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Gender Justice, Customary Law and the Uniform Civil Code in Arunachal Pradesh

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Abstract

In India, discussions surrounding the Uniform Civil Code (UCC) have mostly presented it as a legal tool for promoting gender equality by harmonising personal laws. The UCC is often portrayed in constitutional and political discourse as a response to discriminatory practices embedded in religious family laws, with legal uniformity assumed to be a prerequisite for equality. While this perspective has influence national debates, it remains inadequate for understanding regions where civil life is not primarily governed by codified religious or statutory laws.

Arunachal Pradesh presents a distinctive and under examined context within the UCC debate. Characterised by extensive tribal diversity, geographic remoteness, and constitutionally recognised customary autonomy, the state operates within a plural legal order where unwritten customary norms regulate marriage, inheritance, property ownership, and dispute resolution. For many communities, customary law is not merely a cultural residue but the primary framework through which social order, authority, and justice are organised. At the same time, Arunachal Pradesh is firmly embedded within the constitutional framework of India, which guarantees equality, dignity, and individual rights. This coexistence of constitutional citizenship and customary governance raises a central question; how are constitutional commitments to gender justice mediated through customary institutions that derive legitimacy from tradition and community authority rather than statutory recognition?

This paper examines the relevance of the Uniform Civil Code for gender justice in Arunachal Pradesh by situating it within the everyday operation of customary law. Rather than treating the UCC as an instrument of immediate legal replacement, the paper asks whether it can function as a constitutional reference point for assessing civil practices in plural legal settings. The focus is not on abolishing customary law, but on understanding how its institutional structures shape women's access to rights and how constitutional principles can meaningfully engage with these realities.

Keywords: Uniform Civil Code, Gender Justice, Customary Law, Legal Pluralism, Constitutional morality

Introduction:

Article 44 of the Indian Constitution directs the State to endeavour to secure a Uniform Civil Code for all citizens, reflecting a long-term constitutional aspiration to bring civil laws governing marriage, divorce, inheritance, adoption, and succession into closer alignment with constitutional values. Its placement within the Directive Principles of State Policy signals that the framers did not envisage immediate legal uniformity, but rather a gradual process of reform responsive to India's social diversity (Harbansh, 2024).

Despite this cautionary design, the Uniform Civil Code has remained one of the most contested elements of India's constitutional framework.

Public and legal discourse has frequently portrayed the Uniform Civil Code as a necessary response to inequalities produced by plural personal law systems, particularly those affecting women within family and property relations (Jena, 2021). This position is grounded in the assumption that legal uniformity will generate substantive equality by displacing discriminatory practices embedded in religious or customary norms. However, contemporary constitutional discourse has increasingly questioned this assumption. Critics have cautioned against equating equality with sameness, noting that formally uniform legal regimes may obscure social context and reproduce inequality under the guise of neutrality (Sumithra et al., 2024). The challenge, therefore, lies not simply in harmonising legal rules, but in assessing how different normative systems operate within unequal social structures.

Judicial interpretation has gradually reflected this more nuanced understanding of Article 44. Constitutional adjudication has clarified that the provision is not directed towards cultural homogenisation, but towards securing equal civil rights where personal or customary laws generate structurally unequal outcomes. The Supreme Court has consistently affirmed that while the Constitution accommodates social and cultural diversity, such accommodation is conditional upon compliance with the guarantees of equality and dignity embodied in fundamental rights. Through judgements such as Shah Bano v. Union of India (1985), Sarla Mudgal v. Union of India (1995) and Shayara Bano v. Union of India (2017), the Court has underscored that cultural or religious practices cannot claim constitutional protection when they operate to the detriment of individual rights, particularly those of women (Jena, 2021; Harbansh, 2024).

This jurisprudence places the emphasis not on the formal uniformity of legal rules, but on substantive equality; an approach that evaluates law by its social consequences rather than its facial neutrality. Substantive equality recognises that identical legal treatment may entrench disadvantage where structural and institutional inequalities remain unaddressed. From this perspective, the constitutional vision underlying the Uniform Civil Code is concerned less with imposing a uniform legal law and more with ensuring that all individuals are able to enjoy equal dignity, autonomy, and protection under the law. Crucially, this understanding requires that constitutional commitments be assessed in relation to the specific social contexts in which legal norms are embedded.

This contextual dimension assumes particular significance in regions governed by strong customary legal systems and constitutionally recognised tribal autonomy. Arunachal Pradesh represents a distinct and complex setting within the broader debate on the Uniform Civil Code. The state is home to more than twenty-five major tribes and numerous sub-tribes, each governed by its own customary practices regulating marriage, inheritance, property ownership, and dispute resolution. These systems are not peripheral or residual; for many communities they constitute the primary framework through which civil relations are organised and authority is exercised.

Customary institutions in Arunachal Pradesh perform functions that extend well beyond dispute resolution. They sustain indigenous identity, facilitate social cohesion, and enable forms of local self-governance that derive legitimacy from collective participation rather than statutory recognition (Basar, 2023). Their procedures often prioritise mediation, consensus, and restorative outcomes over adversarial adjudication. At the same time, these institutional arrangements shape internal power relations in ways that have significant implications for gender equality. Authority within customary forums is largely concentrated in male dominated bodies, influencing how norms are interpreted, applied, and enforced.

Empirical patterns complicate assumptions that tribal societies are inherently gender egalitarian. Indicators such as limited access to land and property, low representation in customary and political decision making bodies, and constrained control over marital and inheritance outcomes point to persistent gendered disadvantage (Basar, 2023). In many communities, women's claims in matters of marriage, divorce, and property are articulated not as enforceable legal entitlements but as contingent privileges mediated through kinship and marital status. As a result, access to resources and decision-making remains negotiated and insecure, leaving women vulnerable to exclusion and dependency.

Methodology

This paper adopts a doctrinal and qualitative analytical methodology to examine the relationship between the Uniform Civil Code, gender justice, and customary law in Arunachal Pradesh. The study is primarily theoretical and interpretive, rather than empirical, and is grounded in constitutional analysis, judicial reasoning, and existing scholarly literature. A legal pluralism approach is used to study how constitutional principles interact with customary institutions in everyday life. This method allows a context-sensitive assessment of gender justice without relying on primary field data.

Constitutional Morality, Judicial Deference and Customary Law

The uneven judicial engagement with customary law in regions such as Arunachal Pradesh raises a broader constitutional question: how should courts evaluate social practices that derive legitimacy from tradition but operate within a constitutional order committed to equality and dignity? This question is often addressed through the idea of constitutional morality.

Constitutional morality refers to fidelity to the core values of the Constitution when interpreting and applying the law. It requires institutions, including courts, to prioritise constitutional principles over social habits, long-standing practices, or claims of tradition when the two come into conflict. As articulated by B.R. Ambedkar, constitutional morality demands that democratic governance be guided by respect for constitutional values rather than by unquestioned obedience to custom or authority (Sanighdha, 2025). In this sense, it offers a normative standard for assessing whether existing practices are compatible with constitutional commitments.

Importantly, constitutional morality does not require the rejection of custom as such. It does not treat cultural practices as inherently illegitimate or inferior to statutory law. Instead, it calls for critical engagement. Customs may continue to govern social life, but their legitimacy within a constitutional framework depends on their consistency with values such as equality, dignity, and individual autonomy. Where customary norms systematically disadvantage certain groups, constitutional morality requires that they be examined rather than exempted from scrutiny.

This framework is particularly relevant in Arunachal Pradesh, where judicial authorities have generally adopted a cautious approach towards customary law. Judicial engagement has largely been characterised by deference to tribal autonomy, grounded in concerns about historical marginalisation and the preservation of indigenous self-governance. Such restraint reflects an understandable sensitivity to the political and cultural context of the region. However, sustained deference has also limited the extent to which customary norms governing family and property relations are evaluated through constitutional standards.

The consequence of this approach is not neutrality. Customary institutions are not socially neutral spaces; they are structured by internal hierarchies and power relations. In Arunachal Pradesh, authority within

customary bodies is overwhelmingly male dominated, and women's participation in decision making and dispute resolution remains limited. When courts refrain from engaging with these norms, they do not merely respect cultural autonomy; they indirectly reinforce existing power structures that shape how custom is interpreted and enforced (Flavia Agnes,). As a result, women governed by customary law often experience a disjunction between formal constitutional guarantees and everyday legal realities. While they are recognised as equal citizens in principle, their rights in practice remain filtered through institutions over which they exercise limited influence (Bina, Agarwal). Judicial restraint thus contributes to a situation in which constitutional rights exist in theory but are weakly realised on the ground.

Constitutional morality provides a way to address this tension without resorting to cultural displacement. It allows courts to question the effects of customary practices without denying their social significance. Rather than asking whether a practice is traditional, constitutional morality asks whether it produces outcomes compatible with equality and dignity. This shift in focus from the source of a norm to its consequences creates space for engagement that is both constitutionally grounded and socially sensitive.

Applied to Arunachal Pradesh, this approach suggests the need for recalibration rather than confrontation. Where customary norms systematically exclude women from property ownership, limit their participation in decision making, or make their rights dependent on marital or kinship status, constitutional scrutiny becomes necessary. Such scrutiny need not involve wholesale invalidation of custom. Instead, it can take the form of principled engagement that affirms cultural continuity while rejecting gender-based exclusion.

This understanding also aligns with the idea of substantive equality discussed earlier. Equal rights on paper do not automatically translate into equal outcomes in practice, particularly in settings marked by geographic isolation, economic dependence, and strong social pressure to conform to customary authority. Any constitutional evaluation of customary law must therefore account for these conditions. Without such attention, judicial restraint risks preserving inequality under the language of cultural respect.

Seen in this light, the relevance of the Uniform Civil Code in contexts like Arunachal Pradesh lies not in immediate legal replacement, but in the standards it helps articulate. It provides a constitutional reference point against which customary practices can be assessed, without demanding uniformity as an end in itself. Constitutional morality, in turn, offers the interpretive tool through which this assessment can be carried out.

Gender Justice, Legal Empowerment, and Resistance to Reform in Arunachal Pradesh

While constitutional principles and judicial interpretation provide an important normative framework, the realisation of gender justice in Arunachal Pradesh is shaped by the everyday conditions under which women encounter law. In regions where customary institutions continue to regulate most civil matters, constitutional guarantees do not automatically translate into effective rights. Any assessment of the Uniform Civil Code in this context must therefore move beyond abstract legal commitments and examine how women actually access, understand, and use legal norms in their daily lives.

Women's engagement with formal legal institutions in Arunachal Pradesh is mediated by a range of structural constraints. Geographic remoteness, limited transport and communication infrastructure, linguistic diversity, and unfamiliarity with formal legal procedures make courts difficult to access, particularly for women in rural and interior areas. Economic dependence further limits the ability to pursue legal remedies, as litigation often requires financial resources, time, and social support. These barriers shape not only access to justice, but also perceptions of whether formal law is a realistic or legitimate avenue for resolving disputes. As a result, customary forums remain the primary sites of dispute resolution

for many women. These forums are embedded within community life and are generally perceived as more accessible, faster, and culturally familiar than state courts. Their emphasis on mediation, reconciliation, and communal harmony often aligns with social expectations. However, these same features can also constrain women's claims. Disputes are frequently resolved through compromise rather than rights-based reasoning, and outcomes may prioritise family or community cohesion over individual autonomy. In such settings, women's experiences of harm may be minimised, and remedies may fail to address underlying patterns of inequality.

Social factors further influence women's willingness to seek formal legal intervention. In closely knit tribal communities, initiating legal action against family members or customary authorities can carry significant social costs, including stigma, strained relationships, and economic insecurity. Where social belonging and access to resources are closely tied to conformity with customary norms, asserting individual rights can appear risky and isolating. These pressures are intensified by the perception that courts are reluctant to intervene in customary matters, reinforcing the belief that constitutional remedies are uncertain or ineffective.

Resistance to the Uniform Civil Code (UCC) in Arunachal Pradesh needs to be understood in its specific historical and social context. Opposition to legal reform in the state is not simply a rejection of constitutional values or gender equality, but is deeply shaped by a long history of political marginalisation and limited participation in national law-making processes. For many tribal communities, state and central interventions have often been experienced as imposed from above, creating mistrust toward uniform legal frameworks (Ghosh et al., 2025).

For tribal communities in Arunachal Pradesh, customary systems function as living institutions that sustain social order and collective decision-making, while simultaneously safeguarding community autonomy and the protection of ancestral land, which carries deep economic, cultural, and spiritual significance. As a result, legal reforms affecting areas such as marriage, inheritance, or property are not viewed solely as matters of individual rights or gender justice. Instead, they raise broader concerns about cultural erosion, loss of control over land, and external interference in community governance. The fear is that uniform laws may weaken customary institutions and expose tribal land and social structures to exploitation.

These anxieties were evident in the Arunachal Pradesh Marriage and Inheritance of Property Bill, 2021 which sought to grant equal property and inheritance rights to indigenous women. The Bill proposed measures such as compulsory registration of marriages, recognition of widows' inheritance rights and restrictions on polygamy (Basar, 2021). However, fears that these reforms could facilitate the transfer of tribal land to non-indigenous spouses, thereby threatening customary landholding systems contributed to strong resistance and ultimately undermined the Bill's acceptance. This episode illustrates how legal initiatives perceived as externally imposed or insufficiently attentive to local socio-cultural contexts risk being framed as majoritarian encroachments, even when they are designed to address internal gender inequalities (Fernandes, 2023). In tribal settings, legal interventions affecting marriage and inheritance are therefore evaluated not only through a gender justice lens, but also in relation to concerns about cultural continuity, communal integrity and political autonomy.

Towards a Context-Sensitive Reform Framework

The debate on gender inequality in Arunachal Pradesh cannot be addressed through a single legal intervention. The continued authority of customary law, combined with structural barriers that limit women's access to formal legal institutions, requires an approach that is both constitutionally grounded

and sensitive to local realities. In this context, reform is more likely to be effective when it works with existing institutions while holding them accountable to constitutional values (Basar, 2023).

A central component of such an approach is the participatory codification of customary law. Codification need not imply rigid formalisation or the replacement of indigenous norms with external legal models. When designed as a consultative and inclusive process, it can help clarify rules, reduce arbitrariness, and limit the concentration of interpretive authority within a small group of decision makers (Ghosh et al., 2025). In Arunachal Pradesh, the absence of written customary norms has often allowed selective interpretation, reinforcing existing power imbalances. Participatory codification can make customary rules more transparent and open to constitutional engagement without undermining their social legitimacy. At the same time, codification alone cannot produce gender justice if institutional structures remain unchanged. Its effectiveness depends on the meaningful inclusion of women in the bodies that define, interpret, and apply customary norms. Without such participation, codification risks entrenching existing hierarchies rather than challenging them. Institutional reform is therefore as important as normative reform. Expanding women's representation in customary councils and decision-making bodies is essential not only for addressing women's specific concerns, but also for reshaping how authority and legitimacy are distributed within customary governance.

Alongside institutional reform, legal empowerment plays a critical role. Women's ability to exercise rights depends on access to information, legal assistance, and social support. Legal literacy initiatives, community-based paralegal programmes, and culturally responsive legal aid can strengthen women's capacity to navigate both customary and formal legal systems. Such measures do not displace customary forums, but expand the range of options available to women, enabling them to negotiate rights within families and communities more effectively.

Within this reform landscape, the Uniform Civil Code should be understood as an enabling constitutional framework rather than a compulsory legal code. Its primary significance lies in articulating minimum standards of equality and dignity that guide judicial reasoning, legislative policy, and community level reform. In plural settings such as Arunachal Pradesh, its value is not in immediate uniformity, but in functioning as a constitutional benchmark against which both statutory and customary practices can be assessed. This understanding allows space for contextual adaptation while maintaining fidelity to constitutional principles.

Viewed in this light, the Uniform Civil Code can be operationalised through optional or phased civil law models, under which individuals are permitted to choose between customary legal systems and a general civil code for matters such as marriage, divorce, inheritance, and adoption. Rather than imposing immediate uniformity, this approach introduces the civil code as an alternative legal pathway, allowing its principles to gradually take root within plural social contexts. While such models are often defended as a means of respecting cultural diversity and expanding individual autonomy, their effectiveness depends on whether legal choice can be exercised freely in practice. In patriarchal social settings, women's decisions are frequently shaped by familial authority, community expectations, and economic dependence, limiting their ability to opt out of customary systems. Consequently, the availability of choice may remain formal rather than substantive. Any optional framework must therefore be accompanied by safeguards against coercion, access to legal awareness, and institutional support for vulnerable individuals; without these measures, optionality risks reinforcing existing inequalities instead of advancing substantive gender justice.

Conclusion

The debate on the Uniform Civil Code in Arunachal Pradesh cannot be reduced to a simple opposition between constitutional equality and cultural autonomy. Customary law continues to play a vital role in sustaining tribal identity and local governance, yet its unwritten and male-dominated structures have also enabled persistent gender based exclusions. This paper has argued that the constitutional challenge lies not in eliminating legal pluralism, but in governing it in a manner consistent with substantive equality.

The transformative potential of the Uniform Civil Code in Arunachal Pradesh lies less in legal uniformity and more in its capacity to serve as a constitutional reference point. Judicial restraint, structural barriers, and socio-economic constraints limit the immediate impact of statutory reform, underscoring the need for complementary strategies rooted in participatory codification, institutional reform, and legal empowerment.

Ultimately, gender justice in Arunachal Pradesh cannot be achieved either through the displacement of customary law or through its uncritical preservation. It requires a dialogic process through which customary norms evolve in conversation with constitutional values of dignity, equality, and justice. Such an approach avoids both cultural erasure and constitutional abdication, recognising that meaningful reform emerges at the intersection of law, culture, and lived experience.

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