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Department of Laws, Panjab University,  
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## **ABSTRACT:**

*The Uniform Civil Code (UCC)* has long been one of the most contested legal and political issues in India. *Rooted in Article 44 of the Directive Principles of State Policy* in the Constitution of India, the idea of a UCC calls for a single set of secular civil laws applicable to all citizens, irrespective of religion, caste, or community. Advocates argue that it ensures equality before law, gender justice, and strengthens national integration. Opponents, however, caution that it may undermine the pluralistic fabric of Indian society, curtail religious freedoms under Article 25, and impose majoritarian cultural values. Over the decades, the Indian judiciary has repeatedly emphasized the desirability of a UCC, especially in cases dealing with personal laws such as *Mohd. Ahmed Khan vs. Shah Bano Begum*<sup>1</sup> and *Sarla Mudgal vs. Union of India*<sup>2</sup>. The Law Commission of India has also deliberated on the subject extensively, with its 2018 Consultation Paper recommending a more nuanced approach of reforming personal laws rather than enforcing a rigid uniform code. While Goa has often been hailed as the only Indian state with a functioning civil code applicable to all communities, its model remains limited and not without exceptions. More recently, the State of Uttarakhand enacted its own UCC in 2024, reigniting the national debate. This paper examines the constitutional, historical, and socio-legal dimensions of the UCC, while also analyzing the challenges of implementation in a diverse country like India. It argues that while the UCC remains a constitutional ideal, its realization must be approached cautiously, balancing the principles of equality and secularism with respect for India's cultural pluralism.

## **I. INTRODUCTION:**

*The debate over the Uniform Civil Code (UCC)* is one of the oldest and most complex legal questions in independent India. It lies at the intersection of constitutional law, personal laws, gender justice, and secularism. Article 44 of the Constitution directs the State to “endeavour

<sup>1</sup> 1985 SCR (3) 844.

<sup>2</sup> 1995 AIR 1531, 1995 SCC (3) 635, JT 1995 (4) 331, 1995 SCALE (3) 286.

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*to secure for the citizens a uniform civil code throughout the territory of India.”<sup>3</sup>* While this provision was included as a *Directive Principle of State Policy, making it non-justiciable, its presence reflects the framers’* vision of a legal framework where all citizens would be governed by common civil laws, irrespective of their religion. Historically, India has followed a system where different religious communities are governed by their respective personal laws in matters such as marriage, divorce, inheritance, and adoption. *Hindus, Muslims, Christians, Parsis, and tribal groups follow separate sets of laws, either codified or uncodified.*<sup>4</sup> This plurality, while reflecting India’s cultural diversity, has also been a source of legal inequality, especially in the context of gender rights. The framers of the Constitution debated the issue extensively, with leaders such as Dr. B.R. Ambedkar supporting a common code in the interest of national unity and women’s equality, while others feared it would erode religious freedom.<sup>5</sup>

The judiciary has played a central role in keeping the debate alive. In *Mohd. Ahmed Khan vs. Shah Bano Begum*,<sup>6</sup> the Supreme Court upheld the right of a divorced Muslim woman to maintenance under Section 125 of the Code of Criminal Procedure, stressing the need for a UCC to secure gender justice. Similarly, in *Sarla Mudgal vs. Union of India*,<sup>7</sup> the Court observed that the absence of a uniform code leads to conflicts and misuse of personal laws, reiterating the constitutional promise under Article 44. More recently, in *Shayara Bano v. Union of India*,<sup>8</sup> where the practice of triple talaq was struck down, the Court once again highlighted the importance of reform in personal laws. Beyond judicial pronouncements, the Law Commission of India has also provided valuable insights. Its 21st Report in 1961 and later reports acknowledged the desirability of uniformity but highlighted the challenges in implementation. The 2018 Consultation Paper notably concluded that a UCC is neither

<sup>3</sup> INDIA CONST. art. 44.

<sup>4</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 45–47 (2003).

<sup>5</sup> Constituent Assembly Debates, Vol. VII, Nov. 23, 1948, at 540–42.

<sup>6</sup> (1985) 2 S.C.C. 556.

<sup>7</sup> (1995) 3 S.C.C. 635

<sup>8</sup> (2017) 9 S.C.C. 1.

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“*necessary nor desirable*” at this stage, advocating instead for piecemeal reforms to ensure gender justice within each personal law framework.<sup>9</sup> At the state level, two models have been particularly noteworthy. Goa has operated under the Portuguese Civil Code of 1867, which applies to all communities and is often hailed as a “*mini-UCC*.”<sup>10</sup> However, scholars argue that Goa’s model is not entirely uniform, as it permits certain religious exceptions and customary practices. More recently, in 2024, Uttarakhand became the first Indian state to enact a Uniform Civil Code, bringing marriage, divorce, succession, and live-in relationships under a single secular law. While the law has been praised as a progressive step, it has also faced criticism for inadequate consultation with minority communities and tribal groups.<sup>11</sup> The debate over the UCC is thus not merely a legal question but also a socio-political one. On one hand, it is argued to be essential for equality before law under Article 14 and for ensuring gender justice, particularly for women who have often been disadvantaged under personal laws. On the other hand, critics contend that enforcing uniformity in a deeply pluralistic society risks undermining the constitutional guarantee of religious freedom under Article 25. The balance between these competing constitutional values—equality and liberty—remains at the heart of the UCC discourse. This paper seeks to critically examine the UCC in India, with focus on its constitutional foundation, historical debates, judicial interventions, and the contrasting models of Goa and Uttarakhand. It argues that while the UCC remains a constitutional goal, its implementation requires a cautious, consultative, and phased approach. Only then can India reconcile its constitutional promise of equality with its commitment to pluralism.

## **II. CONSTITUTIONAL AND HISTORICAL BACKGROUND OF THE UNIFORM CIVIL CODE:**

<sup>9</sup> Law Comm’n of India, Consultation Paper on Reform of Family Law (2018).

<sup>10</sup> Nandini Chavan & Qutub Jehan Kidwai, *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code* 98–100 (2006).

<sup>11</sup> Uttarakhand Uniform Civil Code, 2024 (India).

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The Uniform Civil Code (UCC) has its roots in the constitutional vision of India's founding fathers. Although the idea of a UCC gained prominence after independence, the seeds of the debate can be traced back to colonial rule and the system of personal laws introduced by the British. Under the colonial legal framework, criminal laws and certain civil laws were codified and made applicable uniformly, while family and religious matters continued to be governed by the personal laws of respective communities. The British policy of "non-interference" in matters of religion led to the persistence of religiously differentiated personal laws, which continued even after independence.<sup>12</sup> During the framing of the Constitution, the UCC was one of the most debated issues in the Constituent Assembly. Article 44 of the Directive Principles of State Policy was incorporated to direct the State to secure a uniform civil code for its citizens.<sup>13</sup> However, it was placed under the non-justiciable part of the Constitution, indicating that while the farmers considered it an aspirational goal, they were unwilling to enforce it immediately. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, strongly argued in favor of a UCC, stating that while the State should endeavor to bring uniformity in civil laws, it would not compel any citizen to give up religious beliefs or practices in other spheres.<sup>14</sup> He emphasized that a UCC was necessary for ensuring gender equality and national integration. However, several members, such as Mohamed Ismail and Naziruddin Ahmad, opposed its inclusion, fearing it would infringe on the freedom of religion guaranteed under Article 25. As a compromise, the provision was shifted to the DPSPs, making it a guiding principle rather than an enforceable right.<sup>15</sup> The tension between Articles 25 and 44 has since remained central to the UCC debate. Article 25 guarantees freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, and health.<sup>16</sup> Critics of the UCC argue that imposing uniform laws may violate these rights by interfering with religious practices in personal law matters.

<sup>12</sup> Flavia Agnes, *Family Law and Constitutional Claims: Gender and Religion in India* 3–5 (2011).

<sup>13</sup> INDIA CONST. art. 44.

<sup>14</sup> Constituent Assembly Debates, Vol. VII, Nov. 23, 1948, at 540–42.

<sup>15</sup> Id. at 548–49.

<sup>16</sup> INDIA CONST. art. 25.

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Proponents, however, argue that personal laws are not essential religious practices and therefore can be regulated by the State under its constitutional mandate to ensure equality.

The judiciary has played an important role in shaping the discourse. In *Shah Bano Begum case*<sup>17</sup>, the Court highlighted Article 44 as an unfulfilled constitutional mandate and called upon the legislature to implement a UCC to promote national integration.<sup>18</sup> In *Sarla Mudgal judgement*,<sup>19</sup> the Court reiterated that a common civil code would prevent conflicts arising from inter-faith marriages and ensure consistency in personal law.<sup>20</sup> However, in *John Vallamattom vs. Union of India*,<sup>21</sup> the Court adopted a more cautious approach, recognizing the sensitivity of imposing uniformity in a plural society.<sup>22</sup> The historical background of personal law reforms also provides context. Post-independence, the Indian State undertook major reforms of Hindu personal law through the enactment of the ***Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956.***<sup>23</sup> These codified laws aimed at bringing uniformity within the Hindu community and advancing gender justice by abolishing discriminatory practices. However, similar comprehensive reforms were not pursued for Muslim, Christian, or Parsi laws, leading to asymmetry in personal law regimes.

The Law Commission of India has periodically examined the UCC question. Its 21st Report in 1961 stressed the desirability of a uniform law governing marriage and divorce, while subsequent reports urged caution in balancing uniformity with cultural diversity.<sup>24</sup> The 2018 Consultation Paper concluded that while the UCC was an aspirational goal, the immediate focus should be on reforming discriminatory practices within personal laws rather than

<sup>17</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556.

<sup>18</sup> *Ibid.*

<sup>19</sup> Sarla Mudgal v. Union of India, (1995) 3 S.C.C. 635.

<sup>20</sup> *Ibid.*

<sup>21</sup> (2003) 6 S.C.C. 611.

<sup>22</sup> John Vallamattom v. Union of India, (2003) 6 S.C.C. 611.

<sup>23</sup> Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955); Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956); Hindu Minority and Guardianship Act, No. 32 of 1956, INDIA CODE (1956); Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE (1956).

<sup>24</sup> Law Comm'n of India, 21st Report on the Proposal to Introduce Uniform Civil Code (1961).

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enforcing uniformity.<sup>25</sup> Another historical dimension relates to Goa, which retained the Portuguese Civil Code of 1867 even after its integration into India in 1961.<sup>26</sup> Goa's "**common civil code**" is often cited as an example of successful implementation of uniform personal laws, though it too contains exceptions for certain communities. The Goan experience reflects that while a UCC is possible, its acceptance depends on social consensus and historical continuity. In sum, the constitutional and historical background of the UCC reveals a delicate balance between the competing values of secularism, equality, and religious freedom. The framers of the Constitution envisioned the UCC as a goal, but deferred its implementation in recognition of India's diversity. Over time, the judiciary and Law Commission have reiterated its desirability while acknowledging its challenges. This duality—of aspiration and hesitation—continues to define the trajectory of the UCC debate in India.

### **III. CURRENT LEGAL FRAMEWORK: PERSONAL LAWS IN INDIA:**

The current legal framework in India reflects a complex coexistence of uniform codified laws in some areas and community-specific personal laws in others. While criminal law, contract law, and property law are codified and uniformly applicable, matters relating to marriage, divorce, succession, maintenance, adoption, and guardianship are largely governed by religion-based personal laws. This pluralistic system has been both a source of flexibility and a cause of legal inequality.<sup>27</sup>

#### **III.I HINDU LAW:**

<sup>25</sup> Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

<sup>26</sup> Nandini Chavan & Qutub Jehan Kidwai, *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code* 98–100 (2006).

<sup>27</sup> Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 17 (2003).

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Hindu personal laws, which also apply to Buddhists, Jains, and Sikhs, were codified through a series of post-independence legislations collectively known as the Hindu Code Bills.<sup>28</sup>

***These include the Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and Hindu Adoptions and Maintenance Act, 1956.***<sup>29</sup>

The reforms sought to modernize and unify practices among Hindus by outlawing polygamy, providing rights of divorce, and conferring inheritance rights upon women. ***The Hindu Succession (Amendment) Act, 2005*** further advanced gender equality by granting daughters equal rights as coparceners in ancestral property.<sup>30</sup>

### **III.II MUSLIM LAW:**

Muslim personal law in India remains largely uncodified, being derived from Shariat and interpreted through case law. ***The Shariat Application Act, 1937*** made Islamic law applicable to Muslims in matters of marriage, divorce, succession, and maintenance.<sup>31</sup> Judicial pronouncements such as ***Shah Bano*** highlighted tensions between personal law and constitutional rights.<sup>32</sup> Although the ***Muslim Women (Protection of Rights on Divorce) Act, 1986*** diluted the impact of ***Shah Bano***, subsequent cases like ***Danial Latifi vs. Union of India***<sup>33</sup>, interpreted the Act progressively, ensuring divorced Muslim women's right to a reasonable and fair provision for maintenance.<sup>34</sup> In 2019, the ***Muslim Women (Protection of Rights on Marriage) Act*** criminalized the practice of instant ***triple talaq (talaq-e-biddat)***, reflecting the gradual statutory reform of Muslim personal law.<sup>35</sup>

### **III.III CHRISTIAN LAW:**

<sup>28</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 163–65 (1966).

<sup>29</sup> Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955); Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956); Hindu Minority and Guardianship Act, No. 32 of 1956, INDIA CODE (1956); Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE (1956).

<sup>30</sup> Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).

<sup>31</sup> Muslim Personal Law (Shariat) Application Act, No. 26 of 1937, INDIA CODE (1937).

<sup>32</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556.

<sup>33</sup> AIR 2001 SC 3958.

<sup>34</sup> Danial Latifi v. Union of India, (2001) 7 S.C.C. 740.

<sup>35</sup> Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, INDIA CODE (2019).

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Christian personal law is codified primarily under the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869.<sup>36</sup> Amendments to the Divorce Act in 2001 liberalized grounds for divorce, moving towards greater parity with other communities. Succession among Christians is governed by the Indian Succession Act, 1925, which also applies to Parsis and persons of other communities not specifically covered by religious laws.<sup>37</sup>

### **III.IV PARSI LAW:**

Parsis are governed by the *Parsi Marriage and Divorce Act, 1936*, which provides for community-specific matrimonial courts.<sup>38</sup> While the law grants women rights in divorce and maintenance, scholars have argued that its community-specific nature perpetuates legal pluralism inconsistent with constitutional equality.

### **III.V TRIBAL AND CUSTOMARY LAWS:**

Certain Scheduled Tribes in India are expressly exempted from codified family laws and continue to follow their customary practices, particularly in the Northeastern states.<sup>39</sup> These customary laws are often patriarchal, restricting women's inheritance rights. However, they are protected under the Sixth Schedule of the Constitution, reflecting the constitutional accommodation of diversity. This pluralistic legal framework highlights the uneven nature of personal law reform in India. While Hindu law has undergone comprehensive codification and modernization, Muslim, Christian, and Parsi laws continue to reflect varying levels of reform. Moreover, the coexistence of codified and uncodified systems creates inconsistencies, particularly in ensuring gender justice. The judiciary has repeatedly noted that such disparities undermine the principle of equality under Article 14.<sup>40</sup> Thus, India's current legal framework presents a patchwork of religion-based personal laws, constitutional guarantees of equality, and selective legislative reforms. This legal pluralism underscores the

<sup>36</sup> Indian Christian Marriage Act, No. 15 of 1872, INDIA CODE (1872); Indian Divorce Act, No. 4 of 1869, INDIA CODE (1869).

<sup>37</sup> Indian Succession Act, No. 39 of 1925, INDIA CODE (1925).

<sup>38</sup> Parsi Marriage and Divorce Act, No. 3 of 1936, INDIA CODE (1936).

<sup>39</sup> U.N. Women, *Gender and Customary Laws in Northeast India* 22–25 (2014).

<sup>40</sup> Sarla Mudgal v. Union of India, (1995) 3 S.C.C. 635.

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continuing relevance of the UCC debate, as the absence of a uniform law perpetuates unequal treatment of citizens based on religion.

#### **IV. ARGUMENTS IN FAVOUR OF A UNIFORM CIVIL CODE:**

*The demand for a Uniform Civil Code (UCC)* is often justified on constitutional, legal, and social grounds. Proponents argue that a UCC is essential for achieving the constitutional promise of equality, promoting gender justice, strengthening secularism, and ensuring national integration.

##### **IV.I EQUALITY BEFORE LAW AND NON-DISCRIMINATION:**

A primary argument for the UCC is that it would eliminate discrimination inherent in personal laws. Article 14 of the Constitution guarantees equality before law and equal protection of laws, while Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.<sup>41</sup> However, personal laws often provide differential treatment based on religion. For example, polygamy is permitted under Muslim law but prohibited for Hindus and Christians, leading to unequal treatment of citizens.<sup>42</sup> The Supreme Court in *Sarla Mudgal* emphasized that different personal laws for different communities contradict the principle of equality and create legal inconsistencies. A UCC would ensure that all citizens, irrespective of religion, are subject to the same civil laws.<sup>43</sup>

##### **IV.II GENDER JUSTICE AND WOMEN'S RIGHTS:**

One of the strongest arguments for the UCC is its potential to advance gender justice. Personal laws have historically disadvantaged women, particularly in matters of inheritance, divorce, and maintenance. The *Shah Bano* case highlighted the vulnerability of Muslim women, where the Court upheld the right of a divorced woman to maintenance under Section 125 of the Code of Criminal Procedure.<sup>44</sup> Similarly, under Hindu law prior to the 2005

<sup>41</sup> INDIA CONST. arts. 14–15.

<sup>42</sup> Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 26–28 (2003).

<sup>43</sup> *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635.

<sup>44</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556.

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amendment, daughters were denied equal coparcenary rights in ancestral property.<sup>45</sup> The Supreme Court in *Vineeta Sharma vs. Rakesh Sharma*, later affirmed the constitutional commitment to gender equality by upholding daughters' equal coparcenary rights. Advocates argue that a UCC would harmonize such reforms across all communities, ensuring that women are not subject to patriarchal norms embedded in religious laws.<sup>46</sup>

#### **IV.III PROMOTION OF NATIONAL INTEGRATION AND SECULARISM:**

Another justification for the UCC is that it would strengthen India's secular fabric and promote national integration. India follows a model of "principled secularism," where the State respects all religions but also ensures that religion does not override constitutional values.<sup>47</sup> By providing a uniform set of civil laws, the UCC would symbolically affirm the secular character of the State. The Supreme Court in *Shayara Bano v. Union of India*, which declared triple talaq unconstitutional, recognized the need to align personal laws with constitutional morality.<sup>48</sup> Supporters contend that in a society as diverse as India, a UCC would serve as a unifying factor, ensuring that citizenship rather than religion determines civil rights and obligations.

#### **IV.IV SIMPLIFICATION OF LEGAL SYSTEM**

The existence of multiple personal laws creates complexity and confusion in the legal system. Inter-faith marriages, for example, require resort to the Special Marriage Act, 1954, which imposes procedural burdens such as mandatory notice periods, often exposing couples to social harassment.<sup>49</sup> A UCC would streamline civil law, removing inconsistencies and making the legal process simpler and more accessible to citizens. This would also reduce the

<sup>45</sup> Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956).

<sup>46</sup> Vineeta Sharma v. Rakesh Sharma, (2020) 9 S.C.C. 1.

<sup>47</sup> Rajeev Bhargava, *The Promise of India's Secular Democracy* 18 Econ. & Pol. Wkly. 1207, 1210 (1999).

<sup>48</sup> Shayara Bano v. Union of India, (2017) 9 S.C.C. 1.

<sup>49</sup> Special Marriage Act, No. 43 of 1954, INDIA CODE (1954).

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burden on courts, which frequently deal with disputes arising from overlapping personal laws.

#### **IV.V FULFILLMENT OF CONSTITUTIONAL MANDATE**

Article 44 directs the State to secure a UCC, reflecting the framers' vision of a modern, egalitarian legal system. While Directive Principles are non-justiciable, the Supreme Court has consistently held that they are fundamental to the governance of the country and must guide lawmaking. In *Kesavananda Bharati v. State of Kerala*, the Court noted that harmony between Fundamental Rights and Directive Principles is essential to realize constitutional ideals.<sup>50</sup> Thus, implementing a UCC would not only fulfill a constitutional mandate but also advance the broader goals of social justice and equality.

#### **IV.VI INTERNATIONAL PERSPECTIVE AND HUMAN RIGHTS**

##### **OBLIGATIONS**

Proponents also highlight that India, as a signatory to international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is obligated to eliminate discrimination in personal laws.<sup>51</sup> Countries like Turkey and Tunisia have already adopted secular family laws, demonstrating that religious diversity can coexist with uniform civil frameworks. Aligning Indian law with global human rights standards would strengthen India's international image as a progressive democracy committed to equality.

#### **V. ARGUMENTS AGAINST A UNIFORM CIVIL CODE**

While the Uniform Civil Code (UCC) is often portrayed as a constitutional ideal, there are equally strong arguments cautioning against its implementation. Critics point out that a rigid uniform code could undermine India's pluralistic identity, infringe upon religious freedoms, and create more social conflict than harmony.

<sup>50</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

<sup>51</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S.

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## **V.I THREAT TO RELIGIOUS FREEDOM**

Opponents argue that the UCC may infringe upon the right to freedom of religion guaranteed under Article 25 of the Constitution.<sup>52</sup> Personal laws are deeply interwoven with religious beliefs and practices, and many communities perceive them as essential to their religious identity. For instance, Muslim personal law is derived from Shariat, and any attempt to replace it with a secular law is often perceived as interference in religious affairs.<sup>53</sup> The Constituent Assembly debates reveal that Muslim members such as Mohamed Ismail opposed the UCC precisely because it would compromise their freedom to practice religion.<sup>54</sup> Thus, critics view the UCC as a potential violation of the delicate balance between secularism and religious liberty.

## **V.II RISK OF MAJORITY DOMINATION**

A central apprehension regarding the UCC is that it may lead to the imposition of majority Hindu cultural norms on minority communities.<sup>55</sup> For example, the codified Hindu law of the 1950s already embodies significant reforms, while Muslim, Christian, and Parsi laws remain partly uncodified or community specific. If a UCC were to draw heavily from Hindu law, minorities may perceive it as cultural assimilation under the guise of uniformity. Scholars like Flavia Agnes caution that uniformity does not necessarily guarantee equality, especially if it reflects majoritarian standards.<sup>56</sup>

## **V.III UNDERMINING INDIA'S PLURALISM**

India is a country of immense diversity, with multiple religions, sects, and tribal customs. Article 371A of the Constitution, for example, protects Naga customary laws, while the Sixth Schedule grants autonomy to tribal communities in the Northeast.<sup>57</sup> The implementation of a

<sup>52</sup> INDIA CONST. art. 25.

<sup>53</sup> Muslim Personal Law (Shariat) Application Act, No. 26 of 1937, INDIA CODE (1937).

<sup>54</sup> Constituent Assembly Debates, Vol. VII, Nov. 23, 1948, at 548–49.

<sup>55</sup> Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 37–38 (2003).

<sup>56</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 83–85 (1999).

<sup>57</sup> INDIA CONST. art. 371A; INDIA CONST. sched. VI.

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rigid UCC could threaten these constitutional safeguards and erode cultural pluralism. Critics argue that pluralism, not uniformity, has been India's strength, and legal systems should accommodate rather than eliminate diversity.

#### **V.IV LACK OF SOCIAL CONSENSUS**

The absence of broad-based consensus is another reason for caution. The Law Commission of India in its 2018 Consultation Paper concluded that a UCC is neither necessary nor desirable at this stage, emphasizing that reforms should focus on removing gender inequality within personal laws rather than enforcing uniformity.<sup>58</sup> Attempts to push a UCC without adequate dialogue could polarize communities and lead to social unrest.

#### **V.V PRACTICAL DIFFICULTIES OF IMPLEMENTATION**

Implementing a UCC poses significant practical challenges. Personal laws are not only religious but also regional and customary. For instance, Hindu personal law varies across states, with certain communities following matrilineal inheritance systems, such as the Marumakkathayam law in Kerala prior to codification.<sup>59</sup> Similarly, tribal communities in central and northeastern India follow customary laws that are distinct from mainstream practices. Enforcing a UCC would require reconciling these diverse traditions, which may not be feasible in practice.

#### **V.VI JUDICIAL LIMITATIONS AND OVERREACH**

Although the judiciary has often supported the idea of a UCC, critics caution that courts may be overstepping their role. In *Sarla Mudgal v. Union of India*, the Court strongly advocated for a UCC, but scholars argue that such pronouncements blur the separation of powers, as it is ultimately the role of the legislature to implement social reform. The imposition of uniformity through judicial dicta may lack legitimacy without democratic deliberation.<sup>60</sup>

#### **V.VI RISK OF POLITICIZATION**

<sup>58</sup> Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

<sup>59</sup> K.C. Markandan, *Modern Hindu Law* 54–56 (2009).

<sup>60</sup> *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635.

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The UCC debate has often been politicized, with different political parties using it as an electoral issue. Critics argue that the push for UCC is sometimes less about gender justice and more about consolidating majoritarian identity. This politicization undermines the sincerity of the reform and alienates minority communities, making it harder to build trust.<sup>61</sup>

## **V.VII ALTERNATIVE APPROACH: REFORM WITHIN PERSONAL LAWS**

Finally, many scholars and activists suggest that instead of enforcing a UCC, personal laws should be gradually reformed to align with constitutional principles of equality. This incremental approach respects diversity while eliminating discriminatory practices. The Supreme Court in *Shayara Bano v. Union of India*, where triple talaq was struck down, is often cited as an example of reform within personal law rather than through a uniform code.<sup>62</sup>

## **VI. GOA AND UTTARAKHAND**

### **VI.I GOA: THE PORTUGUESE CIVIL CODE**

Goa is the only state in India currently governed by a uniform civil code. The Portuguese Civil Code of 1867, retained even after Goa's integration into India in 1961, continues to regulate marriage, divorce, succession, and adoption for all communities irrespective of religion.<sup>63</sup> Unlike other states, no separate personal laws exist for Hindus, Muslims, or Christians in Goa. For instance, the law mandates compulsory registration of marriages, and provides equal property rights to spouses.<sup>64</sup> Judicial recognition of Goa's UCC came in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, where the Supreme Court observed that Goa has a model of a Uniform Civil Code applicable to all, regardless of religion.<sup>65</sup> However, critics note that even Goa's UCC is not entirely uniform—Hindu men are permitted bigamy under certain conditions, and some customary practices persist.<sup>66</sup> Nonetheless, Goa serves as

<sup>61</sup> Nivedita Menon, *Uniform Civil Code: An Ideological Debate* 30 Econ. & Pol. Wkly. 2151, 2153 (1995).

<sup>62</sup> *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.

<sup>63</sup> The Portuguese Civil Code, 1867 (as applicable in Goa).

<sup>64</sup> 2. Anthony R. D'Souza, *Goa's Civil Code: An Insight* 46 J. Indian L. Inst. 563, 566 (2004).

<sup>65</sup> *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 9 S.C.C. 512.

<sup>66</sup> Flavia Agnes, *Family Law and Constitutional Claims in India* 13 Soc. & Legal Stud. 435, 440 (2004).

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an important precedent, showing that a plural society can function under a largely uniform civil framework.

## **VI.II UTTARAKHAND: THE FIRST STATE-LEVEL UCC IN INDEPENDENT INDIA**

In 2024, Uttarakhand became the first Indian state to enact a UCC after independence. The Uttarakhand Uniform Civil Code, 2024 applies to all residents of the state irrespective of religion, covering marriage, divorce, inheritance, and live-in relationships.<sup>67</sup> The Code prohibits practices like polygamy and ensures equal rights for women in matters of property succession. It also mandates compulsory registration of marriages, divorces, and live-in relationships.<sup>68</sup> The enactment was based on recommendations from a state-appointed expert committee chaired by Justice (Retd.) Ranjana Prakash Desai.<sup>69</sup> The committee argued that uniformity in personal laws would promote gender justice and social equality in line with Article 44 of the Constitution. The legislation, however, exempts Scheduled Tribes in accordance with constitutional protections, reflecting the continued tension between uniformity and pluralism.<sup>70</sup> Critics have raised concerns about the Code's political undertones and its potential misuse to target minority practices.<sup>71</sup> Questions have also been raised about enforceability, given the state's limited administrative capacity to oversee compulsory registration of live-in relationships. Nevertheless, Uttarakhand's experiment marks a watershed moment in the UCC debate, as it demonstrates the possibility of enacting state-level uniform codes even in the absence of central legislation.

<sup>67</sup> The Uttarakhand Uniform Civil Code, 2024 (Uttarakhand Act No. 1 of 2024).

<sup>68</sup> Id. §§ 4–9.

<sup>69</sup> Report of the Expert Committee on Uniform Civil Code, Govt. of Uttarakhand (2023).

<sup>70</sup> INDIA CONST. sched. V & VI.

<sup>71</sup> Jaya Menon, *Uniform Civil Code in Uttarakhand: Politics and Gender Justice*, The Hindu (Feb. 8, 2024).

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### **VI.III COMPARATIVE INSIGHTS FROM GOA AND UTTARAKHAND**

The experiences of Goa and Uttarakhand offer valuable lessons for the national UCC debate. Goa demonstrates that a relatively uniform civil framework can operate in practice, but also reveals that uniformity is often incomplete and tempered by custom. Uttarakhand, on the other hand, represents a contemporary attempt to implement a UCC within a federal framework, highlighting both opportunities and challenges. While both states showcase the constitutional aspiration of Article 44, they also illustrate the delicate balance required between promoting equality and preserving cultural diversity.

### **VII. CHALLENGES AND PRACTICAL ISSUES IN IMPLEMENTING A UNIFORM CIVIL CODE NATIONWIDE**

The implementation of a Uniform Civil Code (UCC) across India has remained elusive despite its constitutional mandate under Article 44. While judicial pronouncements and legislative debates have consistently reiterated its desirability, the practical challenges of framing and enforcing a uniform law in a diverse country like India are immense. These challenges can be broadly categorized into socio-cultural, political, legal, and administrative dimensions.

#### **VII.I INDIA'S RELIGIOUS AND CULTURAL DIVERSITY**

India's pluralistic society comprises multiple religions, sects, castes, and tribal communities, each with distinct personal laws and customary practices. Hindu law itself is not entirely uniform; matrilineal systems such as Marumakkathayam in Kerala and Aliyasantana in Karnataka historically governed inheritance rights in deviation from patriarchal norms.<sup>72</sup> Muslim law is based on multiple schools such as Hanafi, Shafi'i, and Ithna Ashari, each with variations in marriage, divorce, and inheritance practices.<sup>73</sup> Likewise, tribal communities in

<sup>72</sup> K.C. Markandan, *Modern Hindu Law* 54–56 (2009).

<sup>73</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 119–22 (2003).

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the Northeast and central India follow customary laws that are constitutionally protected.<sup>74</sup> Implementing a uniform code risks ignoring this diversity and may be perceived as cultural homogenization.

### **VII.II FEAR OF MAJORITY IMPOSITION**

One of the foremost challenges is the fear among minority communities, particularly Muslims and Christians, that a UCC would effectively impose Hindu norms under the guise of uniformity.<sup>75</sup> Critics argue that because Hindu law has already been extensively codified and reformed, any UCC modeled on it would disproportionately reflect Hindu practices.<sup>76</sup> This perception creates distrust and resistance, undermining the very goal of integration that the UCC seeks to achieve.

### **VII.III POLITICAL AND ELECTORAL SENSITIVITIES**

The UCC has long been a politically contentious issue, often used as an electoral plank by political parties.<sup>77</sup> This politicization makes constructive dialogue difficult, as communities view the proposal through the lens of political motivations rather than constitutional ideals. The communal polarization following the *Shah Bano* judgment and subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, illustrates how UCC-related reforms can spark political backlash.<sup>78</sup> Without bipartisan support and sustained dialogue with stakeholders, any attempt to legislate a UCC at the national level risks deepening communal divides.

### **VII.IV JUDICIAL OVERREACH AND LEGISLATIVE HESITATION**

The judiciary has repeatedly expressed dissatisfaction with the delay in implementing a UCC, as seen in *Sarla Mudgal and Shah Bano*.<sup>79</sup> However, courts lack the democratic legitimacy to

<sup>74</sup> INDIA CONST. sched. V & VI.

<sup>75</sup> Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 37–38 (2003).

<sup>76</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 83–85 (1999).

<sup>77</sup> Nivedita Menon, *Uniform Civil Code: An Ideological Debate* 30 Econ. & Pol. Wkly. 2151, 2153 (1995).

<sup>78</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556.

<sup>79</sup> Sarla Mudgal v. Union of India, (1995) 3 S.C.C. 635.

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enact such sweeping reforms, which must ultimately come from Parliament. Legislators, on the other hand, have historically avoided UCC implementation due to its sensitive nature, preferring piecemeal reforms within personal laws. This institutional deadlock has stalled meaningful progress.<sup>80</sup>

## **VII.V ADMINISTRATIVE AND ENFORCEMENT HURDLES**

Even if a UCC were legislated, its enforcement would present practical difficulties. For instance, the Uttarakhand UCC, 2024 requires compulsory registration of marriages, divorces, and even live-in relationships.<sup>81</sup> While progressive in intent, such provisions raise questions about privacy, bureaucratic overreach, and the state's capacity to monitor compliance effectively. At the national level, such requirements would pose an enormous administrative burden on already strained civil registration systems.

## **VII.VI CONSTITUTIONAL SAFEGUARDS FOR TRIBAL AND CUSTOMARY LAWS**

The Constitution itself protects certain customary laws and religious practices. Article 371A safeguards Naga customary laws, while the Sixth Schedule provides autonomy to tribal communities in the Northeast.<sup>82</sup> Imposing a UCC nationwide would conflict with these constitutional protections unless exceptions were made, which in turn would dilute the "uniform" nature of the Code. Striking a balance between constitutional equality and protection of cultural autonomy remains a formidable challenge.

## **VII.VII LACK OF SOCIAL CONSENSUS**

Perhaps the most critical challenge is the absence of consensus across communities. The 21st Law Commission in its 2018 Consultation Paper categorically stated that a UCC is "neither necessary nor desirable" in the current context, recommending reforms within personal laws

<sup>80</sup> Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

<sup>81</sup> The Uttarakhand Uniform Civil Code, 2024 (Uttarakhand Act No. 1 of 2024), §§ 4–9.

<sup>82</sup> INDIA CONST. art. 371A; INDIA CONST. sched. VI.

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as a more pragmatic approach. Without widespread dialogue and trust-building, imposing a UCC risks alienating minorities and eroding the legitimacy of the reform.<sup>83</sup>

## **VII.VIII RISK OF GENDER JUSTICE BEING COMPROMISED**

Ironically, while the UCC is often justified in terms of promoting gender justice, a hastily drafted code may water down progressive reforms already achieved within certain communities. For example, the Hindu Succession (Amendment) Act, 2005 gave daughters equal coparcenary rights, a reform not yet mirrored in some other personal laws.<sup>84</sup> If a UCC is drafted as a compromise to accommodate all communities, it may end up reinforcing patriarchal norms rather than dismantling them. The challenges of implementing a UCC are deeply rooted in India's socio-political fabric. While the constitutional vision of Article 44 remains relevant, any attempt to enforce uniformity must carefully navigate religious diversity, political sensitivities, constitutional safeguards, and administrative realities. Unless grounded in consensus and inclusivity, a UCC risks undermining the very ideals of equality and justice it seeks to achieve.

## **IX. CONCLUSION AND SUGGESTIONS**

The debate over the Uniform Civil Code (UCC) reflects one of the most enduring dilemmas of India's constitutional democracy: how to reconcile the principles of equality, secularism, and gender justice with the realities of religious diversity and pluralism. Since independence, Article 44 of the Constitution has served as a beacon for the UCC, yet its implementation has remained elusive. Judicial pronouncements have repeatedly highlighted its desirability, while successive Law Commissions have cautioned against hasty or coercive reforms. Case studies of Goa and Uttarakhand illustrate both the opportunities and challenges of uniform civil laws in practice, showing that while they can advance gender justice and simplify legal

<sup>83</sup> Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

<sup>84</sup> Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).

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frameworks, they may also provoke concerns of cultural homogenization and administrative overreach.

### **IX.I THE WAY FORWARD**

### **IX.II GRADUAL AND INCLUSIVE REFORM:**

Rather than enforcing a rigid, one-size-fits-all UCC, a phased approach to reform may be more pragmatic. Incremental reforms within personal laws, such as those seen in the *Shah Bano* and *Shayara Bano* cases, have demonstrated that constitutional principles can be advanced without dismantling cultural identities.<sup>85</sup> Strengthening gender justice within each community's laws, while gradually harmonizing principles across traditions, could create a foundation for eventual convergence.

### **IX.III BUILDING CONSENSUS THROUGH DIALOGUE:**

A major challenge in UCC implementation is the lack of consensus among stakeholders. Minority groups often perceive the UCC as a threat to their religious identity.<sup>86</sup> To address this, meaningful consultation with religious leaders, women's groups, civil society, and tribal communities is essential. The 21st Law Commission's emphasis on inclusivity underscores that reforms must emerge from democratic dialogue rather than unilateral imposition. Without trust-building, any attempt at national legislation risks alienation and social unrest.<sup>87</sup>

### **IX.IV PROTECTING DIVERSITY WHILE ENSURING EQUALITY:**

The UCC debate is often framed as a binary between uniformity and pluralism, but the two need not be mutually exclusive. Comparative insights show that legal pluralism can coexist with constitutional equality if discriminatory practices are reformed.<sup>88</sup> For example, tribal communities in the Northeast may retain customary laws under constitutional protections, while ensuring that such laws do not perpetuate gender discrimination. Tailoring reforms to respect both equality and diversity would better reflect India's constitutional ethos.

<sup>85</sup> Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556; *Shayara Bano v. Union of India*, (2017) 9 S.C.C.

<sup>86</sup> Constituent Assembly Debates, Vol. VII, Nov. 23, 1948, at 548–49.

<sup>87</sup> Law Comm'n of India, Consultation Paper on Reform of Family Law (2018).

<sup>88</sup> Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 119–22 (2003).

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#### **IX.V GENDER JUSTICE AS THE CORE PRINCIPLE:**

Any future UCC or personal law reform must place gender justice at the center. Women across communities continue to face discrimination in inheritance, divorce, and guardianship.<sup>89</sup> While the Hindu Succession (Amendment) Act, 2005 advanced property rights for daughters, similar reforms are needed in Muslim, Christian, and tribal personal laws. The judiciary has already intervened to strike down regressive practices, but legislative codification is necessary to institutionalize equality.<sup>90</sup> Framing the UCC as a women's rights issue, rather than a religious one, could depoliticize the debate and garner broader support.

#### **IX.VI ADMINISTRATIVE PREPAREDNESS:**

Enacting a UCC without adequate administrative capacity risks making the law ineffective. Experiences from Uttarakhand reveal that compulsory registration of marriages, divorces, and live-in relationships requires strong institutional infrastructure.<sup>91</sup> A nationwide UCC would demand significant investment in civil registration systems, awareness campaigns, and legal aid services to ensure accessibility and compliance.

#### **IX.VII INTERNATIONAL LESSONS:**

India can also draw lessons from other plural societies that have reformed personal laws. Turkey, Tunisia, and Indonesia have successfully balanced religious diversity with secular family law frameworks.<sup>92</sup> Aligning with international human rights commitments under instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) would strengthen India's global reputation as a progressive democracy committed to gender equality.<sup>93</sup>

#### **IX.VIII CONCLUSION**

<sup>89</sup> Agnes, F. *Law and Gender Inequality: The Politics of Women's Rights in India* 83–85 (1999).

<sup>90</sup> Vineeta Sharma v. Rakesh Sharma, (2020) 9 S.C.C. 1.

<sup>91</sup> The Uttarakhand Uniform Civil Code, 2024 (Uttarakhand Act No. 1 of 2024), §§ 4–9.

<sup>92</sup> Amira El-Azhary Sonbol, *Women, the Family, and Divorce Laws in Islamic History* 245–49 (1996).

<sup>93</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S.

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The UCC represents both a constitutional aspiration and a site of political contestation. While its desirability in principle is widely acknowledged, its implementation requires careful balancing of equality, secularism, and pluralism. Goa and Uttarakhand provide useful case studies but also demonstrate that uniformity is rarely absolute and must accommodate local contexts. The future of the UCC lies not in coercive uniformity but in participatory, inclusive reform that prioritizes gender justice while respecting cultural diversity. Thus, the path forward should be evolutionary rather than revolutionary: reforming personal laws incrementally, harmonizing constitutional principles across communities, building consensus through dialogue, and ensuring administrative readiness. Such an approach would honor both the spirit of Article 44 and the pluralistic soul of the Indian Constitution.

