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"BEYOND ARTICLE 44: THE REAL QUESTION OF A UNIFORM CIVIL CODE"

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ABSTRACT

The idea of a Uniform Civil Code (UCC) in India has been debated for over a century, occupying a contested space at the intersection of law, politics, religion, and society. Article 44 of the Constitution¹ places upon the State a directive principle to endeavour to secure a uniform civil code throughout the territory of India. The provision, though non-justiciable, has acquired enduring constitutional significance through judicial pronouncements in *Mohd. Ahmed Khan v. Shah Bano Begum*², *Sarla Mudgal v. Union of India*³, and *Shayara Bano v. Union of India*⁴, and through repeated calls by successive governments and law commissions for legislative engagement. This article examines whether the Uniform Civil Code is, in substance, a constitutional necessity for ensuring equality and gender justice or merely a normative aspiration in a society characterised by deep cultural and religious pluralism. Adopting a doctrinal and comparative methodology, the article traces the constitutional foundations of Article 44, evaluates personal-law jurisprudence, examines social and political challenges to implementation, analyses State-level initiatives in Uttarakhand and Gujarat, draws lessons from comparative jurisdictions including France, the United States, Israel, and Goa, and concludes that the real question is not whether to implement a UCC but how to do so through a calibrated, gender-just, and culturally-sensitive process of gradual legal reform.

Keywords: Uniform Civil Code, Article 44, Personal Laws, Directive Principles, Fundamental Rights, Secularism, Gender Justice, Shah Bano, Shayara Bano, Sarla Mudgal, Uttarakhand UCC, Goa Civil Code, Comparative Law.

1. INTRODUCTION

India is a country of remarkable cultural, religious, and linguistic diversity. Its legal architecture has long reflected this pluralism through the coexistence of multiple personal-law systems governing matters of marriage, divorce, succession, adoption, and maintenance. Hindu law derives from the Dharmashastras and is now substantially codified through the Hindu Code Bills of 1955–56; Muslim law is governed by the Shariat Application Act of 1937 and uncodified Islamic jurisprudence; Christians, Parsis, and Jews are governed by their own statutes; and tribal and customary practices add further variation. Article 44 of the Constitution, situated within the Directive Principles of State Policy (Part IV), aspires to replace this plurality with a single civil code applicable to all citizens irrespective of religion. Article 37 of the Constitution makes clear, however, that directive principles are not enforceable by any court, even though they remain fundamental to the governance of the country and the State has a duty to apply them in the making of laws.⁵

The debate over the UCC has acquired renewed urgency in the past decade. Successive governments have placed the UCC on their legislative agenda; the Law Commission of India in 2018 issued a consultation paper recommending reform within personal laws rather than uniform codification; the State of Uttarakhand has enacted a UCC effective from January 2025; and the State of Gujarat has constituted a High-Level Committee to examine implementation. Each of these developments has rekindled fundamental questions: What does Article 44 actually demand? Is uniformity of civil law a precondition of constitutional equality, or does pluralism better serve the secular Indian polity? Can a UCC be enacted in a manner consistent with Articles 14, 15, 21, 25, 26, and 29⁶? This article addresses these questions through six analytical parts: the constitutional framework and the Constituent Assembly debates (Part 2); the personal-law jurisprudence (Part 3); the social and political challenges (Part 4); the State-level initiatives in Uttarakhand and Gujarat (Part 5); the comparative experience across France, the United States, Israel, Goa, and Muslim-majority countries (Part 6); and the conclusion with normative recommendations (Part 7). The argument advanced is that the real question is not whether the Uniform Civil Code should be implemented but how it should be designed and rolled out so that it serves the constitutional commitments to equality, secularism, and gender justice without flattening the cultural diversity that defines the Indian polity.

2. THE CONSTITUTIONAL FRAMEWORK: ARTICLE 44 AND THE CONSTITUENT ASSEMBLY DEBATES

2.1 Article 44 and the Architecture of Directive Principles

Article 44 directs the State to endeavour to secure a uniform civil code for the citizens throughout the territory of India. Located within Part IV of the Constitution, the provision shares the non-justiciable character of all directive principles under Article 37, but is regarded as fundamental to governance. The choice of placement was deliberate: a constitutional aspiration rather than a binding mandate. Yet directive principles are not constitutionally inert. The Supreme Court has consistently held that they constitute conscience of the Constitution, that fundamental rights and directive principles must be read harmoniously, and that the social and economic reform contemplated by Part IV informs the interpretation of fundamental rights under Part III. In *Minerva Mills Ltd. v. Union of India*, the Supreme Court underscored that Parts III and IV form an integrated whole and that the harmony between them is part of the basic structure of the Constitution.²⁰

2.2 The Constituent Assembly Debates

The Constituent Assembly debates of November 1948 reveal an intense and unresolved disagreement on the question of the UCC. Members from minority communities, including Mohammed Ismail Sahib and Naziruddin Ahmad, argued that the inclusion of UCC under directive principles would interfere with religious freedom and threaten minority identity. K.M. Munshi and Alladi Krishnaswami Ayyar countered that uniform civil law was essential for national integration, gender equality, and the eradication of discriminatory practices. Dr. B.R. Ambedkar, while acknowledging the difficulty, observed that the Constitution did not impose a UCC but merely placed an aspirational obligation on the State.⁷ The eventual placement of UCC under directive principles thus represented a constitutional compromise: a recognition that uniformity was a desirable goal but that the timing, content, and method of implementation must be left to future legislative judgement.

2.3 Secularism, the DPSP-FR Interface, and Harmonious Construction

Three interpretive doctrines bear on Article 44. *First*, secularism, declared in *S.R. Bommai v. Union of India* to be a basic feature of the Constitution,¹⁸ provides the philosophical anchor for any debate on personal laws. Indian secularism, however, is not a strict separation of religion and State on the French model; it is a principled distance allowing the State both to abstain

from religious interference and to intervene where religious practice produces inequality or social injustice. *Second*, the relationship between fundamental rights and directive principles, articulated in *Kesavananda Bharati*¹⁹ and *Minerva Mills*, requires that constitutional provisions be read harmoniously rather than in opposition. *Third*, the doctrine of harmonious construction requires that the right to religious freedom under Article 25, the right to manage religious affairs under Article 26, and the rights to equality under Articles 14 and 15 be reconciled. Article 25(1) itself qualifies religious freedom as subject to public order, morality, health, and the other provisions of Part III³⁵—a textual recognition that religious practice cannot displace fundamental rights to equality and dignity.

3. PERSONAL LAW JURISPRUDENCE AND THE JUDICIAL VOICE ON ARTICLE 44

3.1 The Codification of Hindu Law and the Persistence of Plurality

Post-independence, Hindu personal law underwent significant codification through the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act, all enacted between 1955 and 1956.⁸ Muslim law, by contrast, remained governed by the Muslim Personal Law (Shariat) Application Act, 1937; Christians by the Indian Christian Marriage Act, 1872; and Parsis by the Parsi Marriage and Divorce Act, 1936.⁹ The Special Marriage Act, 1954 and the Indian Succession Act, 1925 offered citizens an optional secular regime.¹⁰ The asymmetry of codification—Hindu law substantially reformed while Muslim, Christian, and Parsi laws remained largely untouched—has been a recurring feature of the UCC debate.

3.2 Shah Bano: The Watershed Moment

In 1985, the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* held that a divorced Muslim woman was entitled to maintenance under section 125 of the Code of Criminal Procedure beyond the iddat period, notwithstanding any contrary provision of personal law.² The Court took the rare step of expressly invoking Article 44, lamenting that the directive had remained a dead letter and urging the State to enact a UCC. The political backlash culminated in the Muslim Women (Protection of Rights on Divorce) Act, 1986, which sought to undo the Court's holding. The episode marked the most dramatic intersection of constitutional aspiration, personal-law jurisprudence, and political compromise in modern Indian legal history.

3.3 Sarla Mudgal, Lily Thomas, John Vallamattom, and Danial Latifi

In *Sarla Mudgal v. Union of India*, the Supreme Court addressed the practice of Hindu husbands converting to Islam to contract a second marriage and held the practice illegal.³ The Court reiterated its call for a UCC, observing that the absence of uniform civil law produced anomalies that defeated the constitutional commitment to equality. The principle was reaffirmed in *Lily Thomas v. Union of India*,¹³ which clarified that conversion did not dissolve a prior Hindu marriage. In *John Vallamattom v. Union of India*, the Court struck down section 118 of the Indian Succession Act on equality grounds, again expressing regret at the legislative inertia on Article 44.¹⁴ *Danial Latifi v. Union of India* preserved the substantive protection of *Shah Bano* by interpreting the 1986 Act consistently with constitutional guarantees of equality and the right to a dignified life.¹⁵

3.4 Shayara Bano and the Triple Talaq Verdict

In *Shayara Bano v. Union of India*, a five-judge Constitution Bench struck down the practice of instantaneous triple talaq (talaq-e-biddat) by a 3:2 majority.⁴ The judgment is a landmark engagement with the personal-law-equality debate. The plurality held the practice manifestly arbitrary under Article 14, while a separate opinion held that the practice was not an essential religious practice protected by Article 25. The Muslim Women (Protection of Rights on Marriage) Act, 2019 subsequently criminalised the practice. *Shayara Bano* demonstrates that gender-just reform of personal laws can be achieved through constitutional adjudication and targeted legislation, without necessarily requiring the wholesale enactment of a UCC.

3.5 Other Significant Decisions

Several other decisions enrich the jurisprudence. In *Krishna Singh v. Mathura Ahir*, the Supreme Court reaffirmed the autonomy of personal-law systems where statutory law was silent.¹¹ In *Ms. Jordan Diengdeh v. S.S. Chopra*, the Court called for a uniform code of marriage and divorce, observing the need for a uniform civil code to overcome the differing personal laws.¹² *Seema v. Ashwani Kumar* mandated the compulsory registration of marriages across all religions as a step towards procedural uniformity,¹⁶ while *ABC v. State (NCT of Delhi)* recognised the rights of an unwed mother as a sole guardian, advancing gender-just outcomes within personal-law adjudication.¹⁷

4. SOCIAL AND POLITICAL CHALLENGES OF IMPLEMENTATION

4.1 Religious Diversity, Cultural Identity, and Minority Apprehensions

India is home to followers of every major world religion, and personal laws have for centuries reflected the cultural distinctiveness of these communities. Any proposal for uniform civil law inevitably engages questions of cultural identity. Minority communities have voiced concerns that uniform codification could become a vehicle for majoritarian assimilation rather than equality. Critics argue that the Hindu Code Bills of the 1950s reformed Hindu personal law without comparable engagement with Muslim, Christian, or Parsi laws, producing an asymmetry that any future UCC must address. The fear of majoritarianism is not merely rhetorical: in a polity where one community constitutes nearly eighty per cent of the population, the design and content of any uniform code must be scrupulously inclusive.

4.2 Gender Justice and the Religious-Freedom Tension

The most powerful normative case for the UCC rests on gender justice. Personal laws across religious communities contain provisions that disadvantage women in matters of marriage, divorce, maintenance, inheritance, and guardianship. Feminist scholarship including the work of Flavia Agnes,²⁹ Indira Jaising, and Nivedita Menon has documented these inequalities and the structural limits of intra-personal-law reform. At the same time, scholars caution against treating uniformity as a proxy for equality: a UCC drafted in haste, without careful attention to the gender-just dimensions of each personal-law tradition, may simply reproduce existing male-favouring assumptions in a uniform garb. The constitutional commitment is to gender justice, not uniformity per se; uniformity is a means, not an end.

4.3 Political Controversy and the Limits of Public Consensus

The UCC has been a politically polarising issue across the post-independence decades. Proponents present it as a matter of constitutional fidelity and women's rights; opponents frame it as a threat to religious freedom and cultural pluralism. The 21st Law Commission of India in its 2018 consultation paper concluded that a UCC was neither necessary nor desirable at present and recommended reform within personal laws.²¹ Critics including Upendra Baxi have observed that the political invocation of UCC is often instrumental rather than principled.³³ Genuine implementation requires sustained democratic deliberation, public consultation, and a non-partisan legislative process—conditions presently absent in much of the UCC discourse.

4.4 Legal Complexity and the Question of Gradualism versus Immediate Reform

Implementing a UCC raises formidable legal challenges. Drafting requires expert engagement with Hindu, Muslim, Christian, Parsi, and tribal law, with regional and customary variations, and with the constitutional commitments to gender justice, religious freedom, and minority protection. Two competing approaches present themselves: gradualism, advocating reform within each personal-law tradition followed by progressive convergence; and immediate codification, advocating a comprehensive UCC enacted as a single legislative measure. The Indian experience favours gradualism: the Hindu Code Bills of the 1950s, the abolition of triple talaq in 2019, and the targeted reform of inheritance and maintenance through judicial decisions illustrate that incremental change can deliver substantive gender justice without the political and social costs of comprehensive codification.

5. STATE-LEVEL INITIATIVES: UTTARAKHAND AND GUJARAT

5.1 The Uttarakhand Uniform Civil Code Act, 2024

On 27 January 2025, Uttarakhand became the first State in independent India to operationalise a Uniform Civil Code. The Uttarakhand Uniform Civil Code Act, 2024,²² enacted following the recommendations of an expert committee chaired by Justice Ranjana Prakash Desai (Retd.), provides for uniform rules on marriage, divorce, succession, and live-in relationships, applicable to all citizens of the State (with limited exceptions for Scheduled Tribes). The Act introduces the registration of live-in relationships, prohibits polygamy, sets a uniform age of marriage, and introduces succession rules independent of religious affiliation. The Act is constitutionally and politically significant: it operationalises Article 44 at the State level under the Concurrent List entry on personal laws, and it provides a working test of how a UCC functions in practice. Critics have raised concerns about the constitutional validity of certain provisions—particularly the live-in registration requirement and the implications for privacy under Article 21—but the legislative experiment will provide a critical empirical foundation for any future national-level enactment.

5.2 The Gujarat Initiative

On 4 February 2025, the State of Gujarat constituted a High-Level Committee to examine the implementation of a UCC.²³ The Committee's mandate includes a comprehensive review of personal laws, public consultation, and a draft text for legislative consideration. While the Gujarat process is at a preliminary stage at the time of writing, the initiative reflects a federal

pattern: States, exercising their concurrent legislative competence over personal laws, may experiment with UCC implementation independently of central legislation. This federalist approach has both advantages—local experimentation, public consultation, and democratic accountability—and disadvantages, including the risk of fragmented uniformity and potential constitutional challenges based on inter-State variations in marriage and divorce law.

6. COMPARATIVE PERSPECTIVES: LESSONS FROM OTHER JURISDICTIONS

6.1 France: The Napoleonic Model of Civil Uniformity

The French Civil Code of 1804, the Napoleonic Code, represents the paradigmatic example of comprehensive civil uniformity.²⁵ Marriage, divorce, succession, and family relations are governed by a single secular code applicable to all citizens irrespective of religion. The French model is anchored in the constitutional principle of *laïcité*, a strict separation of religion and State that contrasts with the Indian conception of secularism as principled distance. While the French model offers an instructive baseline of uniformity, the underlying philosophical commitment to *laïcité* is not directly transferable to a polity that constitutionally protects the right to manage religious affairs under Article 26.

6.2 The United States: Federalism and Uniform Model Laws

The United States approaches personal law primarily through State legislation, with uniformity achieved through model statutes drafted by the Uniform Law Commission—including the Uniform Marriage and Divorce Act, the Uniform Probate Code, and the Uniform Premarital Agreement Act.²⁶ The American experience demonstrates that substantive uniformity can be achieved through coordinated State action without a single national code, an approach broadly compatible with the Indian federal structure. The model-law method offers a possible middle path: a national framework enacted in coordination with State legislatures, preserving local sensitivity while delivering substantive convergence.

6.3 Israel: Religious Personal Law within a Modern State

Israel maintains a system in which personal status matters—marriage and divorce in particular—are governed by religious courts of the various recognised communities, including rabbinical, Sharia, Druze, and Christian ecclesiastical courts.²⁷ This pluralistic system has generated significant tensions, particularly in matters of mixed-religion marriage and gender

equality, and Israeli civil society has debated reform for decades. The Israeli experience illustrates the durability of religious-personal-law systems within constitutional democracies and the practical difficulties of moving towards uniformity once pluralism has been institutionally entrenched.

6.4 The Muslim-Majority World: Turkey, Tunisia, and Reform within Islamic Law

The experience of Muslim-majority countries that have undertaken civil-code reform is instructive. Turkey adopted a secular civil code in 1926, modelled on the Swiss Civil Code, and later updated in 2001.²⁸ Tunisia's Code of Personal Status, 1956 substantially reformed marriage, divorce, and inheritance within an Islamic-law framework, prohibiting polygamy and providing for judicial divorce. These examples demonstrate that reform within personal-law traditions, combined with constitutional commitments to gender equality, can deliver substantial progress without comprehensive secular codification.

6.5 Goa: India's Laboratory of Uniform Civil Law

The State of Goa has, since its accession to India in 1961, retained the Goa Civil Code derived from the Portuguese Civil Code of 1867.²⁴ The Goa Code is often cited as a working example of a uniform civil code within India. It is not, however, fully uniform: it preserves certain religious-community-specific provisions, including limited polygamy for Hindus in defined circumstances. The Goa experience illustrates both the feasibility of uniform civil codification within India and the inevitability of certain compromises that any future national UCC will likely have to contend with.

6.6 Lessons for India

The comparative survey yields several lessons. *First*, uniform civil codification is constitutionally feasible and has been achieved in jurisdictions with vastly different demographic and political profiles. *Second*, the design of uniformity is more important than its existence: codes that ignore the cultural, gender, and minority dimensions of personal-law reform produce backlash and instability. *Third*, the federal model offers a workable middle path between immediate national codification and indefinite continuation of plurality. *Fourth*, reform within personal-law traditions can deliver substantive gender justice without comprehensive replacement; the question is not whether to reform but how to do so consistently with constitutional values.

7. CONCLUSION AND RECOMMENDATIONS: BEYOND ARTICLE 44

The real question of the Uniform Civil Code is not whether Article 44 should be implemented but how the constitutional commitments to equality, secularism, and gender justice can be translated into a workable legal framework consistent with the cultural and religious diversity that defines the Indian polity. The doctrinal analysis undertaken in this article supports four propositions. *First*, Article 44, though non-justiciable, is constitutionally binding on the State as a directive principle and must be read harmoniously with the fundamental rights to equality, religious freedom, and dignity. *Second*, the personal-law jurisprudence from *Shah Bano* through *Shayara Bano* demonstrates that the constitutional commitments to gender justice can be advanced through targeted intervention within personal-law traditions, without necessarily requiring comprehensive codification. *Third*, the State-level experiments in Uttarakhand and Gujarat provide a workable laboratory for implementation within a federal framework, although the constitutional validity of specific provisions must be tested through judicial review. *Fourth*, the comparative experience of France, the United States, Israel, the Muslim-majority world, and Goa offers a rich repertoire of design choices that India can adapt to its constitutional and demographic context.

Several normative recommendations follow. *First*, the central government should constitute a permanent Law Commission of India initiative on the UCC with a clear mandate of public consultation, transparent drafting, and gender-just reform across all personal-law traditions. *Second*, reform should proceed in stages: codification of common minimum standards on marriageable age, registration, monogamy, divorce on equal grounds, equal inheritance, and equal guardianship, with progressive convergence over time. *Third*, the Special Marriage Act, 1954 should be strengthened and made more accessible as an opt-in secular regime available to all citizens, providing a practical bridge to substantive uniformity. *Fourth*, State-level UCC enactments should be subjected to careful constitutional review, particularly with regard to privacy under Article 21 and equality under Article 14.

Fifth, any UCC must include robust safeguards for tribal customs, the practices of Scheduled Tribes, and the cultural autonomy of minority communities, recognising that uniformity must not be confused with majoritarian assimilation. *Sixth*, public engagement and education must be central to the process: the legitimacy of any UCC will depend on the depth of democratic deliberation that precedes it. *Seventh*, and most fundamentally, the conversation must move

beyond the binary of "uniformity versus pluralism" towards a constitutional architecture that achieves substantive gender justice and equality while honouring the cultural and religious diversity that is itself a constitutional value under Articles 25, 26, and 29.

The fundamental insight that emerges from this study is that the Uniform Civil Code is neither a panacea nor a threat: it is a constitutional aspiration whose realisation depends on the quality of legislative design, the depth of democratic deliberation, and the fidelity of constitutional interpretation. The challenge for the Indian legal and political system, as the country marks the seventy-fifth year of its constitutional life, is to construct a UCC that fulfils the egalitarian promise of Articles 14, 15, 21, and 44 while honouring the pluralistic ethos enshrined in Articles 25, 26, and 29. The real question of Article 44 is not whether to act but how to act—patiently, inclusively, gender-justly, and constitutionally—so that the directive principle becomes, at last, a lived constitutional reality.

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