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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNIFORM CIVIL CODE IN INDIA: CONSTITUTIONAL VISION, JUDICIAL EVOLUTION, AND CONTEMPORARY CHALLENGES

AUTHORED BY - AKHIL SAJEEV & ANUSREE J

Abstract

This paper examines the concept of a Uniform Civil Code (UCC) in India, a constitutional vision enshrined in Article 44 of the Directive Principles of State Policy. Despite being a founding constitutional aspiration, the implementation of a UCC has remained elusive for over seven decades since independence. This research analyzes the judicial evolution of UCC discourse through landmark cases, explores the tensions between personal laws and constitutional guarantees, examines contemporary developments including Uttarakhand's UCC implementation, and evaluates the potential pathways forward. The paper argues that while a UCC represents an important step toward gender justice and national integration, its implementation necessitates a delicate balance between constitutional uniformity and religious diversity. It concludes that a gradual, consultative approach with meaningful participation from all communities would be essential for developing a UCC that upholds constitutional values while respecting India's pluralistic ethos.

Keywords: Uniform Civil Code, Article 44, Personal Laws, Constitutional Rights, Judicial Activism, Gender Justice, Religious Freedom, Legal Pluralism

1. Introduction

The concept of a Uniform Civil Code (UCC) represents one of the most contentious yet significant constitutional visions in India's legal framework. Enshrined in Article 44 of the Constitution under the Directive Principles of State Policy, it directs that "the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."¹ This directive embodies the aspiration to transcend religious and customary differences in personal laws and establish a common framework governing matters such as marriage, divorce, inheritance, and adoption for all citizens regardless of their religious affiliations.

¹ Constitution of India, Article 44.

The journey of UCC from a constitutional directive to a practical reality has been fraught with challenges, debates, and judicial interventions. After more than seven decades of independence, India continues to operate under a system of personal laws that vary across religious communities, raising important questions about gender equality, religious freedom, and constitutional supremacy. The Supreme Court has repeatedly highlighted the need for a UCC through landmark judgments, yet its implementation remains elusive due to political, social, and religious sensitivities.

This research paper examines the evolution of UCC discourse in India through the lens of constitutional provisions, judicial pronouncements, legislative developments, and sociopolitical dynamics. It analyzes landmark cases that have shaped the judicial approach toward personal laws and UCC, explores the tension between religious freedom and constitutional guarantees, and evaluates recent developments including Uttarakhand's adoption of India's first state-level UCC in 2024. The paper aims to provide a comprehensive analysis of the challenges and opportunities in implementing a UCC while balancing constitutional uniformity with respect for India's pluralistic heritage.

2. Historical Context and Constitutional Framework

2.1 Pre-Independence Legal Landscape

The roots of India's complex personal law system can be traced to the colonial era when the British administration adopted a policy of non-interference in the personal laws of various communities. This approach was formalized through the Queen's Proclamation of 1858, which promised not to impose British customs and traditions on Indian subjects.² Consequently, different communities continued to be governed by their respective religious and customary laws in matters of marriage, succession, and other personal affairs.

The colonial legal system thus fostered what Derrett terms as "legal pluralism,"³ wherein multiple legal systems coexisted within a single political unit. This pluralistic approach, while respecting communal diversity, also perpetuated various inequalities, particularly gender disparities across different personal law systems.

² Queen Victoria's Proclamation, November 1, 1858.

³ Derrett, J.D.M. (1968). *Religion, Law and the State in India*. Oxford University Press, p. 39.

2.2 Constitutional Vision and Debates

During the drafting of the Indian Constitution, the question of whether to continue with disparate personal laws or establish a uniform code became a subject of intense debate in the Constituent Assembly. Progressive members, led by Dr. B.R. Ambedkar, advocated for a uniform code as essential for national integration and gender justice. Conversely, some members expressed concerns about potential encroachment on religious freedoms and cultural practices.⁴

The compromise reached was to include the UCC as a non-justiciable directive principle rather than a fundamental right or an immediately enforceable provision. Article 44 thus became part of the Directive Principles of State Policy (DPSP), which, according to Article 37, are “fundamental in the governance of the country” but “not enforceable by any court.”⁵

This placement reflected the constitution-makers’ recognition of the UCC as an important national objective while acknowledging the need for gradual implementation with due regard to India’s diverse social fabric. As Dr. Ambedkar remarked during the constituent assembly debates, “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.”⁶

2.3 Constitutional Tension: Personal Laws vs. Fundamental Rights

The continued existence of religion-based personal laws has created a constitutional tension that courts have grappled with repeatedly. This tension manifests primarily at two levels:

First, between Article 25 (right to freedom of religion) and Article 44 (directive for a UCC). While Article 25 guarantees the right to practice and propagate religion, it also includes a crucial qualification—this right is “subject to public order, morality and health and to the other provisions of this Part.”⁷ This qualification has been interpreted to suggest that religious practices inconsistent with fundamental rights could be reformed.

Second, between Article 14 (right to equality) and Article 15 (prohibition of discrimination on

⁴ Constituent Assembly Debates, Vol. VII, pp. 540-552.

⁵ Constitution of India, Article 37.

⁶ Dr. B.R. Ambedkar’s speech in the Constituent Assembly on November 23, 1948, Constituent Assembly Debates, Vol. VII, p. 551.

⁷ Constitution of India, Article 25(1).

grounds of religion, race, caste, sex, or place of birth) on one hand, and the disparities inherent in various personal laws on the other. Many provisions in religious personal laws, particularly regarding inheritance, marriage, and divorce rights, have been criticized for discriminating on the basis of gender.⁸

This constitutional tension has provided the backdrop against which judicial interventions in personal laws have evolved, gradually pushing toward greater alignment with constitutional principles while navigating sensitive issues of religious autonomy.

3. Judicial Evolution: Landmark Cases and Their Impact

3.1 State of Bombay v. Narasu Appa Mali (1952)

One of the earliest cases addressing the relationship between personal laws and the Constitution was *State of Bombay v. Narasu Appa Mali*.⁹ The Bombay High Court held that personal laws do not fall within the definition of “laws in force” under Article 13 of the Constitution, which subjects pre-constitutional laws to fundamental rights scrutiny. The court reasoned that personal laws derived their authority from religious texts and customs rather than from legislation, exempting them from constitutional review.

Justice Chagla observed: “The framers of the Constitution wanted to leave the personal laws outside the ambit of Part III of the Constitution” (which deals with fundamental rights).¹⁰ This judgment effectively created a shield around personal laws, protecting them from challenges based on fundamental rights violations—a position that would be gradually reconsidered in subsequent decades.

3.2 Mohd. Ahmed Khan v. Shah Bano Begum (1985)

The watershed moment in UCC discourse came with the *Shah Bano* case.¹¹ The Supreme Court ruled that a Muslim woman was entitled to maintenance from her husband beyond the iddat period under Section 125 of the Criminal Procedure Code, despite contrary provisions in Muslim personal law. Chief Justice Y.V. Chandrachud’s judgment went beyond the immediate dispute to emphasize the need for implementing the UCC:

⁸ Agnes, F. (2011). “Family Law: Marriage, Divorce, and Matrimonial Litigation.” In *The Oxford Handbook of Indian Constitution*, Oxford University Press, pp. 787-803.

⁹ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

¹⁰ *Ibid*, para 24.

¹¹ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

“It is also a matter of regret that Article 44 of our Constitution has remained a dead letter... A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.”¹²

This obiter dicta explicitly linking UCC to national integration sparked nationwide controversy. Under political pressure, the government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, effectively overturning the judgment and exempting Muslim women from the purview of Section 125 CrPC.¹³ The legislative response to Shah Bano demonstrated the political sensitivity surrounding personal law reforms and the challenges in implementing a UCC through judicial pronouncements alone.

3.3 Sarla Mudgal v. Union of India (1995)

In *Sarla Mudgal*,¹⁴ the Supreme Court addressed the issue of Hindu men converting to Islam solely to contract a second marriage without dissolving their first marriage. The court held that a Hindu marriage could only be dissolved under the Hindu Marriage Act, and conversion to Islam for the purpose of remarriage without dissolving the first marriage would constitute bigamy under Section 494 of the Indian Penal Code.

Justice Kuldeep Singh’s judgment contained strong advocacy for a UCC, stating:

“The successive governments have, till date, been wholly remiss in their duty of implementing the constitutional mandate under Article 44... When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of ‘uniform civil code’ for all citizens in the territory of India.”¹⁵

This judgment represented an important step in preventing the misuse of personal laws and reinforced the judiciary’s growing impatience with the legislature’s inaction on implementing the UCC.

3.4 Danial Latifi v. Union of India (2001)

Following the controversy surrounding the *Shah Bano* case and the subsequent legislative response, the constitutionality of the Muslim Women (Protection of Rights on Divorce) Act,

¹² Ibid, para 32.

¹³ Muslim Women (Protection of Rights on Divorce) Act, 1986.

¹⁴ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

¹⁵ Ibid, para 44.

1986 was challenged in *Danial Latifi*.¹⁶ The Supreme Court upheld the Act but interpreted it to mean that a Muslim husband's obligation to provide maintenance to his divorced wife extends beyond the iddat period, effectively harmonizing the Act with the principle established in *Shah Bano*.

The court demonstrated judicial creativity by interpreting the Act in a manner consistent with constitutional principles of equality and dignity, while formally respecting the legislature's authority. This approach reflected a growing judicial tendency to indirectly reform personal laws through interpretation rather than direct invalidation.¹⁷

3.5 John Vallamattom v. Union of India (2003)

In *John Vallamattom*,¹⁸ the Supreme Court struck down Section 118 of the Indian Succession Act, which imposed restrictions on Christians' right to bequeath property for religious or charitable purposes. Chief Justice V.N. Khare observed:

"We would like to state that Article 44 provides that the State shall endeavor to secure for all citizens a uniform civil code throughout the territory of India. It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country."¹⁹

This case highlighted the discriminatory aspects of certain laws applicable to specific religious communities and reinforced judicial support for a UCC.

3.6 Shayara Bano v. Union of India (2017)

The landmark *Triple Talaq* case²⁰ marked a significant departure from the *Narasu Appa Mali* doctrine. The Supreme Court, by a 3:2 majority, invalidated the practice of instant triple talaq (talaq-e-biddat) among Muslims, finding it unconstitutional. The majority held that this practice violated fundamental rights guaranteed under Articles 14, 15, and 21 of the Constitution.

Justice Rohinton Nariman's opinion explicitly recognized that personal laws, when codified

¹⁶ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

¹⁷ Parashar, A. (2013). "Religious Personal Laws as Non-State Laws: Implications for Gender Justice." *Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 5-23.

¹⁸ *John Vallamattom v. Union of India*, AIR 2003 SC 2902.

¹⁹ *Ibid*, para 44.

²⁰ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

into statutes, become “laws in force” under Article 13 and must conform to fundamental rights.²¹ Even Justice Kurian Joseph, who decided on narrower grounds, held that practices that are against the basic tenets of the Quran cannot be protected under Article 25.

This judgment represented a watershed moment in subjecting personal laws to constitutional scrutiny and paved the way for subsequent reforms, including the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized triple talaq.²²

3.7 Joseph Shine v. Union of India (2018)

In *Joseph Shine*,²³ the Supreme Court unanimously struck down Section 497 of the Indian Penal Code, which criminalized adultery. The court found the provision to be based on gender stereotypes and violative of Articles 14, 15, and 21 of the Constitution. Chief Justice Dipak Misra observed that “a law that treats women differently based on gender stereotypes is an affront to women’s dignity.”²⁴

While not directly addressing the UCC, this judgment continued the judicial trend of scrutinizing laws that perpetuate gender inequality, a principle central to the UCC discourse.

3.8 Indian Young Lawyers Association v. State of Kerala (Sabarimala Case) (2018)

The *Sabarimala* judgment²⁵ addressed the exclusion of women of menstruating age from entering the Sabarimala temple. The majority opinion held that the practice violated women’s right to equality and freedom of religion. Justice D.Y. Chandrachud’s concurring opinion emphasized that “religious practices that subordinate women or exclude them from the life of the community should not be allowed to claim constitutional protection.”²⁶

This case illustrated the judiciary’s willingness to subject religious practices to constitutional scrutiny, particularly when they involve gender discrimination. The principles articulated in this judgment have significant implications for personal laws and strengthen the constitutional case for a UCC.

²¹ Ibid, opinion of Justice Rohinton Nariman, para 25.

²² Muslim Women (Protection of Rights on Marriage) Act, 2019.

²³ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

²⁴ Ibid, opinion of Chief Justice Dipak Misra, para 56.

²⁵ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

²⁶ Ibid, opinion of Justice D.Y. Chandrachud, para 298.

4. Contemporary Developments and Challenges

4.1 The Uttarakhand Uniform Civil Code, 2024

In February 2024, Uttarakhand became the first state in India to implement a UCC, marking a historic milestone in the country's legal landscape.²⁷ The Uttarakhand UCC applies to all residents of the state except the tribal communities protected under the Sixth Schedule of the Constitution. It establishes uniform provisions for:

1. Registration of marriages and live-in relationships
2. Divorce and maintenance
3. Inheritance and succession
4. Adoption and guardianship

Key features of the Uttarakhand UCC include the prohibition of polygamy and polyandry, mandatory registration of marriages and live-in relationships, equal inheritance rights for all children regardless of gender, and a uniform age of marriage (21 for men and 18 for women).²⁸ The Uttarakhand model represents a significant development that could serve as a template for other states or a national UCC. However, it has also faced criticism from minority groups concerned about religious freedoms and has been challenged in the Supreme Court on grounds of encroaching upon the central government's legislative domain.²⁹

4.2 Law Commission Reports and Recommendations

The Law Commission of India has examined the UCC question on multiple occasions, reflecting evolving perspectives on its implementation:

The 21st Law Commission (2018) concluded that a UCC was “neither necessary nor desirable at this stage,” advocating instead for reforms within personal laws to eliminate discrimination and ensure that they conform to constitutional principles.³⁰ The Commission recommended:

1. Codification of personal laws that remain uncoded
2. Amendments to existing codified personal laws to remove provisions that perpetuate gender inequality
3. Optional UCC that citizens could adopt voluntarily

In contrast, the 22nd Law Commission initiated fresh consultations on UCC in 2022, indicating the government's renewed interest in pursuing this constitutional directive.³¹

²⁷ The Uttarakhand Uniform Civil Code, 2024.

²⁸ Ibid, Chapters II-V.

²⁹ Muslim Personal Law Board challenges Uttarakhand's UCC in Supreme Court, *The Hindu*, March 10, 2024.

³⁰ Law Commission of India, Consultation Paper on Reform of Family Law, August 31, 2018.

³¹ Law Commission of India, Public Notice for Fresh Consultation on Uniform Civil Code, June 14, 2022.

4.3 Political and Social Discourse

The UCC discourse in contemporary India has become increasingly polarized. Proponents argue that a UCC is essential for:

1. Advancing gender justice by eliminating discriminatory provisions in personal laws
2. Promoting national integration by emphasizing citizenship over religious identity
3. Fulfilling a constitutional mandate that has been neglected for too long

Opponents express concerns regarding:

1. Potential homogenization that may not respect India's pluralistic traditions
2. Fears of majoritarian imposition and erosion of minority rights
3. Constitutional questions about the balance between religious freedom and state intervention

Political parties have adopted varying positions, often influenced by electoral considerations. The Bharatiya Janata Party has consistently advocated for a UCC in its election manifestos, while many opposition parties have expressed reservations about its implementation without adequate consultation with minority communities.³²

4.4 International Perspectives and Comparative Analysis

India's approach to personal laws and UCC can be contextualized through comparative analysis with other pluralistic societies:

1. **Turkey** adopted secularism and a uniform civil code under Kemal Atatürk in the 1920s, replacing Islamic law with a civil code based on the Swiss model.³³
2. **Indonesia**, despite having the world's largest Muslim population, has maintained a civil code applicable to all citizens in many matters while preserving religious courts for specific issues.³⁴
3. **Lebanon** maintains a system of legal pluralism where different religious communities administer their personal laws, similar to India's current system.³⁵

These comparative experiences suggest that successful legal reforms in pluralistic societies typically require a balance between respecting cultural diversity and ensuring adherence to universal human rights principles.

³² Election Manifesto of Bharatiya Janata Party, 2019 and 2024.

³³ Yilmaz, I. (2005). *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Ashgate Publishing, pp. 86-119.

³⁴ Cammack, M.E. (2009). "Legal Aspects of Muslim-Non-Muslim Marriage in Indonesia." In *Mixed Marriages: Intermarriage and Group Identity in the Second Temple Period*, edited by Christian Frevel, T&T Clark, pp. 54-78.

³⁵ Shehadeh, L.R. (1998). "The Legal Status of Married Women in Lebanon." *International Journal of Middle East Studies*, 30(4), pp. 501-519.

5. The Path Forward: Balancing Uniformity and Diversity

5.1 Gender Justice as a Constitutional Imperative

At the heart of the UCC debate lies the question of gender justice. Personal laws across religions contain provisions that disadvantage women in matters of marriage, divorce, inheritance, and guardianship. The Supreme Court in *Shayara Bano* recognized that “the fundamental nature of Islamic religion cannot be altered by any authority but the practice of triple talaq is derogatory to the dignity of women.”³⁶

A UCC that ensures gender equality across all communities would align with India’s constitutional commitments and international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³⁷ However, the approach to achieving gender justice need not necessarily involve wholesale replacement of personal laws; it could also be pursued through gender-sensitive reforms within each personal law system.

5.2 Gradual and Consultative Approach

The successful implementation of a UCC likely requires a gradual and consultative approach that builds consensus across communities. This might involve:

1. **Sequenced Reforms:** Beginning with less contentious areas (such as adoption or succession) before addressing more sensitive matters (such as marriage and divorce)
2. **Meaningful Consultation:** Ensuring participation from all religious communities, women’s groups, legal experts, and civil society in the drafting process
3. **Opt-in Provisions:** Following Dr. Ambedkar’s suggestion of initially making the UCC optional for those who choose to be governed by it³⁸
4. **Constitutional Safeguards:** Incorporating specific protections for cultural and religious practices that do not contradict fundamental constitutional values

The Goa Civil Code, which has operated successfully since Portuguese colonial times, offers an instructive example of how uniform laws can accommodate certain community-specific provisions while maintaining an overall framework of equality.³⁹

³⁶ *Shayara Bano v. Union of India*, (2017) 9 SCC 1, para 394.

³⁷ Convention on the Elimination of All Forms of Discrimination Against Women, ratified by India on July 9, 1993.

³⁸ Dr. B.R. Ambedkar’s speech in the Constituent Assembly on November 23, 1948, Constituent Assembly Debates, Vol. VII, p. 551.

³⁹ De Souza, A. (2019). “The Goa Civil Code: A Model for a Uniform Civil Code?” In *Uniform Civil Code for India: Prospects and Challenges*, edited by R.K. Sinha, Sage Publications, pp. 112-134.

5.3 Federalism and State-Level Experiments

The implementation of UCC by Uttarakhand opens up possibilities for a federal approach to this constitutional directive. Under Entry 5 of the Concurrent List (marriage and divorce; infants and minors; adoption; wills, intestacy, and succession; joint family and partition), both the Union and state governments have legislative competence in matters typically covered by a UCC.⁴⁰

This concurrent jurisdiction allows for state-level experimentation that can:

1. Test different models of uniformity adapted to local contexts
2. Generate empirical evidence on the impacts of various approaches
3. Create momentum for national-level reforms based on successful state experiences

However, this approach also raises concerns about legal fragmentation if different states adopt substantially different civil codes, potentially complicating interstate matters involving personal laws.

5.4 Judicial Role in Constitutional Evolution

The judiciary has played a crucial role in gradually aligning personal laws with constitutional principles, even without a comprehensive UCC. This incremental approach has several advantages:

1. It addresses specific discriminatory provisions without wholesale replacement of personal laws
2. It allows for evolutionary change that may face less resistance than revolutionary reform
3. It maintains the balance between judicial intervention and legislative prerogative

Cases like *Shayara Bano*, *Joseph Shine*, and *Indian Young Lawyers Association* demonstrate how constitutional courts can contribute to legal reform while respecting the separation of powers. However, as Justice Chandrachud noted in the *Sabarimala* case, “The task of reformation has to be undertaken by the State and the courts simultaneously, the final word in matters constitutional being spoken by the courts.”⁴¹

⁴⁰ Constitution of India, Seventh Schedule, List III, Entry 5.

⁴¹ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, opinion of Justice D.Y. Chandrachud, para 412.

6. Conclusion

The journey toward a Uniform Civil Code in India represents a complex interplay between constitutional aspirations, religious diversity, gender justice, and political realities. While Article 44 provides a clear directive for establishing a UCC, its implementation requires careful navigation of India's pluralistic social fabric.

The judicial evolution traced in this paper demonstrates a gradual but consistent movement toward subjecting personal laws to constitutional scrutiny, particularly regarding gender equality. The Supreme Court has increasingly emphasized that religious freedom cannot justify practices that violate fundamental rights or human dignity.

Uttarakhand's implementation of a state-level UCC in 2024 marks a significant milestone and provides an opportunity to assess the practical implications of such uniformity. Whether this will catalyze similar reforms in other states or at the national level remains to be seen.

The path forward likely involves a balanced approach that:

1. Prioritizes gender justice across all personal law systems
2. Engages in meaningful consultation with all stakeholders
3. Proceeds gradually, beginning with areas of greater consensus
4. Respects diversity while upholding constitutional values
5. Learns from comparative experiences and state-level experiments

Ultimately, a UCC should not be seen merely as legal uniformity for its own sake but as a means to achieve the constitutional guarantees of equality, dignity, and justice for all citizens. As Justice Chandrachud observed in the *Sabarimala* case, "The Constitution exists not only to disenable entrenched structures of discrimination and prejudice, but to empower those who traditionally have been deprived of an equal citizenship."⁴² This empowering vision of constitutionalism provides the normative foundation for approaching the complex question of personal law reforms in India's diverse democracy.

References

⁴² Ibid, para 415.