

On why the Indian Constitution must be amended to protect the rights of communities to follow their traditions so that India's diversity is protected and celebrated

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Although we never tire of proclaiming to the world that our country, India, is an outstanding example of "Unity in Diversity", the sad fact remains that we have collectively failed to create conditions for our diversity to flourish or even endure.

In the past, one after another many empires came into being and disappeared into history. Despite this, the Indian subcontinent continued to remain the cradle of many languages, customs, traditions, cultures, castes, tribes, communities, and creeds. Many great social reformers like Buddha, Mahavira, Basaveshwara, Guru Nanak, Kabir and saints belonging to the Sufi tradition and Bhakti movement tried their best to re-organise the societies of their times on the basis of certain perceived universal values of brotherhood, compassion, non violence etc...They made enormous impact on their times. But, as time progressed, their followers formed their own cult and established their own separate identity to survive as just one more community among the many communities and cults which constituted Indian Society. Nevertheless, their teachings were internalised to varying extent by members of various other communities too that populated India. India, however, stubbornly continued to remain a plural and diverse society of tribes, castes, communities, religious sects (panths/cults) and traditions. This internal social dynamics of creation and amalgamation of sects and communities that influenced each other's perceptions on what is right and what is wrong, formed the basis of the evolution of a common dharma (a set of moral codes

that governed people's interactions with each other), accepted to varying degrees by the members of all communities. India's plurality was also enriched by the influx of various persecuted communities from foreign lands who were given protection by the rulers of various Indian kingdoms. Many kings also welcomed with open arms proponents of Christianity and Islam who were given the freedom not only to preach their religion but also to convert their subjects to these religions.

Indian Constitution and traditional communities

In sum, it may be said that India has not functioned as a melting pot of different traditions, tribes, castes, communities etc. Instead, it is a mosaic of these and that is the strength and uniqueness of India. However, the political leadership of the country after independence, the product of Western Education that instilled in them imported notions of nationhood, rule of law based on a written Constitution, democracy, individual freedom, equality and progress while admitting that this diversity is unique to Indian society were not able to come to terms with it and grant the traditional communities of India the legal sanction and constitutional right to follow their traditions. Only, the right to practice and preach the religion of one's choice was granted to individuals. The political leadership with perhaps the exception of Mahatma Gandhi, feared that this diversity would turn out to be not India's strength, but its weakness. Most of the political leaders, irrespective of whether they belonged to the left centre or right of the ideological spectrum, while paying lip service to the notion of "Unity in Diversity" acted in a manner that sought to undermine the plurality and diversity of India.

Nothing illustrates this better than India's Constitution. The whole Constitution is centred on the notion of the Indian Republic as constituted of

individual citizens. The preamble starts with the phrase, "We, the people of India", whereas it would have been more representative of the country, were it to be replaced by "We the peoples of India", a truer description of ourselves, reflecting and acknowledging the plurality and diversity of India. Nowhere in the constitution is there any legal status or rights accorded to "indigenous communities" as distinct from "individual citizens". Castes and tribes are not considered deserving of any constitutional right to preserve their autonomies and separate and distinct customs and laws. There is no legal status accorded to a village community, or any community confined to a geographical region, as possessing the right of collective ownership of common natural resources like forest, land and water belonging to that region. It is implicit in the Constitution that property can belong either to a private entity (an individual or a legally constituted entity) or the state. Nowhere is it granted that communities can collectively have property rights over land, water and forest. The collective rights of the communities were replaced by private rights. Public right to property was exclusively that of the state. This is the foremost reason why people have discontinued their traditions of upkeep and maintenance of their natural environment, because the state has arrogated to itself all powers over the management of natural resources and environment.

The continuing obsession with the Uniform Civil Code (UCC)

While the Constitution has a framework for enactment of uniform civil laws for the citizens of the country, there was and is disagreement over enacting uniform personal laws governing marriage, inheritance etc... for all communities (belonging to different religions). The Hindutva groups, argue that the right to have four wives granted under Sharia (muslim personal law) has the potential for unchecked population explosion of the muslims

eventually resulting in the Hindu majority becoming a minority, This, although is a laughable argument born more out jealousy than reason, and is not borne out by the demographic data on birth rates, has been used as rallying point to unite the Hindu majority. Apart from it, the Hindutva proponents would definitely like to bring under one umbrella of UCC, all the castes, tribes and religions like Jainism, Buddhism and Sikhism and even native Christians it seems, to make sure that the majoritarian project versus the minority muslims is successful. In the Constituent assembly debates and afterwards in the early years of the Nehru government, Ambedkar was insistent on having a UCC, which although may not be mandatory could be an optional choice for any citizen to adopt. Ambedkar resigned from the Nehru government on this question, specifically on the issue of a uniform Hindu Code. Ultimately the Hindu Marriage Act as well as a Special Marriage Act, the latter for those who want to follow civil laws of marriage, were passed. All this happened before Ambedkar ironically opted to embrace Buddhism in 1956. The UCC debate received boost during the Shah Bano case, which saw many twists and turns done by Congress to placate the muslim community. The BJP made political capital out of it and ultimately succeeded in enacting the bill banning Triple Talaq.

Although the UCC was relegated to the status of Directive Principles in the Constitution, again and again the issue is being raised. The question is, should the UCC be allowed to have any place in the Indian Constitution at all? Has not the time come to permanently bury the subject?

Community rights/traditions and the Sabarimala temple entry issue

The Supreme court gave the verdict favouring the entry of women in Sabarimala temple, citing constitutionally granted equal rights for both sexes.

Ironically, the very same BJP which is championing UCC and the equal rights of muslim women, did a U-turn in this case, and argued for banning the entry of all women, be they Hindu Muslim or any other religion or not, into the temple, in direct contravention of the Supreme Court's orders. The Congress party spoke in many voices, with the Kerala unit opting to support the ban on the entry of women. Even the CPM govt in Kerala was forced to soft pedal the issue after an initial push to implement the Supreme Court's order. All these events show that the traditions of India's communities are too strong to be uprooted merely because the Western educated elite have subscribed, at least publicly, to European notions of individual rights, parliamentary democracy, Constitution, equality and progress.

I would therefore argue that it is time the Constitution is amended to grant rights to communities to follow their customs and traditions so long as those do not infringe on the rights of other communities to follow their own separate customs and traditions. At the same time, a certain minimum set of individual rights must also be granted protection, along with an option granted to individuals to choose between these explicit constitutionally guaranteed rights and the traditional rights enjoyed by the individual by virtue of his being a member of a particular traditional community.

Possible issues arising from grant of Constitutional rights to traditional communities

Now let us examine the problems arising out of the grant of Constitutional rights to communities to follow their customs and practices including those pertaining to collective ownership of property.

1. Communities dwelling within areas defined in geographical units - like villages, kasbas, mohallas, towns, and panchayats at village,

block and district levels. These communities normally resident in their respective areas themselves may consist of many castes and tribes and sects but are united by their common interest in improving the quality of their lives and their environment. These are administrative units and local self-government bodies that have been constitutionally recognised through the Panchayati Raj amendment of the Constitution. And therefore, it is easy to confer common property ownership rights to these bodies.

Now, while land and forest can be geographically partitioned between villages and panchayats, the same cannot be said of water flowing overground and underground. Standard principles and procedures must be formulated to resolve conflicts of interests between upper lying villages and lower lying ones.

Secondly, these community organisations (units of local self-government) to be functional and to be autonomous of the central and state govts must have their independent sources of income to depend on and not just grants or funds allocated to them from above, under the schemes run by state and central govts. Certain taxes, levies and cesses must exclusively be under the jurisdiction of these units.

2. Non geographically defined communities like castes, sects, religions. These types of communities may be spread over large areas, overlapping each other geographically. If, they are classified as belonging to Hinduism, the default religion assigned to any community when they are not muslims, christians, parsis etc...(that is, religions of foreign origin), there is the temptation to put them in a vertical hierarchy of the Chatur Varna system, ascribed to the Hindu mythological figure Manu. This becomes extremely problematic when the upper castes command the lower castes to follow their dictates of social behaviour. Hence, a way must be found

to overcome this. One solution that comes to mind is to outright ban any attempts to create any hierarchies among castes, tribes and communities by religious heads. Further, mention of religion could be made illegal or optional when a child is admitted to school, with only the caste/community needed to be mentioned.

The basis of emancipation of communities and their knowledge systems from hierarchical structures

It is to be accepted by all that no two communities can be compared to give a judgement that one is superior to another. This is because every community has its own unique customs, traditions and knowledge systems, that it has developed through its peculiar historical experiences which cannot be duplicated by other communities. That is every community is unique and that is the basis of its equal status to other communities.

Taking this argument to the realm of knowledge, it must be acknowledged that the corpus of knowledge possessed by a community, the Lok Vidya of the community is unique and distinct from those possessed by other communities. Thus we come to the conclusion that Lok Vidya is not a monolithic abstract entity, but is something that changes from community to community. Since each corpus of knowledge or knowledge system came into being and developed in order to fulfil the aspirations of a particular community or a group of communities (being in turn a community itself), we cannot as a corollary make comparisons among knowledge systems to prove the superiority of any particular knowledge system over another. Thus we have to accept all knowledge systems as legitimate expressions of the aspirations of differing communities and cannot pick and choose among them. Of course these knowledge systems will also interact when

communities interact, and evolve with time, enriching themselves from the knowledge possessed by other communities.

The above argument of the essentially equal status of different communities based on their unique characteristics, and the logical extension of this argument to the realm of knowledge possessed by the differing communities results in the acknowledgement that differing knowledge systems of different communities have to be granted their own space to evolve, unhindered by violence, suppression and dominance by other communities and their knowledge systems. This means that each autonomous community must grant autonomies to other communities and their knowledge systems to evolve and flourish.

However, this is easier said than done. History does not bear this out. This does not mean that the autonomy of autonomies of differing communities is impossible. We have to inquire into the essence of autonomy of autonomies, that is, the rules of mutual interactions of autonomous communities.

Autonomy of autonomies

Non-domination of one community by another has been proposed as the fundamental principle. This would logically mean that there is no need to have any central power that grants autonomy to communities and ensures their autonomies. Because any central power means domination of one form or another. This however does not preclude the possibility of coordination among communities to make sure that there is no violation of autonomy of any community by another community.

We need a new political imagination to visualise such an autonomy of autonomous communities in today's context where the world dominated by

a few centres of power that wreak violence and suppress the aspirations of communities. However, such an autonomy of autonomies can be witnessed in the panchayat system of self governance practiced by traditional communities. An instance of this is the Khap system of Western Uttar Pradesh and Haryana. Here among rural communities separate Khap Panchayats deal with issues affecting the particular Khap, while Sarva Khap Panchayats take collective decisions affecting all communities. Here autonomy of autonomies can be seen in action. We need to inquire into and study such practices of autonomy of autonomous communities/sects. Another such event is the Kumbh Mela organised periodically after every 12 years, which sees coordination of autonomous sects to organise the event. We should perhaps learn from such traditional practices and take them forward into the future.

Homogeneity versus heterogeneity

There is a view that continued existence of traditional communities is a hindrance to human progress. This view is shared both by proponents of capitalism and communism. The capitalist class in the expansionist mode wanted to overcome the limitations of tiny kingdoms and fragmented markets and was instrumental in establishing nation states and elected governments. Colonialism caused large scale elimination of traditional communities, called savages and natives by the colonial masters, in the conquered territories of the Americas, Australia, Africa and parts of Asia. Where the traditional communities were not physically eliminated, their ways of living, their social organisation, their means of living and most importantly their knowledge systems were destroyed. Through Western education, an alien knowledge system was forced upon them. This disruption of the

traditional communities was considered essential for capitalism to expand. Notions of progress considered coterminous with the creation of modern nation states, unified markets, elected governments were instilled in the minds of the conquered races. Post colonial globalisation although devoid of the cruelty and violence of colonialism, is also a manifestation of the expansionist capitalism, this time led by a few monopolist multinational corporations. Enforced homogeneity in tastes, habits and aspirations is the means by which global capital expands its spread. Traditional communities have even lesser chances of survival in this globalized world. The major force opposing this expansionary global capital today is the peasantry whose social organisation as traditional communities still survives in large parts of the world.

Some leftists argue that this homogenisation of the traditional communities through markets dominated by global capital is laying the ground work for unified/class action by the exploited and oppressed masses. They claim traditional community organisations tend to weaken the unity among the exploited masses.

However this does not seem to fit with the evidence of mass movements rising in various parts of the world against the domination by global capital. In our own country, peasant organisations from various parts of the country have forged alliances and led combined movements. Sikhs, Muslims and Hindus have been able to come together and fight common causes.

On the contrary, homogenization of society can give rise to dictatorships much more easily than in a society constituted of many traditional communities. India's plurality acts as a bulwark against the dictatorial

tendencies of monopoly capitalism. That is also one of the reasons we must celebrate India's diversity. Many proponents of Hindutva believe that all the castes and tribes have to be brought into the Hindu fold, for a strong nation to emerge. Nothing could be farther from the truth. A nation where the legitimate aspirations of its traditional communities are denied expression is sure to end up fighting for their breathing spaces in order to survive. The unrest we see today in the North East is a reflection of the fact that enforced homogeneity by Hindutva forces are creating conflicts where none existed before.