

BETWEEN UNIFORMITY AND DIVERSITY: A CONSTITUTIONAL ANALYSIS OF THE UNIFORM CIVIL CODE

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ABSTRACT

Article 44 of the Indian Constitution, which advocates for the establishment of a Uniform Civil Code (UCC), is one of the most contentious and politically sensitive sections within India's constitutional framework. This study conducts a comprehensive examination of Article 44, investigating its historical origins, constitutional framework, and progressive interpretations. Rooted in the Directive Principles of State Policy (DPSP), Article 44 embodies the constitutional principle of legal uniformity concerning personal law. Nonetheless, its connection with Articles 25 and 26, which protect religious liberty, engenders intricate inquiries regarding secularism, minority rights, and the boundaries of governmental interference in private domains.

This study evaluates the practical and ideological problems in implementing a Uniform Civil Code (UCC) through an analysis of significant judicial rulings, legislative advancements, and state-level initiatives, specifically in Goa and Uttarakhand. It further assesses the function of the Law Commission of India, emphasizing the disparity between constitutional ideals and institutional methodology. The article promotes a gradualist approach to reform, emphasizing gender-equitable codification of personal laws, public consultation, and legal literacy as realistic methods to forward the intent of Article 44 while preserving religious pluralism.

This study seeks to provide a fair and progressive view on the UCC by examining constitutional theory, comparative legislative practices, and current legal discussions. The conclusion is that the aim should not be the enforcement of uniformity, but rather the attainment of substantive equality and justice—principles central to India's constitutional morality.

Keyword: *Uniform Civil Code, Religious Freedom, Legal Pluralism, Gender Justice.*

1. INTRODUCTION

India's legal framework is a distinctive amalgamation of diverse traditions, profoundly shaped by its multicultural and multi-religious composition. Criminal law applies universally to all residents, regardless of religion, whereas civil rules, especially those pertaining to marriage, divorce, inheritance, and adoption, are predominantly community-specific. These regulations, also referred to as personal laws, are based on religious traditions and teachings. The legal duality has been central to the discourse surrounding the UCC, a constitutional principle articulated in Article 44, which aims to supplant

personal laws rooted in religion, customs, and traditions with a singular common law applicable to all, regardless of religion, caste, creed, sexual orientation, or gender.¹

Notwithstanding its incorporation in the Constitution under the Directive Principles of State Policy, the Uniform Civil Code remains one of the most contentious and least executed constitutional commitments. This discussion centers on reconciling conflicting constitutional principles, including secularism, religious freedom (as outlined in Articles 25 and 26), and gender equality (as stipulated in Articles 14 and 15).² The introduction of a UCC in this setting prompts

¹ "Uniform Civil Code: Explained", *Livemint* (21 Jun. 2023) available at: <https://www.livemint.com/news/india/uniform-civil-code-explainer-ucc-indian-constitution-directive->

[principles-hindu-marriage-act-muslim-personal-law-11687924522068.html](https://www.livemint.com/news/india/uniform-civil-code-explainer-ucc-indian-constitution-directive-principles-hindu-marriage-act-muslim-personal-law-11687924522068.html) (last visited Apr. 11, 2025).

² India Const., arts. 14, 15, 25 & 26.

significant constitutional inquiries regarding the interplay between law and religion in a secular state, and whether genuine equality before the law can be realized while upholding distinct personal laws for various religious communities.

The framers of the constitution acknowledged the issue's sensitivity. Dr. B.R. Ambedkar, although asserting the necessity of a Uniform Civil Code for national unity and legal coherence, supported the passage of Article 44 during the Constituent Assembly Debates by proposing that its implementation may be progressive and collaborative.³ Nevertheless, owing to societal sensitivities and electoral constraints, subsequent administrations have largely refrained from active engagement in the decades after independence.

Throughout the years, the judiciary has sometimes served as a catalyst, prompting legislative measures in support of a Uniform Civil Code, especially in pivotal instances like *Mohd. Ahmed Khan v. Shah Bano Begum*⁴ and *Sarla Mudgal v. Union of India*.⁵ Nonetheless, political inertia and social resistance have persisted, making the UCC a constitutional aspiration yet to be realized.

This article conducts a comprehensive examination of Article 44, assessing its constitutional significance, the historical development of the UCC debate, the conflicts it presents with other fundamental rights, and the changing judicial and political discourse. The objective is to examine the legal intricacies associated with the provision and evaluate its current significance in a time more focused on gender justice and legal consistency.

2. CONSTITUTIONAL AND STATUTORY FOUNDATIONS OF THE UNIFORM CIVIL CODE

Article 44 of the Indian Constitution is located in Part IV, which addresses the Directive Principles of State Policy, a collection of rules intended to steer the State towards the attainment of socio-economic fairness and constitutional governance. The article states: "The State shall strive to ensure a uniform civil code for all citizens across the territory of India."

Article 37 explicitly states that Directive Principles of State Policy (DPSPs) are not enforceable in a court of law, in contrast to the Fundamental Rights enumerated in Part III. The State is obligated to comply with these principles while formulating legislation, as they are "essential to the government of the country. Therefore, although Article 44 does not establish a mandatory responsibility, it undeniably serves as a fundamental direction of significant relevance.

- *Article 44 and the Constitutional Vision of a Uniform Civil Code*

The contrast between Article 44 and legitimate rights, such as the freedom of religion (Articles 25–28), has been the principal source of constitutional conflict. Nonetheless, its positioning in Part IV embodies the intent of the Constitution's architects: to promote social reform incrementally while preserving the fragile religious fabric of the nation in the immediate post-independence era.⁶

The Constituent Assembly Debates⁷ provide essential insight into this intention. Dr. B.R. Ambedkar, the chief architect of the Constitution, advocated for the incorporation of Article 44, contending that the State's authority to create a Uniform Civil Code was vital for the promotion of equality and national cohesion. He elucidated that personal laws concerning marriage and succession are not inherently tied to religion and may be governed by the State without infringing upon the right to religious freedom. Nevertheless, numerous Muslim Assembly members contested this perspective, voicing concerns that the UCC may infringe upon Islamic identity and customs. The divergent perspectives influenced the ultimate formulation of Article 44 as a non-binding ambition instead than a compulsory obligation.

- *Judicial Engagement with Article 44: Evolving Constitutional Jurisprudence*

The Supreme Court of India has made numerous observations regarding Article 44, frequently criticizing the State's inaction and urging legislative action. In the pivotal case of *Shah Bano*, the Court emphatically advocated for the implementation of a Uniform Civil system, noting

³ Constituent Assembly Debates, Vol. VII, 23 November 1948.

⁴ (1985) 2 SCC 556.

⁵ (1995) 3 SCC 635.

⁶ M.P. Jain, *Indian Constitutional Law*, (8th ed., LexisNexis 2018).

⁷ Constituent Assembly Debates, Vol. VII, 23 November 1948.

that such a system would facilitate national unification and eliminate inconsistencies rooted in religious ideology.

Subsequently, in *Sarla Mudgal*, the Court advanced its position by determining that allowing conversion to evade personal laws, such as for the purpose of entering into a second marriage, constituted an abuse of legal plurality, and emphasized the necessity of enacting a consistent code. Justice R.M. Sahai, concurring, observed that Article 44 had become a “dead letter” and asserted that it was time for the State to honor its constitutional commitment.

Nonetheless, courts have acknowledged the constraints of judicial authority in this area. In *John Vallamattom v. Union of India*⁸, the Court annulled Section 118 of the Indian Succession Act due to its discriminatory nature against Christians, while emphasizing that the responsibility for enacting a Uniform Civil Code lies with the government, not the judiciary.

The judiciary's interpretation of Article 44 demonstrates a developing comprehension: one that is supportive of consistency in civil laws while also aware of the necessity for societal consensus and legislative intent. It acknowledges “the intricate relationship between legal uniformity and cultural diversity,” underscoring that legal reform in a pluralistic society must be measured, inclusive, and dialogic rather than enforced.

3. TRACING THE EVOLUTION OF THE UNIFORM CIVIL CODE DISCOURSE

The discussion on the UCC in India is not solely a result of modern political dynamics. It has developed over an extended duration, intricately connected to India's colonial heritage, constitutional evolution, post-independence legal reforms, and intermittent judicial interventions. Comprehending this historical trajectory is essential for recognizing the importance of Article 44 and the reluctance surrounding its implementation.

- *Colonial Legacies and the Emergence of Legal Pluralism*

The origins of India's legal plurality can be attributed to British colonial governance, which deliberately chose to preserve the personal laws of many religious communities concerning marriage, divorce, succession, and familial relations. This was partially pragmatic, since it enabled the colonial State to administer a culturally diverse populace without inciting insurrection. It also exemplified the colonial policy of “non-interference” in religious affairs, while concurrently codifying and regulating criminal law, contract law, and property law.

The Hindu Widows' Remarriage Act of 1856, the Hindu Gains of Learning Act of 1930, and the Dissolution of Muslim Marriages Act of 1939 exemplify legislative actions during this period that sought to alter personal laws, albeit with caution.⁹ Nonetheless, there was no substantial effort to consolidate civil law among communities.

- *Constituent Assembly Debates: Framing the Constitutional Vision*

The post-independence era signified a constitutional milestone in India's legal evolution. The Constituent Assembly Debates saw intense contention on the implementation of a uniform civil code for all inhabitants in the new republic.¹⁰

Dr. B.R. Ambedkar, chair of the Drafting Committee, staunchly supported a Uniform Civil Code (UCC), viewing it not as a constraint on religious liberty but as a necessary legal reform for national cohesion and gender equality. He emphasized that the aim was not to disrupt religious traditions themselves but to guarantee equality in civil affairs such as marriage, inheritance, and guardianship. Nonetheless, numerous members—especially from the Muslim community—expressed apprehensions that such a code may compromise their cultural sovereignty.

In response to this opposition, Article 44 was incorporated into Part IV of the Constitution, indicating that it represented a long-term objective rather than an instantly enforced directive.

⁸ *John Vallamattom v. Union of India*, (2003) 6 SCC 611.

⁹ Flavia Agnes, “Family Law: Family Law and Constitutional Claims,” in *Oxford Handbook of the Indian Constitution* (Sujit Choudhry et al. eds., OUP

2016)

¹⁰ Constituent Assembly Debates, Vol. VII, 23 November 1948.

- *Personal Law Reforms in Post-Independence India*

Although the concept of a Uniform Civil Code (UCC) remained inactive, the 1950s had significant revisions in Hindu personal law, spearheaded by Prime Minister Jawaharlal Nehru. These resulted in a succession of legislations including:

1. The Hindu Marriage Act, 1955
2. The Hindu Succession Act, 1956
3. The Hindu Minority and Guardianship Act, 1956
4. The Hindu Adoptions and Maintenance Act, 1956

These ordinances delineated and modified customs related to marriage, inheritance, and guardianship for Hindus, Buddhists, Jains, and Sikhs, thereby establishing a measure of uniformity within the Hindu community. Nonetheless, analogous efforts were not made for other religious groups, reinforcing the perception that legal change was both selective and divided.

The judiciary has been pivotal in reinvigorating the discourse on the UCC at crucial moments. In *Mohd. In Ahmed Khan v. Shah Bano Begum*, the Supreme Court affirmed a Muslim woman's entitlement to maintenance under Section 125 of the Criminal Procedure Code, overcoming the constraints of personal law. The Court emphatically urged the government to create a UCC, deeming it vital for national integration. This incited a widespread debate, resulting in the Muslim Women (Protection of Rights on Divorce) Act, 1986, which effectively overturned the Court's decision.¹¹ The episode illustrated how political factors frequently supersede judicial efforts in personal law reform. The significant case, *Sarla Mudgal v. Union of India*, examined the matter of religious conversion for the purpose of polygamy. The Court denounced these practices and emphasized the need for a standardized rule to avert the abuse of religious laws. The ruling elicited intense emotions; however, no definitive legislative action followed.

¹¹ Muslim Women (Protection of Rights on Divorce) Act, 1986.

¹² *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

4.BETWEEN RELIGIOUS FREEDOM AND CONSTITUTIONAL EQUALITY: THE UCC DILEMMA

The endeavor to implement a Uniform Civil Code in India always encounters constitutional discord, particularly between Article 44, which advocates for legal uniformity in civil matters, and Articles 25 and 26, which safeguard the right to religious freedom. The constitutional contrast between the Directive Principles and Fundamental Rights is central to the UCC debate, highlighting significant issues regarding the essence of Indian secularism and the constraints on State involvement in religious matters.

- *Harmonising Fundamental Rights with Directive Principles*

Article 25 ensures that all individuals possess “the freedom of conscience and the right to freely profess, practice, and propagate religion, contingent upon public order, morality, and health.” Article 26 further authorizes religious denominations to govern their business concerning religious topics.¹² Conversely, Article 44 aims to establish a cohesive framework of civil rules that surpasses religious distinctions.

The Supreme Court of India has consistently affirmed that personal laws, albeit being rooted in religious traditions, are subject to constitutional examination. In *State of Bombay v. Narasu Appa Mali*, the Bombay High Court determined that personal laws do not constitute 'laws' under Article 13 and, therefore, cannot be assessed for infringement of basic rights. This stance has faced growing scrutiny as courts have increasingly involved in issues traditionally deemed religious, particularly where such practices violate gender equality and constitutional morality.

- *Indian Secularism: Neutral Accommodation or Transformative Constitutionalism?*

India's secularism approach differs from the rigid church-state separation observed in Western legal systems. The Indian Constitution anticipates principled involvement, permitting the State to modify religious practices that conflict with constitutional ideals.¹³ This is apparent from

¹³ Upendra Baxi, “The Constitutional Future of the Uniform Civil Code,” in *Uniform Civil Code for India: Principles and Prospects* (R. M. MacIver ed., Oxford University Press 2008).

social reforms such as the eradication of untouchability and the codification of Hindu personal laws in the 1950s, implemented over opposition from orthodox factions.

The Supreme Court established the "essential religious practices" criteria in *Shirur Mutt*, enabling the judiciary to ascertain whether a certain activity is safeguarded by Article 25.¹⁴ This has become a crucial doctrinal tool in evaluating the constitutionality of religious customs.

A succession of pivotal rulings in the past twenty years demonstrates an increasing judicial readiness to confront outdated personal laws and traditions. In the *Shayara Bano* case, the Court annulled the practice of triple talaq (talaq-e-biddat) on the grounds of its arbitrariness and violation of Article 14, notwithstanding its inclusion in Muslim personal law.¹⁵ In *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case), the Court annulled the prohibition on women's access into the Sabarimala shrine, determining that religious freedom cannot supersede gender equality.¹⁶ Additionally, in the *Joseph Shine* Case, the Court decriminalized adultery by nullifying Section 497 of the Indian Penal Code, emphasizing that patriarchal concepts cannot govern personal liberty.¹⁷

These instances illustrate a persistent trend: the judiciary has demonstrated a growing dedication to preserving constitutional morality—a value framework based on equality, decency, and rationality—even at the expense of religious or customary values.

The UCC argument is framed within a broader conflict between collective rights (to religious freedom and cultural identity) and individual rights (to equality and non-discrimination). Although group rights are vital in a diversified country such as India, they must not be employed

to rationalize infringements on human dignity or to sustain structural inequity.

Judicial bodies have underscored that the freedom to religious practice is not unconditional. Social practices that threaten constitutional ideals, rather than being religious, are subject to reform. Article 44 should be interpreted within this complex framework—not as a menace to plurality, but as an endeavor to ensure real equality across communities.

5.CONTEMPORARY TRAJECTORIES: POLICY DEVELOPMENTS AND INSTITUTIONAL RESPONSES

The discussion on the UCC in India has experienced notable advancements at both the state and institutional tiers. Goa has consistently upheld a Uniform Civil Code, whereas Uttarakhand's recent legislative action signifies a significant change. Simultaneously, the Law Commission of India has been diligently addressing the topic, illustrating the changing viewpoints on the UCC.

- *State-Level Initiatives Towards a Uniform Civil Code*

Goa exemplifies a distinct case in India, having implemented a Uniform Civil Code based on the Portuguese Civil Code of 1867.¹⁸ This code, maintained after liberation in 1961, uniformly governs civil matters such as marriage, divorce, and succession across all communities of Goa, Daman, and Diu. It guarantees equal rights for men and women in marriage and inheritance matters. The code's duration and approval among Goans indicate its effectiveness in promoting legal uniformity and gender equity.

In 2024, Uttarakhand became the first Indian state to enact its own UCC.¹⁹ The legislation aims to standardize personal laws across all communities

¹⁴ *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282.

¹⁵ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

¹⁶ *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1.

¹⁷ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹⁸ Elgar Noronha, "Portuguese Civil Code: The Silent Law That Unites Goa, Daman and Diu," *Frontline*, July 27, 2023, available at: [https://frontline.thehindu.com/the-](https://frontline.thehindu.com/the-nation/portuguese-civil-code-the-silent-law-that-unites-go-daman-and-diu/article67093492.ece)

[nation/portuguese-civil-code-the-silent-law-that-unites-go-daman-and-diu/article67093492.ece](https://frontline.thehindu.com/the-nation/portuguese-civil-code-the-silent-law-that-unites-go-daman-and-diu/article67093492.ece) (last visited Apr. 11, 2025).

¹⁹ "The Uniform Civil Code (UCC) of Uttarakhand: Advancement in Gender Justice or Violating Individual Liberties?," *Citizens for Justice and Peace*, Jan. 31, 2025, available at: <https://cjp.org.in/the-uniform-civil-code-ucc-of-uttarakhand-advancement-in-gender-justice-or-violating-individual-liberties/> (last visited Apr. 11, 2025).

in the state, covering areas such as marriage, divorce, inheritance, and adoption.

1. Marriage and Divorce: Implementation of a standardized minimum marriageable age (18 for women, 21 for males), mandatory marriage registration, and consistent criteria for divorce.

2. Inheritance and Succession: Equal inheritance rights for sons and daughters, abolishing inequalities between ancestral and self-acquired property.

3. Live-in Relationships: Compulsory registration of cohabiting relationships, including stipulations for maintenance and inheritance rights for partners and their offspring.

4. Prohibition of Polygamy: Ban on polygamy for all individuals, irrespective of religion.

The Act excludes Scheduled Tribes from its provisions, honoring their customary laws. The Act has been praised for advancing gender equality, although it has also encountered criticism for possible violations of human liberties and privacy. The compulsory registration of cohabiting couples has elicited apprehensions of governmental interference in private affairs.

- *The Evolving Position of the Law Commission of India*

The Law Commission of India²⁰ has significantly contributed to assessing the feasibility of implementing a Uniform Civil Code at the national level. In its 2018 consultation document, the 21st Law Commission concluded that a Uniform Civil Code was neither necessary nor advisable at that time. It recommended amending existing personal laws to rectify discriminatory practices. The Commission underscored the significance of maintaining India's pluralistic society and warned against enforcing uniformity that would violate religious liberties.

Consequently, the 22nd Law Commission, established in 2020, commenced new consultations on the UCC, acknowledging the necessity to reassess the topic due to the time that has passed since prior discussions. In June 2023, the Commission released a public notice

requesting opinions from the public and acknowledged religious organizations regarding the UCC. The Commission's mandate concluded in August 2024 without delivering its report on the UCC, chiefly because to the lack of a chairperson after Justice Ritu Raj Awasthi's nomination to the Lokpal.

6.CONCLUSION

The implementation of a UCC in India is laden with socio-political complexities. Article 44 of the Indian Constitution delineates the goal of establishing a Uniform Civil Code; yet, its implementation necessitates a sophisticated, incremental, and consultative strategy. This section presents practical solutions to reconcile the constitutional vision with the nation's socio-religious heterogeneity.

Implementing the UCC in a varied and multi-religious community such as India necessitates prudence. A gradualist approach—implementing reforms incrementally—can alleviate opposition from religious communities and prevent impressions of state-enforced uniformity. By advancing incrementally instead of through comprehensive legislative reforms, the State can promote societal acceptability and cultivate an environment favorable to legal harmonization without marginalizing minority communities.

A productive intermediary measure toward a Uniform Civil Code (UCC) could entail codifying the uncodified elements of personal laws, especially those adhered to by religious minorities. For example, significant aspects of Muslim personal law remain regulated by custom and tradition instead of legislative codification. Codifying these laws can provide transparency, judicial uniformity, and improved safeguarding of individual rights. This method would not eliminate community-specific rules but would standardize them to enhance accountability and facilitate future harmonization over time.

A primary rationale for a UCC is the advancement of gender equity. A feasible approach could involve amending discriminatory aspects of personal laws, particularly those related to marriage, divorce, and inheritance. The

²⁰ Flavia Agnes, "Law Commission's Report on Uniform Civil Code: Undesirable and Unnecessary," *The Indian Express*, June 16, 2023, available at: [https://indianexpress.com/article/opinion/columns/l](https://indianexpress.com/article/opinion/columns/law-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/)

[aw-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/](https://indianexpress.com/article/opinion/columns/law-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/) (last visited Apr. 11, 2025).

implementation of equal inheritance rights for women across communities, exemplified by the Hindu Succession (Amendment) Act, 2005, could act as a model for analogous revisions in other personal laws. Addressing particular aspects of gender inequality is expected to attract wider popular backing and legal approval.

Such reforms cannot be imposed from above; they must arise from inclusive, democratic processes. The efficacy of any forthcoming UCC depends on extensive public input, particularly including stakeholders from many religious communities. Interfaith conversations and community engagement help alleviate misconceptions and apprehensions regarding the UCC. Concurrently, investing in legal literacy and education regarding constitutional principles—particularly gender justice, equality, and secularism—can establish a more robust platform for reform.

The concept of a UCC, as articulated in Article 44, must be reconciled with the constitutional assurance of religious liberty under Article 25. The need for a Uniform Civil Code is frequently presented as a constitutional necessity, although its implementation must honor India's heterogeneous values. This article has delineated the historical development of Article 44, the associated legal and constitutional framework, and the socio-political discourses that have shaped its course.

Insights from Goa and Uttarakhand, coupled with the Law Commission's developing perspective, indicate that a unified code is attainable but necessitates refinement. Equality, rather than conformity, should be the fundamental concept motivating reform. By implementing a progressive, inclusive, and gender-sensitive strategy, India can advance towards fulfilling the essence of Article 44 while preserving the secular and multicultural basis of its governance. Ultimately, the UCC should be viewed not as a formal mandate but as a shared ideal for justice, equality, and unity amidst diversity