

Uniform Civil Code in India: Reconciling Constitutional Morality, Religious Freedom, and Gender Justice in a Pluralist Society

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Abstract

The Uniform Civil Code (UCC), enshrined under Article 44 of the Directive Principles of State Policy, remains the most debated "unfinished business" of the Indian Constitution. This paper explores the multidimensional challenges of implementing a UCC in a society defined by profound religious and cultural diversity. By examining the transition from colonial "legal dualism" to the contemporary era of "Constitutional Morality," the study analyses how personal laws often serve as sites of gender discrimination. Through a critical evaluation of landmark judgments from Shah Bano to Shayara Bano — this research argues that the UCC must be reimagined not as a tool for cultural majoritarianism, but as a secular vehicle for substantive equality. The paper concludes that a phased, consultative approach toward a "Just Code" is essential to harmonize the "diverse many" into a "unified one" without eroding the pluralist fabric of the nation.

Keywords: Article 44, Constitutional Morality, Gender Justice, Secularism, Legal Pluralism, Personal Laws, Judicial Activism.

1. Introduction: The Constitutional Mandate and the Secular Paradox

The legal architecture of India is characterized by a unique dichotomy. While public life is governed by uniform statutes such as the penal laws, Contract Act, while the private sphere remains fragmented. Matters of marriage, divorce, inheritance, and guardianship are governed by "Personal Laws" rooted in religious identity. Article 44 of the Constitution provides:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." However, being a Directive Principle of State Policy (DPSP), it is non-justiciable. This has created a "Secular Paradox": a nation that aspires to be secular yet maintains a legal system that differentiates rights based on the citizen's faith. The UCC is frequently framed as a conflict between the Right to Equality (Article 14) and the Right to Religious Freedom (Article 25). For "One Nation- One Law"² the

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² Shamim Ahmad Ansari And Dr. Naseem Akhtar, Uniform Civil Code In Modern India: Historical Roots, Contemporary Developments, And The Role Of The Judiciary In Pursuit Of 'One Nation-One Law', International Journal Of Law, Justice And Jurisprudence, E-Issn: 2790-0681,2024, Vol. 4, Issue 1, Part A, Available At: <https://www.lawjournal.info/archives/2024.V4.I1.A.90>

question is whether these rights are truly antithetical or if they can be reconciled through the lens of Constitutional Morality.

2. Historical Genesis: The Evolution of Legal Fragmentation

2.1 Colonial Policy of "Non-Interference"

The roots of India’s fragmented personal laws lie in the British colonial strategy of political expediency. Following the Plan of 1772 under Warren Hastings, the British administration decided that in matters of "inheritance, marriage, caste and other religious usages or institutions," the laws of the Shastras and the Quran would prevail for Hindus and Muslims, respectively.

This was not an act of respect for diversity, but a "Divide and Rule" tactic. By codifying criminal and commercial laws while leaving personal laws untouched, the British effectively "fossilized" religious practices, preventing the natural evolution of social norms. This created "Legal Islands" where traditional patriarchy remained insulated from the burgeoning concepts of modern civil rights.

Historical Key Developments:

| Period/Year | Key Development | Significance |
|----------------|--|---|
| Medieval India | Introduction of Shariat law for Muslims | Solidified legal pluralism based on religion. |
| 1829–1870 | Social Reform Acts (e.g., Sati abolition, widow remarriage). | First legislative interventions in socio-religious practices. |
| 1834 | First Law Commission (Macaulay Commission) formed. | Recommended codification and a uniform |
| 1860–1861 | Enactment of Indian Penal Code (IPC) and CrPC. | Established uniformity in criminal law for all citizens |
| 1937 | Muslim Personal Law (Shariat) Application Act passed | Formalized the application of Shariat law for Muslims in personal matters |
| 1941–1947 | B.N. Rau Committee and Hindu Code Bill | First major attempt to comprehensively |

| | | |
|-----------|--|---|
| | discussions. | codify and reform Hindu personal law |
| 1950 | Constitution of India adopted with Article 44. | Enshrined the UCC as a Directive Principle of State Policy. |
| 1955–1956 | Enactment of the Hindu Code Bills as four separate Acts. | Codified and modernized personal law for Hindus, Buddhists, Jains, and Sikhs. |

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2.2 The Constituent Assembly Debates (1946–1949)

The UCC was one of the most polarized topics during the drafting of the Constitution. Proponents (Ambedkar, Munshi, Iyer): Argued that personal laws were an impediment to national identity. Dr. B.R. Ambedkar maintained that the State must have the power to reform social relations, as religion should be restricted to those matters which as a matter of fact are religious." Further B.R. Ambedkar:

*"It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."*⁴

Opponents (Naziruddin Ahmad, Mahboob Ali Baig): Viewed the UCC as an infringement on the fundamental right to practice religion. They feared that a uniform code would lead to the "annihilation" of minority cultures. The eventual placement of the UCC in Part IV (Article 44) was a strategic postponement. It acknowledged the normative necessity of a UCC while recognizing that the socio-political climate of a partition-torn India was too volatile for immediate implementation.

3. Theoretical Framework: Constitutional Morality vs. Legal Pluralism

3.1 Defining Constitutional Morality

In recent years, the Supreme Court has moved away from "Public Morality" (which reflects social prejudices) toward "Constitutional Morality." This principle, as articulated in Navtej Singh Johar v. Union

³ Rajnish, Rakesh Kumar, Journey Of Indian Society Towards Uniform Civil Code, Social Sciences & Humanities Open, Volume 13, <https://doi.org/10.1016/j.sso.2026.102459>, Available At: <https://www.sciencedirect.com/science/article/pii/S2590291126000239>

⁴ Ibid 2

of India, suggests that the Constitution is a transformative document intended to protect the individual from the tyranny of the majority and the rigidity of tradition.

In the context of the UCC, Constitutional Morality dictates that the individual, not the religious group, is the primary unit of rights. Therefore, if a religious personal law violates the dignity of a woman (Article 21) or her right to equality (Article 14), that law must yield to the constitutional standard.

3.2 The Doctrine of Essential Religious Practices

Under Article 25, only practices "essential" to a religion are protected. The judiciary has increasingly held that matters of marriage, divorce, and succession are "secular activities" associated with religion, rather than "essential religious practices." This distinction is vital; it grants the State the constitutional authority to legislate a UCC without violating the core tenets of religious freedom. The Supreme Court⁵ held that the protection of Articles 25 and 26 is not limited to matters of doctrine of belief. It extends to acts done in pursuance of religion and, therefore, contains a guarantee for ritual and observations, ceremonies and modes of worship, which are the integral parts of religion.⁶

4. The Judicial Roadmap: From "Dead Letter" to Transformative Law

Article 44 of the Indian Constitution purports this liberal-intellectual directive principle.⁷ The concept of a UCC proposes that personal laws based on religious traditions and customs be eliminated in favour of a single body of civil law that is equally applicable to all people in India.⁸ Since the legislature remained dormant on Article 44, the Judiciary became the primary site for the UCC discourse.

4.1 Shah Bano Begum(1985): The First Clarion Call

In Mohd. Ahmed Khan v. Shah Bano Begum⁹, the Supreme Court upheld a divorced Muslim woman's right to maintenance under the secular Section 125 of the CrPC. Chief Justice Y.V. Chandrachud lamented that Article 44 had remained a "dead letter" and argued that a common civil code would help the cause of national integration. The subsequent political reversal of this judgment via the Muslim Women (Protection of Rights on Divorce) Act, 1986 highlighted the tension between electoral politics and constitutional values.

⁵ Acharya Jagdishwaranand V. Commissioner Of Police, Air 1984 SC 512: 1984 SCR (1) 447.

⁶ Siddharth Singh, Unravelling The Uniform Civil Code (UCC): Evolution, Implications, And Challenges In Contemporary India, International Journal Of Criminal, Common And Statutory Law 2024; 4(1): 45-49, E-ISSN: 2789-9500, <https://doi.org/10.22271/27899497.2024.V4.I1a.67>

⁷ Sunaina Nassa, The Debate Over Uniform Civil Code ("UCC") And Its Significance For India As A Secular Democracy, Indian Journal Of Integrated Research In Law ,Volume Iii Issue Iii | Issn: 2583-0538, Available At: <https://ijirl.com/Wp-Content/Uploads/2023/06/The-Debate-Over-Uniform-Civil-Code-Ucc-And-Its-Significance-For-India-As-A-Secular-Democracy.Pdf>

⁸ Mehrotra, Abhinav. "Uniform Civil Code (Ucc) In India: An Overview." Observer Research Foundation (2022).

⁹ Mohd. Ahmed Khan Vs Shah Bano Begum And Ors ,1985 Air 945, 1985 Scr (3) 844

4.2 Sarla Mudgal (1995): Preventing Fraud on Law

In *Sarla Mudgal v. Union of India*¹⁰, the Court addressed the practice of Hindu men converting to Islam solely to bypass monogamy and contract a second marriage. The Court ruled that such marriages were void, emphasizing that the lack of a UCC allowed for "legal loopholes" that exploited women and degraded the sanctity of both religions.

4.3 Shayara Bano¹¹ (2017): The Death of Instant Triple Talaq

The invalidation of Talaq-e-Biddat was a watershed moment. The Court held that a practice which is "manifestly arbitrary" cannot be protected by the shield of religion. This judgment was significant because it applied the test of Arbitrariness to personal laws, signalling that religious customs are subject to the same constitutional scrutiny as any other law. In *Daniel Latiffi*¹² case, A Five-Judge Bench of this Court reiterated If there was a conflict between the terms of the Code and the rights and obligations of the individuals, the former would prevail.

5. Gender Justice: The Core Rationale for a UCC

The most compelling argument for a UCC is not "uniformity," but Justice. Current personal laws across all faiths contain patriarchal elements that disadvantage women:

5.1 Inheritance and Property Rights

- Hindu Law: Despite the 2005 Amendment to the Hindu Succession Act, significant disparities remain in the practical application of coparcenary rights in rural contexts.
- Muslim Law: The principle of Ta'sib often results in female heirs receiving half the share of their male counterparts.
- Christian/Parsi Laws: Historically, these laws also contained biases regarding the succession rights of mothers and daughters.

5.2 Matrimonial Rights and Guardianship

Personal laws often treat the father as the "Natural Guardian," reducing the mother's role to that of a "custodian." Furthermore, the grounds for divorce and the quantum of alimony vary wildly across religious lines, making a woman's financial security after divorce dependent on her "religious identity" rather than her "legal rights."

¹⁰ Sarla Mudgal V. Union Of India, (1995) 3 S.C.C. 635

¹¹ Shayara Bano Vs Union Of India And Ors. Ministry Of Women, Air 2017 Supreme Court 4609

¹² Danial Latifi & Anr Vs Union Of India, Air 2001 Supreme Court 3958

6. Comparative Perspectives: Global Secular Models

To understand the feasibility of a UCC, we must look at how other pluralist nations handle family law:

- **The Turkish Model (1926):** Under Mustafa Kemal Atatürk, Turkey replaced Sharia courts with a secular civil code based on the Swiss model. This transition proved that a predominantly Muslim society could successfully adopt a secular legal framework to modernize its social fabric.
- **The French Model (Laïcité):** France maintains a strict separation between church and state. Religious marriages carry no legal weight; only civil marriages are recognized.
- **The Goa Model (India):** The Goa Civil Code of 1867 remains the only functioning UCC in India. It applies to all Goans, regardless of religion. While it has some flaws (such as specific Hindu bigamy provisions), it has largely succeeded in creating a unified legal identity for the state's citizens.
- **Uttarakhand:** The UCC was first implemented by the Uttarakhand state after the independence on 27th January, 2026, however Scheduled Tribes are exempted from it.
- **Gujarat:** Second state is Gujarat to follow the same steps and pass the UCC Bill on 24th March, 2026.
- **Assam** also has started the process in this direction whereas **Haryana, Maharashtra, Madhya Pradesh and Uttar Pradesh** leadership also express their intent to form law regarding UCC.

7. Socio-Political Challenges: The "Uniformity vs. Diversity" Debate

7.1 The Fear of Majoritarianism

A significant portion of the minority community views the UCC as a "Trojan Horse" for the imposition of Hindu cultural norms. For a UCC to be successful, it must not be a "Hinduization" of laws, but a neutral synthesis of the most progressive elements of all faiths and international human rights standards.

7.2 Tribal Autonomy and the North-East

India's tribal populations, particularly in states like Nagaland and Mizoram, are protected by Article 371A and 371G, which safeguard their customary laws. Any "Uniform" code that fails to account for these constitutional protections risks triggering massive social unrest and undermining the federal structure of the nation.

8. Critical Evaluation: Is the UCC "Desirable" in 2026?

The 21st Law Commission (2018) famously stated that a UCC is "neither necessary nor desirable at this stage," suggesting that the focus should be on reforming individual personal laws to remove discrimination. However, by 2026, the discourse has shifted. The enactment of the Uttarakhand UCC Bill (2024) serves as a contemporary case study. While it achieved gender parity in inheritance, its

controversial requirements for "registration of live-in relationships" have sparked debates about the "Right to Privacy" (Article 21).

9. The Way Forward: Towards a "Just" Code

The implementation of a UCC must follow a "Substantive Equality" model rather than a "Formal Equality" model.

- Formal Equality (Uniformity): Treats everyone exactly the same, ignoring existing disadvantages. This "one-size-fits-all" approach often fails to address the historical, social, and economic disparities between genders and communities, simply perpetuating patriarchy under a new law.¹³
- Substantive Equality (Equity): Focuses on outcomes rather than identical treatment. It recognises that unequals cannot be treated equally and requires tailoring laws to account for historical disadvantages, thereby providing special measures for vulnerable groups, particularly women.¹⁴

Formal Equality and Substantive Equality provides two perspectives. If these are applied on need of legislation regarding UCC it can be judged upon the creation of uniformity among unequals. So here difference is of religion but similarity is of gender. Why are two females of different religion treated differently where one woman has certain rights but the other one is denied just because of her religion?

10. Conclusion

The Uniform Civil Code is not merely a legal project; it is a quest for the fulfilment of the Indian democratic promise. Constitutional Morality demands that the "Legal Islands" of personal law be integrated into the mainland of the Constitution. However, "Uniformity" must not be confused with "Sameness." A successful UCC will be one that protects the cultural diversity of India while ensuring that no woman is denied her rights under the guise of religious custom. The goal is a code that is secular in its application, gender-just in its content, and constitutional in its spirit. As India strides toward its centenary of independence, the transition from a "collection of communities" to a "community of citizens" remains the ultimate goal of Article 44.

¹³ Titia Loenen, From Formal To More Substantive Equality, Series: Nijhoff Law Specials, Volume: 111, Cover The Conceptualization Of Equality And Non-Discrimination As Legal Standards, 13 Dec 2024 Publisher: Brill | Nijhoff ,E-Book Isbn: 9789004538368 , Pages: 38-74, Available At: <https://Brill.Com/Display/Book/9789004538368/Bp000012.Xml>

¹⁴ Ibid

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