Naga tribes follow a strict patriarchal structure, the father is the head of the family and the natural guardian. Property, be it land or immovable properties like buildings, are always in his name, even if the wife jointly contributes financially in procuring it, and passes on to his male heirs. However, it is to be noted that ancestral property cannot be inherited because such kind of property belongs to the clan members of the village. Therefore, every male member of the clan is considered as the custodian and guardian of such ancestral land.

#### Phom Naga Tribe:

Marriage (Yiukyahpu) between same clan is strictly prohibited in the Phom community. Monogamy is the present norm of marriage in the Phom society. A matrimony alliance with other religion other than Christianity is permissible. Similarly, inter-marriage with other tribe or plainsmen is not restricted though usually not encouraged. There is no restriction on marriage between second and third cousins among the Phoms if they do not belong to the same clan. In the event of a marriage without the consent of the parents, the clansmen of both the families can get together and legitimise the marriage. Marriages between the father and step daughter, mother and step son are not allowed even if they are not related by blood. Marriage between adopted son or daughter, and foster son and daughter are also not permissible. There is no particular age at which a boy or a girl can get married, but child marriage is prohibited in the Phom community. Marriages are registered in the church and thereafter, the family members of the bride and bridegroom sit for a formal meeting recognizing the marriage. The clan men and relatives make customary agreements. There is no practice of bride price in the Phom society. A widow, widower or a divorcee can remarry anytime if he or she feels it necessary. And as such they do not have any specific period for remarriage, but it is preferable to have a gap of at least one year after the separation with the first wife or husband.

A husband can divorce (Yiuk Yanpu) his wife on the grounds of adultery, violation of marriage vows and conflict of views and opinion in the family. A wife can also divorce her husband on the grounds of adultery, violation of marriage vows and conflict of views and opinion in the

family. Divorce can also be initiated by mutual consent, but it is very rarely practiced. When a husband divorces his wife without any valid reason, he can be penalized to payment of land, pig, or moveable or immovable properties. If a wife divorces her husband without any valid reasons, then she will be driven out empty handed.

### Lotha Naga Tribe

The Lotha tribe is one of the major tribes in Nagaland, with most of its population residing in the Wokha district. The district is predominantly inhabited by the Lotha tribe. The Lotha tribe practices exogamy and monogamy. The Lotha tribe practices both arranged marriage and love marriages. In traditional legal terms, it has been a longstanding practice that when a female individual reaches the age of 15, she becomes eligible for marriage, with the church also recognizing such unions. In contemporary times, under customary practices, there are no restrictions prohibiting this practice, although it is not actively encouraged due to the potential consequences associated with divorce. Currently, there are instances where a husband can divorce his wife and marry another woman if the wife does not bear a male child.

In divorce cases, it is customary for the father to have custody if the child is a son, and custody of a daughter is given to the mother in few cases. However, in this tradition, a mother does not have an inherent right to claim custody of a child, as it is the husband and his family who hold the decision-making authority. If the husband chooses not to relinquish custody of their daughter, the mother does not have the right to claim custody of the daughter. In summary, the father possesses all the vested rights to have custody of all the children, regardless of their gender.

In Lotha tradition, during divorce, the individual who is at fault or initiates the divorce is required to pay Rs 10 and surrender half of their property in certain cases to the other party, without the payment of any maintenance. In earlier times, this had considerable value, but in contemporary society, it has lost its significance, except when used to insult women. Consequently, because of such practices, often women are subjected to insult to demean them and portray them negatively.

### Problems in implementing a UCC in Nagaland:

Discussions on the Uniform Civil Code has seen a revival in the past few months, with many sections of the society emphasising and supporting a uniform law to regulate matters of civil life that are currently under the personal laws of the different religious communities in the country. Such a law would seek to remove inequalities based on gender, which are perpetuated under personal laws that deprive women of an equal status with that of men in the areas of marriage, divorce, inheritance and adoption, among others.

A Uniform Civil Code, as benevolent as its aims and intentions may be, cannot be materialised in the context of the Naga society, which is founded on customary practices traditions and rules that regulate every aspect of an individual's life from birth to death. These laws and regulations have been passed down orally from one generation to another through the male line, and despite many of the laws getting lost in translation over the ages, it has retained many core values, one of them being that women were barred from the decision-making space. This was the justification given by the civil society organisations to oppose the 33% reservation to women in the Urban Local Bodies in Nagaland on the ground that it violated Article 371A of the

Constitution of India, which protects, *inter alia* Naga customary law and procedures, and giving women the power to make decisions would be in stark contravention to what is protected by Article 371A, and therefore, for many years, elections to the ULBs were not conducted. According to Article 371A, Parliament cannot make laws on the religious or social practices of the Nagas, their traditional laws, and how they solve legal problems, or who owns and uses the land unless the Nagaland Legislative Assembly agrees. The apex tribal body of Nagaland, Naga Hoho argues that women have traditionally not been part of decision-making bodies. Nagaland is the only state where ULB seats are not reserved for women.

Similarly, all matters of inheritance and property rights fall under the purview of customary laws and procedure. Regardless of whether someone is an elected member in the legislative Assembly, or he is a simple farmer in the village, the actions of disposing off his immovable property is dictated by customary law, and under that, male heirs get the immovable property. In case there is no male progeny, it goes to the next of kin, which usually happens to be the father's brothers, or male members from the father's side. In the villages, this rule is strictly applied, because matters involving land become not only a family issue but a clan/village issue.

The reason why women have not been given the rights to hold immovable property is based on the premise that once a woman marries, she becomes a part of her husband's family, clan, village (if the spouses belong to two different villages but from the same tribe) or tribe (if the spouses are from two different Naga tribes) and thus the land will go away to her husband's side which ultimately means that an alien gets rights over the land which the woman's father has acquired in his lifetime. This is especially the case if a woman decides to marry a Non-Naga or someone who is not an indigenous inhabitant of Nagaland. The issue of inheritance therefore has many complexities.

However, of late, in the urban areas, there are slow but steady changes taking place where a man may divide his self-acquired immovable property, which usually takes the form of land he purchased or the house he built to his daughters while he is alive. Though inheritance and succession are sensitive topics of discussion that not many women led civil organisations have forayed upon given the repercussions that would ensue, families in urban towns who are privileged enough to acquire immovable properties are choosing to make wills and gift deeds, equally dividing the property between the sons and daughters. This means that only those who are exposed to legal awareness and literacy take such steps. The lack of legal awareness stems from the fact that traditional institutions of justice dispensation and dispute settlement have overshadowed the formal channels.

The latest development regarding UCC was that the Nagaland Assembly, with unanimous support from all 60 Members of the Legislative Assembly (MLAs) including those from the BJP, a constituent of the ruling coalition, has passed a resolution seeking exemption from the Uniform Civil Code (UCC) during the second session of the 14<sup>th</sup> Nagaland Legislative Assembly, which was held from 11<sup>th</sup>- 14<sup>th</sup> September 2023.

The Consultants expressed their hope that the Central government will respect this decision and consider the constitutional provisions safeguarding the interests of the Nagas. It was also discussed that the state government has already formally requested the 22<sup>nd</sup> Law Commission

for Nagaland's exemption from the UCC. Across political affiliations, Nagaland lawmakers share the belief that the UCC could potentially undermine the safeguards provided by Article 371 (A) to the state. The UCC entails a single law covering various aspects like marriage, divorce, succession, inheritance, and adoption, which may conflict with the customary practices deeply rooted in Nagaland.

Nagaland's historical significance, as evidenced by legislations such as the Bengal Eastern Frontier Regulation, 1873 (BEFR Act 1873), the 9-Point Agreement of 1947, and the 16-Point Agreement of 1960, justifies its exemption from the UCC. These agreements introduced the Inner Line Permit (ILP) system and granted Nagaland substantial powers in judicial, executive, and legislative matters, along with autonomy in land-related affairs.

The once dormant provision of Article 371(A) has recently gained prominence, after lying relatively unused for several decades. Article 371(A) serves as a vital safeguard for preserving social and religious practices, offering a robust constitutional guarantee.

In popular opinion, any attempt to enforce the Uniform Civil Code (UCC) could potentially pose a threat to the established social, religious, and customary laws, directly intruding upon personal legal matters.

Consultants have emphasized that women in Nagaland are at the receiving end because of some archaic customary practices which hinder their participation in decision making bodies of the state thwart their right to inherit family property and continue to deny women equal rights as that of men in many aspects of their lives. It was urged that customary law should refrain from acknowledging marriage involving girls below 18 years of age and boys below 21 years of age and age relating to marriage should be made uniform. However according to them, at this point of time, it is not feasible to introduce a law which would suddenly overhaul what the Nagas had followed and practised for generations. They viewed that what is desired at this juncture are efforts by bodies like the NCW and other women-centric bodies to take a bottoms –up approach to ensure that structural changes happen in the Naga civil society. The same can be actualized through community engagements and sensitizing local community members who can play the role of change agents and permeate the social changes that need to be imminently affected for gender justice.

Lived experiences of the people matter, and understanding the realities of women with regards to their views on not only customary law but also the power of patriarchy in the State can be a good start which thereby calls for ethnographic studies conducted in-depth to be able to arrive at conclusions on how Naga women perceive customary laws especially with regards to the areas of discussion.

## **Mizoram**

In response to the Public Notice issued on June 14, 2023, the Mizoram Church Leader's Committee (M.K.H.C.) has come forward as a key stakeholder in the discussion surrounding the implementation of the Uniform Civil Code (UCC). The committee has asserted that



Mizoram, owing to the Memorandum of Settlement (Peace Accord), holds a unique status with regard to certain constitutional matters.

The Memorandum of Settlement explicitly states, "*Notwithstanding anything contained in the Constitution, no act of Parliament in respect of: (a) Religion or social practises of the Mizo. (b) Mizo Customary Law or Procedure. (c) Administration of Civil and Criminal Justice involving decisions according to Mizo customary Law. (d) Ownership and transfer of Land shall apply to the State of Mizoram unless the Legislative Assembly of Mizoram by a resolution so decides.*"

The Mizoram Church Leader's Committee strongly believes that the implementation of the UCC has the potential to erode the rights and privileges of minorities that are safeguarded under Constitution Article 371 G. They express concerns that the UCC, if enforced, could become a tool of oppression and assimilation for minority communities and religious organizations within Mizoram. This apprehension arises from the fact that the UCC seeks to establish a uniform legal framework that may not fully accommodate the unique customs, traditions, and practices of Mizoram.

The committee's stance underscores the importance of considering the distinct constitutional provisions and agreements that apply to Mizoram when deliberating on the potential application of the Uniform Civil Code in the state. It emphasizes the need for inclusive discussions and careful consideration of the implications of implementing such a code in a region with its own well-defined legal and customary practices.

The Consultants from Mizoram in their deliberations spoke about the codified law called '*the Mizo Marriage, Divorce and Inheritance of Property Act, 2014*' which governs marriage and divorce in Mizoram. Through this Act, there has been incorporation of both customary practices as well as Christian marriage in Mizoram. With respect to marriage there is exchange of bride price made through the negotiator called 'Palai' and after exchange has been done, a church recognized officer solemnizes the marriage in the church and formalities are carried out. Recently, law commission of Mizoram have made recommendation to recognize marriage according to the local customs even before such marriages are solemnized in a church. It has been proposed that once a bride's price is paid by the groom's family and accepted by the bride's family, the couple should be accepted as legally married. This would result in the recognition of marriage under the Mizo customary law, prior to the marriage being solemnized before a priest/pastor. The women, after enactment of the proposed amendment can avail maintenance and other benefits in case of divorce, even before the Christian marriage is solemnized in a church which is not possible in the present dispensation.

The consultants stressed that with respect to Uniform Civil Code, more consultation and thorough research of different cultures and traditions is required. India is a Union of states and territories. It is a society with social varieties - religiously, culturally, ethnically, economically, linguistically and family bindings etc. There is patriarchal and matriarchal set up as well as polygamy and monogamy. So, the concept of uniformity is still in doubt. They said that in paper or in law, it may sound good in terms of one nation one civil law as a nation. But there is a big question as to uniformity in practice which needs serious consideration.

## **Sikkim**

Sikkim, boasts a unique constitutional provision, Article 371F, which provides special safeguards to the state. This protection is rooted in preserving the traditional rules and laws that have governed the region for years. As discussions surrounding the Uniform Civil Code (UCC) permeate the nation, Sikkim's response has been characterized by a firm assertion of its distinct status and cultural heritage. Article 371F stands as a sentinel, guarding the age-old practices and customs of Sikkim. It grants the state specific protections that set it apart from others in the Indian Union. This provision serves as a cornerstone for safeguarding the unique social and cultural fabric of Sikkim. On July 2, the Joint Action Council (JAC) orchestrated a comprehensive symposium on the UCC within Sikkim. This event brought together a diverse array of participants, including political representatives, intellectuals, legal experts, and members of non-governmental organizations. The consensus was resounding - a unified rejection of the UCC's implementation within Sikkim's borders. The symposium concluded with a pivotal one-point resolution. It emphatically stated that, given the presence of Article 371F and the prevailing customary laws of various communities, the UCC neither aligns with the state's ethos nor is deemed necessary in the current Sikkimese context.

This resolution holds significant sway over the future of Sikkim's legal landscape. As the one-month period for offering feedback and suggestions on the UCC nears its close on July 12, the resolution is slated for submission to the Law Commission. Sikkim, at this juncture, neither outright opposes nor wholeheartedly embraces the UCC. Instead, it adopts a vigilant stance, observing how the 22<sup>nd</sup> Law Commission crafts the UCC draft, particularly considering the 21<sup>st</sup> Law Commission's prior rejection. The pivotal factor under scrutiny will be whether Sikkim's protective shield, Article 371F, is duly considered in the decision-making process.

## **Arunachal Pradesh**

The social landscape of present-day Arunachal Pradesh is undergoing a transformation, with a noticeable shift towards discouraging practices like polygamy and child marriage. In matters of divorce, both traditional methods and legal proceedings are being utilized. While marriage and divorce may not necessarily be contentious issues, the areas of adoption, inheritance, and succession hold the potential to invoke the ire of the indigenous population towards the government and any prospective Uniform Civil Code (UCC).

Historically, instances such as the Permanent Resident Certificate (PRC) dispute and the Arunachal Pradesh Marriage and Inheritance of Property Bill of 2021 have unequivocally communicated the stance of the indigenous people – non-APST (Arunachal Pradesh Scheduled Tribes) individuals should never lay claim to land ownership or tribal rights within Arunachal Pradesh. There is, however, a prevailing apprehension that the implementation of a UCC might supersede protections afforded by legislations like the Bengal Eastern Frontier Act of 1873, potentially encroaching on indigenous land and customary rights.

In Arunachal Pradesh, land holds far greater significance than mere physical space. It is intricately intertwined with ancestral legacies, woven into the fabric of indigenous beliefs, encompassing elements like folklore, rituals, ancestral lineage, deep-seated emotions, and

much more. This cultural and emotional connection further amplifies the stakes involved when considering any changes in legal frameworks pertaining to land and inheritance.

The imperative for the state government to undertake the codification of Article 371 H, aligning it with the provisions of Article 371 A and Article 371 G, cannot be overstated. It is crucial that the elected representatives acknowledge the potential ramifications of a Uniform Civil Code (UCC) and take proactive steps in a timely manner. Furthermore, it is imperative to break free from the prevailing trend of only addressing issues when they reach a critical juncture. By initiating this codification process now, the government can proactively safeguard the unique interests and rights of the state's populace, ensuring that they are not compromised in the face of potential UCC implementation. The Arunachal Indigenous Tribes Forum (AITF), representing 26 major tribal communities, has urged the Law Commission of India to exempt the state from the potential implementation of the Uniform Civil Code (UCC).

In a letter addressed to the Commission, the AITF emphasized the unique cultural and social fabric of Arunachal Pradesh, a state comprising 26 major tribes and more than 100 sub-tribes. This diversity encompasses distinct traditions, languages, belief systems, and a deeply-rooted ethos. The AITF underscored the constitutional safeguards in place for Arunachal Pradesh's social structure, customary laws, and traditional rights, asserting the importance of preserving these protections.

UCC has also been contested in other states of the NE Region, viz. *Manipur and Tripura*. CM of Assam has however lent his support towards the UCC; nevertheless, indigenous communities have raised contentions against the process of acculturation they fear would be brought forth by the UCC.

## **Tripura**

Different major religions namely Hindu, Muslim, Christian, Buddhist, Jain and communities like Tribal and Bengali are peacefully living together in the state of Tripura from time immemorial. The rich diversity of the state can well be understood from its assorted cultural heritage, social practices, food habits, languages and so on. Tripura has 19 Tribal sub-groups consisting of Tripuri, Riang, Jamatia, Noatia, Uchai, Chakma, Mog, Lushai, Kuki, Halam, Munda, Kaur, Orang, Santal, Bhil, Bhutia, Chaimal, Garo, Khasia, and Lepcha with their distinct culture and social norms as well as many commonalities. The marriage and divorce in these communities are guided by their respective customary laws and as such inheritance of property in many ways is interlinked with the norms of marriage and divorce from the perspective of gender sensitivity.

Inheritance rights are not well defined in the customary laws for almost all the tribal communities of Tripura and tribal women are generally denied right to own and inherit land and other immovable property. However, the women had traditionally enjoyed some degree of economic security and autonomy within the family due to communal ownership of land and forests and their substantial role in agricultural activities, especially *jhum* cultivation. In many cases where questions of ownership and succession have remained unresolved (since most customary laws have not been codified), local community leaders who are usually men, have been left with the discretion to decide on contentious issues.

Among the major tribes of Tripura, the general rule is to deny women a right to own or inherit land and other immovable property from their father or husband. Only the Tripuris and Jamatias make a small concession to widows and daughters. Tripuri fathers may give a small portion of the family property to their daughters, while the sons get the maximum. Widows may be given a nominal share in the deceased husband's property. A Jamatia father may give one-eighth portion of land to a daughter. In case a Jamatia man dies without having any children, his property remains in the possession of his widow, but if she re-marries, the property goes to close relatives of the deceased husband.

There are varied forms of marriage among the tribes of Tripura which exhibit the diversity imbibed in the customary marriage practices prevalent in Tripura. Some of the major forms of marriage practices are as follows:

- a. **Marriage by Negotiation** (*Hamjuk Tubui Khaimani*): Negotiation between two families is done by the *Raibai* (marriage broker). Guardian of the either side plays the sole role and the bride or groom has little choice. Usually, the marriage takes place in the house of the bridegroom. The tribal society of Tripura has a reverse dowry system where the guardians of the daughter demand dowry in the form of money, ornaments etc. For most of the tribal communities, the marriage ceremony happens to be the most colourful one consisting of decoration of flowers and leaves and bamboo, worship, offerings of prayers, enjoying rice beer along with other rituals.
- b. **Marriage by Exchange** (*Nakkaisa Kaimung*): Sometimes marriage is arranged between two families by exchanging a boy and a girl and thus avoiding the payment of dowry or bride-price.
- c. **Marriage by Elopement** (*Kharlaoi Kaijakmani*): This type of marriage occurs by mutual contract between two individuals when they become fond of each other. When boy and girl fall in love but do not get approval of their guardians, the boy elopes with the girl to certain place and marries her. The boy generally takes the initiatives and the marriage is performed by worships or puja where four fowls are sacrificed and the couple bow down in front of the Owathap deity.
- d. **Marriage by Purchase** (*Fuisai Tooboa*): In this form of marriage, the bride is fully purchased by the bridegroom or his parents by offering a price to the bride's family. All sort of matrimonial rituals is observed in this marriage.
- e. **Marriage by Capture** (*Kaklam Kuruini Kaimung*): A boy captures a girl of his choice on her way to any place or from her home and forcibly marries her. No wedding rites and rituals are observed in such marriage.
- f. **Marriage by Love** (*Hamjak Laii Kailaimani*): This form of marriage is getting popular among the tribes now-a-days. When the boy and the girl are in love, they bring it to the notice of their guardians but if the guardians do not agree to the relationship, the boy and the girl may not obey their guardian's decisions and run away from their house and village and get married. Sometimes the bridegroom leaves his house and settles down in his fathers-in-law's house.
- g. **Marriage by Insistence** (*Burui Hamjajai Kaijakmani*): This form of marriage is very rare where a girl stands against the decision of her parents to marry the boy of her choice and pleads for negotiating with the guardian to the boy's house.

- h. **Marriage by Service** (*Chamari Kamani*): In this form of marriage prevalent among the Tripuris, the boy procures a bride by offering services. The tenure of the services by the bridegroom at the bride's house is generally fixed by the bride side and the tenure varies from one to three years or even more. The boy does all sorts of work such as fetching of water, fire woods, jhum cutting, sowing, harvesting etc in the bride's house. Such a bride groom is known as 'Chamari' among the Tripuris.
- i. **Widow Marriage** (*Sindoor Phoolna*): Widow Marriage is prevalent in the tribal society of Tripura from time immemorial. A widow, widower, divorcee, or a deserted woman are allowed to remarry. The widower or divorcee person is allowed to remarry with usual observation of rituals but when a widow or divorcee wishes remarry, she is debarred from observing the rituals which she had once observed in her previous marriage. Moreover a widower or a divorcee enjoys freedom to choose a maiden girl as his wife whereas the widow or the divorcee woman is restricted from selecting a bachelor as a husband.

Divorce known as 'Kaklaimani' is permissible among the tribes of Tripura on various grounds. Both the husband and the wife are allowed to seek divorce. The wife or husband, who seeks divorce, stays away from each other. Thereafter on a prefix date, the guardians of both sides and village headman assemble in the house of the husband or wife, who seeks divorce. Both the husband and wife are permitted to express their views and grievances in favour of divorce, and the judgment comes accordingly. Between the husband and wife, the one who seeks divorce, must pay back the marriage expenses to his or her counterpart as penalty. Divorce can be sought on various grounds such as that the wife is barren or the husband is impotent, incurable diseases, witchcraft, having illicit relation or extra-marital affair, ill temper or quarrelling frequently.

The Consultants from Tripura viewed that the basic problem with the customary laws is that they are not uniform and codified. However, many of the customary laws provide for equal rights to men and women and accommodate social diversity. They are also part and parcel of the traditions and culture of the respective societies. Though the codification of the customary laws at the present transition phase of tribal societies from traditional to modernity is very much needed yet the same has to be done provided the diversity in the customary practices of Tripura is preserved and protected. Therefore, the best way of uniformity and codification for a vast and diverse society is to consider the best of such customs and religion practices (leaving the worse), putting them together and reaching to uniformity by keeping the diversity.

## RECOMMENDATIONS ON “*REVISITING PERSONAL LAWS OF INDIA VIS-À-VIS UNIFORM CIVIL CODE*”

### A. Christian Law of Marriage and Divorce

The following inputs have been proposed for introducing some changes in the Christian law of Marriage and Divorce

#### ➤ **Dissolution of marriage by mutual consent**

Under S. 10A of the Divorce Act, 1869, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, on the ground that they have been living separately for a period of **two years or more**, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

This period is **one year or more** under S.13B of the Hindu Marriage Act, 1955. An amendment may be effected in the Divorce Act, 1869 on similar lines.

#### ➤ **Grounds for dissolution of marriage**

Under S. 10(1)(viii) of the Divorce Act, 1869, any marriage solemnized, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent has failed to comply with a decree for restitution of conjugal rights for a period of **two years or upwards** after the passing of the decree against the respondent

This period is **one year or upwards** under S. 13(1A)(ii) of the Hindu Marriage Act, 1955. It was originally two year or upwards in the Hindu Marriage Act, 1955 as well but it was amended to one year or upwards in 1976. Similar amendment may be effected in the Divorce Act, 1869.

#### ➤ **Irretrievable breakdown of marriage** may be introduced as a ground for dissolution of marriage.

### B. Muslim Law of Marriage and Divorce

**The Resource Person had made the following recommendations:**

- Shariat Law should be repealed. All marriages must be compulsorily registered.
- To do away with various forms of divorce. For divorce the sole ground should be irretrievable breakdown of marriage.
- Mehr is not to be equated with Maintenance.
- Maintenance should be uniform. For this purpose, there should be a tabular schedule similar to the insurance tabular index (as applied by the Motor Accident Claims

Tribunal) wherein based on earning capacity and age the maintenance to be paid should be explicitly mentioned. Maintenance specified in the tabular scheduler should be provided along with maintenance under section 125 of the Code of Criminal Procedure. This would remove disparity and vexatious litigation.

- Legitimacy and Parentage is a vital issue under Muslim law. Children born of Batil and Fasid marriage cannot inherit. This adversely affects the child's life. Indian Succession Act should be the law for all types of inheritance.
- Indian Marriage Act should be read with Indian Registration Act
- There should be single monogamist marriage and Fasid marriage should not be allowed.
- Existence of Jabr which is 'guardianship in marriage' is a serious concern and is in complete dissonance with Prohibition of Child Marriage Act, 2006, Juvenile Justice (Care and Protection of Children) Act 2015 and persons indulging in such marriages must be prosecuted under the Protection of Children from Sexual Offences Act 2012.
- As per Guardians and Wards Act 1890, the age of marriage should be 21 years.

### **C. Customary Laws**

As has been elucidated in the narratives above, customary laws largely do not favour women. For instance, even in matrilineal societies like that of the Khasi, Garo, and Jaintia tribes of the north-eastern states, women are theoretically supposed to wield control, however, it is the men who hold sway over crucial platforms. Despite the apparent female control in these matrilineal societies, men are the primary decision-makers in both social and political matters. In Meghalaya, the *Dorbar Shnongs*, an assembly of adult males operating under an elected headman or chief called *Rangbah Shnong*, governs the welfare of the people, oversees customary practices, and enforces discipline among its members. The political system among the Khasis evolved through the participation of the *kuror matri-clan*, where a *knior* uncle assumes a pivotal role as the sole decision-maker, responsible for legal and religious rites within the Dorbar kuror clan assembly. Unfortunately, this political structure lacks any representation from women, and the village council and elders consistently interpret customary laws in favor of men. Women are mere custodians of property and do not have rights over the same. Customary laws and their biased stance vis-à-vis women is evidenced by the customs of the other communities of the NE Region as well.

Customary laws may be ridden with flaws; however, they hold great sway over the communities of the NE Region. Community socialization preserves and proliferates customs and is difficult to uproot the same owing to its social and psychological hold on the community. Rooted in community culture, such practices shall remain resistive to any idea of unification and assimilation.

In order to secure gender justice through the UCC, the following may be pondered upon:

1. UCC should be sensitive to essential difference between religious /ethnic groups of the country
2. The introduction of a Uniform Civil Code (UCC) in India would require a well-balanced approach that acknowledges and values the country's multiculturalism and diversity. This process should be undertaken with meticulous consideration and thoughtful deliberation.
3. Social transformation should be focused at the grassroots through active community engagement.
4. The UCC is built on the tenet of gender equality. Therefore, efforts ought to be directed towards community sensitization on gender equality. A sensitized community could emerge as an instrument of social transformation.
5. The focus should be on promoting gender justice and eliminate discriminatory practices in personal laws rather and vying for a set of laws that aspire for sweeping uniformity.
6. An effort should be undertaken to pass a model Uniform Civil Code (UCC) that incorporates the most favorable aspects from various personal laws.
7. Considering the rich diversity of India, the adoption of the Uniform Civil Code (UCC) should be pursued in a gradual and incremental manner.



## Photographs of the Event













