

# Constitutional Perspectives on the Uniform Civil Code: A Focus on Women's Rights

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## **Abstract**

The Uniform Civil Code occupies a position of utmost importance within the constitutional structure of India that is enshrined in Article 44 promising uniformity in personal laws among various communities while fostering equality and justice. This paper, therefore, focuses on the constitutional dimensions of UCC, with respect to its impact on women's rights. Such a study will be based upon how personal laws, through religious customs, often perpetuate inequality.

It considers the constitutional imperative of UCC vis-à-vis basic rights under Articles 14, 15, and 21 urging equality, non-discrimination, and dignity to each citizen. Judicial decisions in judgments such as 'Shah Bano' & 'Sarla Mudgal' Cases have brought home to everybody the need for having a UCC that obliterates gender discrimination within the domain of personal laws.

While UCC promises to be a transformative tool in achieving gender justice, it also raises some critical questions regarding cultural diversity, religious freedom, and the challenge of its implementation in a pluralistic society. It is this paper's argument that the application of UCC must be balanced and inclusive in an approach to harmonize constitutional ideals with the realities of India's socio-cultural fabric and thereby empowering women and advancing their rights.

## **1. Introduction**

India is a country of cultural, religious, and ethnic diversity, with an equally complex legal system governing matters of personal law. These issues are primarily regulated by religious personal laws that often vary considerably between communities. Although this legal pluralism respects the cultural and religious identities of different groups, it has also sustained gender inequalities, particularly for women. Therefore, the UCC is conceived as something of a panacea over this inequality, so all communities enjoy equality, guarantee justice and consistency (Kumar, 2023).

This is because the UCC, based on Article 44 of the Indian Constitution, has the provisions enunciating a directive principle of state policy for the establishment of a UCC for all citizens in India. At present also, the constitution remains a directive obligation not properly implemented, and the controversies arising from the relationships between religion, culture, and gender rights have become complex issues. This research tries to analyze the complex relationship between gender equality and the UCC within the history of its establishment, basis in the legislation, social impact, and scope for further improvement (Chakraborty, 2017).

The UCC derives its authority from Article 44 of the Indian Constitution, which happens to be part of DPSP. Article 44 says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." DPSPs are not judicially enforceable but still acts as guiding principles to the state in establishing an egalitarian and just society.

The constitutional importance of the UCC comes from the basic rights reflected under Articles 14, 15, and 21 of the Constitution.

Article 14 protects the rule of "equality before the law" and "equal protection of the laws," making it free from any form of discrimination in the application of laws. Article 15 further consolidates the doctrine by making express prohibitions on grounds of religion, race, caste, sex, or place of birth (Verma, 2001). Furthermore, Article 21 protects the right to life and personal liberty and has been expansively construed by courts to be able to live with dignity and equality. Thus taken together, these provisions build an immeasurably constitutional framework for promoting a UCC as an instrument to end gender-based discrimination and secure rights equally for women. The very heart of the debate regarding the UCC is that of women's rights. Personal laws moulded by religious doctrines and patriarchal traditions have always kept women on a lower pedestal than their male counterparts. Women are denied property inheritance, receive less than their due share of maintenance at the time of separation, and are dealt with in divorce proceedings discriminatorily. These injustices would be addressed by having the UCC step forward gender justice and align personal law with constitutional values.

The judiciary has always insisted on enactment of a UCC that ensured promotion of gender equality. In the case of *Shah Bano Begum v. Union of India* (1985), the Supreme Court highlighted the plight of Muslim women under personal laws, calling for a UCC to address gender-based disparities. Similarly, In *Sarla Mudgal v. Union of India* (1995), the Court reiterated the need for a UCC to unify personal laws, emphasizing its role in achieving gender justice and national integration. These judgments reflect the judiciary's acknowledgment of the inherent contradictions between personal laws and the constitutional mandate for equality. Despite the potential benefits that may be derived from implementation, the UCC will face major challenges, especially when it comes to religious freedom and cultural identity. Critics express that a UCC would tread on the rights provided for by Articles 25 and 26, which protect the right to practice and to manage religious affairs. This is highly sensitive and complex because the balance between cultural diversity has to be weighed against constitutional principles of equality.

## **2. HISTORICAL BACKGROUND:**

The personal law in India is derived from ancient times, and was connected integrally to religious rites and customs that governed the legal regimes concerning marriage, divorce, inheritance, and succession. Personal laws were codified principally in respect to religious principles so that they correlate with the culture and spirituality of certain groups.

The Hindu scriptures including the Manusmriti and other Dharmashastras, formed the basis of Hindu personal laws while Islamic personal laws were based on the Quran, Hadith, and Sharia principles. Similarly, other religious communities followed their respective traditions and customs in matters of personal law (Derrett 1968).

In fact, it established a pluralistic legal system all throughout the colonial period aimed at maintaining social cohesion and not interfering with religious issues. The Britishers adopted the rule of 'non-interference' on religious affairs and codified personal laws for Hindus and Muslims as well although other communities were largely left unregulated. However, this process of codification was inconsistent and often biased towards patriarchy, as it benefited specific readings of religious texts over others and thus consolidated inequalities in the system of personal law (Cohn, 1996). It is evident that Indian Constitution makers wanted to modernize and integrate the legal system and maintain the diversities in culture of this country. Since it is highly probable that conflict can arise in personal laws because of colliding with the tenets of the constitution, they placed Article 44 as a DPSP and waited for a time when personal laws may be replaced by a UCC.

### **3. CONSTITUTIONAL ASPECT FOR UCC:**

The UCC based on Article 44 of the Indian Constitution forms one important mandate for bringing equality within personal legal frameworks. This Article 44, states: "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India (Constitution of India, Art. 44) However, it is worth noting that though the DPSPs are not justiciable and cannot be enforced in a court of law, they still remain the guiding fundamental principles of governance, because they are the constitutional aspirations of justice, equality, and dignity.

The framers of the Constitution could imagine the UCC harmonizing diverse personal laws eliminating gender-based discrimination. Yet, despite the constitutional imperative, the UCC is still an unrealized dream; it has been foiled by political sensitivities, socio-religious diversity, and the dilemma of reconciling cultural pluralism with ideals of the Constitution. Indeed, the delay has seen the debate over whether the state is giving greater importance to religious sentiments over the fundamental rights, that is, women's rights balancing 'Secularism and Religious Freedom'. India has a secularism that is uniquely different in the sense that it doesn't separate church and state but equally respects and protects all religions.

Articles 25-28 of the Constitution guarantee to safeguard freedom of conscience, that is, they ensure to people the free exercise and propagation of any profession or religion. Under Articles 25(2) (a), the State shall take steps to make effective provisions for securing the removal of social evils.

This provision enables the state to intervene in the personal laws in view of the protection of constitutional principles, including gender justice.

However, the UCC is still balancing the religious freedom and secularism. It is argued that the UCC is violating Articles 25 and 26, which protect religious practices. Reforms of personal laws eliminating gender discrimination do not violate religious freedom but strengthen constitutional values of equality and dignity, according to proponents.

The judiciary, however, has been the UCC's greatest supporter, more so in the cases that depict the contradictions in personal laws:

- i. ***Mohd. Ahmed Khan v. Shah Bano Begum, 1985***: In this landmark case, the Supreme Court upheld the right of a Muslim woman, Shah Bano, to receive maintenance as prescribed under Section 125 of the Criminal Procedure Code. In this judgment, the Supreme Court criticized the discriminatory features of personal laws and opined that a Uniform Civil Code (UCC) will bring about gender equality and uniformity in civil matters.
- ii. ***Sarla Mudgal v. Union of India, 1995***: This legal case examined the challenges associated with polygamy in marriages between individuals of different faiths, as well as the exploitation of personal laws. The Court emphasized the significance of the Uniform Civil Code (UCC) in promoting national cohesion and safeguarding against the infringement of constitutional values related to equality. The Supreme Court was compelled to examine a series of judicial precedents to establish a fundamental principle: a marriage solemnized under a specific personal law cannot be dissolved by applying another personal law to which one spouse converts, while the other spouse refuses to do so. This ruling underscores the legal complexities arising from religious conversions and their impact on matrimonial obligations, emphasizing that the dissolution of a marriage must adhere to the personal law under which it was originally contracted. The court ultimately invokes the residuary rule in the administration of justice, emphasizing that the actions of a spouse who converts to Islam must be evaluated based on the principles of justice, equity, and good conscience. Furthermore, relying on the doctrine of natural justice, the court asserts that even if a Hindu husband has the right to convert to Islam, he does not have the right to enter into a second marriage without legally dissolving his first marriage. The court concludes that such a second marriage, contracted after conversion, violates the principles of natural justice and is therefore void. This ruling reinforces the importance of adhering to ethical and legal standards in matrimonial matters, regardless of religious conversions (Kumar, 2000).
- iii. ***Danial Latifi v. Union of India, 2001***: The judgment upheld the validity of the Muslim Women Act of 1986, read it in such a way that maintenance rights were conferred upon divorced Muslim women, and underlined the need for laws to be in concert with constitutional guarantees of dignity and justice.

#### **4. PERSONAL LAWS ON WOMEN'S RIGHT**

Personal laws mainly based on patriarchal traditions, discriminate between women of the different communities as follows:

**4.1. Marriage and Divorce:** Islamic personal law has traditionally permitted men to unilaterally divorce their wives through talaq-e-biddat until the practice was declared invalid by the Triple Talaq ruling in 2019. Hindu law originally treated marriage as a sacrament, which meant that women had limited rights to divorce until legislative changes brought greater parity. Christian women also faced unequal conditions regarding divorce until the Indian Divorce (Amendment) Act was passed in 2001.

**4.1.1. Hindu Law:** Hindu marriages have always been considered sacred, and therefore divorce has always been out of the hands of women. The Hindu Marriage Act, 1955, brought provisions for divorce, but societal and family pressure often deters women from resorting to it (The Hindu Marriage Act, 1995).

**4.1.2.Muslim Law:** Muslim personal laws permitted unilateral divorce for men through talaq (repudiation), but women had to meet certain legal conditions before they could initiate divorce. The Supreme Court's Triple Talaq Judgment of 2019 declared talaq-e-biddat unconstitutional, thus ensuring greater equality for Muslim women (Shayara Bano v. Union of India, 2017).

**4.1.3.Christian Law:** In the earlier laws Christian women faced unequal grounds for dissolution of marriage. Whereas grounds on which men could claim dissolution were mere adultery, while additional grounds had to be proven by women, like cruelty or desertion (Indian Divorce (Amendment) Act, 2001).

**4.2Inheritance:** Under Islamic law, women inherit half of what male counterparts receive. Hindu women, until the Hindu Succession (Amendment) Act, 2005, faced systemic exclusion from ancestral property under the Mitakshara coparcenary system. Christian and Parsi women also faced similar inequities in inheritance laws until partial reforms were introduced.

**4.2.1.Hindu Law:** The coparcenary structure of Mitakshara never gave rights over ancestral property to daughters. The HSA (Amendment) of 2005 cured it as daughters were given equal rights in respect of ancestral property, even if married.

**4.2.2.Islamic Law:** Muslim women have rights to inheritance, but only half the share of male heirs. This is another indication of gender bias incorporated within the religious framework and therefore leaves women economically behind (Fyzee, 2009).

**4.2.3.Christian and Parsi Law:** Throughout history, women belonging to Christian and Parsi communities encountered restrictions regarding their inheritance rights. Although legislative reforms have rectified some of these inequalities, discrepancies continue to persist.

**4.3.Maintenance:** Personal laws usually restricted women from claiming proper maintenance after separation, thus leaving them economically insecure. For instance, maintenance under Muslim law was considered only for the iddat period until the judiciary expanded this interpretation (Danial Latifi v. Union of India, 2001).

**4.3.1.Hindu Law:** Under the Hindu Adoption and Maintenance Act, 1956, women are entitled to maintenance after divorce. However, societal stigma and judicial discretion often result in inadequate support.

**4.3.2.Islamic Law:** Maintenance for Muslim women is restricted to the iddat period (3 months). The Danial Latifi Case (2001) expanded this interpretation to ensure that women are entitled to reasonable and fair provisions for the future.

**4.3.3.Christian Law:** Maintenance rights for Christian women have improved but enforcement challenges persist, making them vulnerable post-divorce.

### **Effects of Discriminatory Acts:**

These discriminatory practices have a deep impact on the social and economic status of women, thereby perpetuating dependency and inequality. Limited inheritance rights hinder financial independence, while unequal divorce and maintenance laws exacerbate vulnerabilities after marriage. These violate the constitutional rights of equality (Article 14) and dignity (Article 21).



#### **4.4 Recent Developments**

Notwithstanding the above, some progressive reforms have addressed specific inequalities prevailing in personal laws:

Hindu Succession (Amendment) Act, 2005: This legislative amendment granted equal rights to Hindu women concerning ancestral property, thus resolving long-standing gender imbalances in the laws of inheritance.

Triple Talaq Judgment (2019): The Supreme Court declared talaq-e-biddat unconstitutional, emphasizing gender equality and ensuring that religious practices conform to constitutional principles (Shayara Bano v. Union of India, 2017).

In recent years, the UCC has gained renewed attention. State governments like Uttarakhand has already implemented the UCC and Gujarat has started efforts towards its feasibility, and increasing political will is directed at redressing legal inequalities. Yet a common consensus remains elusive due to the complexities of cultural diversity, religious sensitivities, and gender justice.

### **5. EFFECTS OF UCC ON WOMEN'S RIGHTS**

Such discriminatory personal laws perpetuate gender inequalities and thereby curtail the financial independence and social freedom of women. Inadequate inheritance rights and biased divorce regulations further marginalize women. Such inequality violates constitutional guarantees under Article 14, Article 21, and Article 15.

#### **5.1. Potential Benefits**

The UCC could thus spearhead gender-based discrimination as follows:

- a. Eliminating inconsistencies in personal laws. This would help the members of different communities to avail the benefits of legal reforms more easily.
- b. Equal rights to women in matters of marriage, divorce, inheritance, and maintenance in all communities. A set of uniform laws would surely eliminate the discrimination practices faced by women in their respective personal laws.
- c. These included economic self-sufficiency and social empowerment for women. The social empowerment will automatically result in the development of women overall and the society we are living in.

#### **5.2. Potential Concerns**

There are certain concerns relating to the enforcement of UCC and opinions of critiques they are as follows-

- a. The argument is about that the imposition of this concept could destabilize the cultural and religious ideologies. It could breach the values and freedom to put into practice their own personal laws.
- b. The resistance for not accepting the change is also one of the issues faced in a country which is so diverse in terms of religious and cultural values. Some people are conservative and insecure for such kind of acceptance.

- c. Some views that though the goal is gender equality, there could be instances where the women from specific community lose their freedom as it was there in the previous personal laws before the implementation of UCC.

## **6. UTTARAKHAND AND UNIFORM CIVIL CODE: A RELECTION**

Uttarakhand's initiative to implement a Uniform Civil Code (UCC) marks a significant step in India's long-standing debate over legal uniformity in personal matters like marriage, divorce, and inheritance. Rooted in Article 44 of the Constitution, the UCC aims to replace religion-based personal laws with a common framework, promoting equality and justice. Uttarakhand, governed by the BJP, has taken the lead in this endeavor, framing the UCC as a tool to address gender disparities and foster national integration. The state's diverse population, comprising Hindus, Muslims, Sikhs, and others, makes it a fitting ground for this experiment.

A committee was formed to draft the UCC, focusing on standardizing laws related to marriage, divorce, inheritance, and adoption. Key objectives include eliminating practices like polygamy and triple talaq, ensuring equal inheritance rights for women, and creating a progressive legal framework. However, the move has sparked controversy, with critics arguing that it could undermine religious freedom and cultural diversity. Minority communities, particularly Muslims and tribal groups, fear the erosion of their personal laws and traditions, viewing the UCC as a potential imposition of majoritarian values.

The success of Uttarakhand's UCC is depending upon its ability to balance uniformity with diversity, ensuring justice while respecting cultural and religious differences. It is the way for a more equitable legal system, setting a precedent for the rest of India. However, the journey requires a careful navigation of complex socio-political dynamics to achieve a harmonious balance between progress and tradition. There are certain loopholes in the UCC as implemented in the state and which are still in controversy. The concept of live in relationship and interfaith marriage is criticized as by the Code both require mandatory registration. It seems that the Code somewhere abridges the rights of individuals. Some views are in favor of mandatory registration as it will further help in the legitimacy of the child and in providing the maintenance (Thakur & Saxena, 2023).

## **7. CHALLENGES IN ACHIEVING UCC:**

Introduction of the UCC is very close to tough challenges as it connects with the socio-political and cultural tapestry of India.

### **7.1. Socio-political Resistance**

Various religious communities, especially minorities, have often opposed the UCC, considering it an assault on their religious and cultural freedom. In fact, the issue is further complicated by political parties that have used the issue of the UCC debate as a tool to exacerbate communal polarization (Basu, 2020).

### **7.2. Delicate Balancing Act: Minority Rights and Gender Justice**

Implementing the UCC necessitates a careful equilibrium between honoring minority rights as outlined in Article 25, which safeguards the freedom of religion, and upholding gender justice as required by Articles 14, 15, and 21. Detractors contend that the UCC might jeopardize the diversity enshrined in the Constitution under the guise of uniformity (Noorani, 1996).

### **7.3. The Need for Building Consensus across Diverse Communities**

India is a pluralistic society with religious, linguistic, and cultural practices diverse at the community level. Therefore, this needs wide consultation and cultural sensitiveness to avoid alienation and resistance from the affected groups to settle upon a uniform code (Law Commission of India, 2018).

## **8. CONCLUSION AND THE RECOMMENDATIONS:**

UCC is not merely a constitutional directive like Article 44; it is more of a moral imperative toward the removal of gender disparity and toward social justice. UCC fights for the elimination of disparities of personal laws, while fighting for the rights that are embodied in Articles 14, 15 and 21 that are the bedrock of equality, dignity and non-discrimination. Although the implementation would meet serious socio-political resistance and community rights concerns, these can be met by gradual and consultative implementation. Full public information dissemination and integrating women and other marginalized groups will be vital to this end. The UCC represents a very important move forward in the direction of that society where justice remains free of the divides of religion or culture. Its adoption is a requirement for upholding India's constitutional commitment to an inclusive and just democracy.

### **8.1. Phased and Consultative Approach to Reforms**

A gradual implementation strategy is of utmost importance. Permitting optional compliance with a uniform code during the early stages can foster voluntary participation and establish trust. This method was suggested by the Law Commission of India in its 2018 consultation paper regarding the UCC.

### **8.2. Representation of women and minority groups**

To ensure that UCC addresses the needs of all citizens equitably, women and marginalized communities must be actively involved in its drafting process. Their representation can help mitigate fears of exclusion and ensure the code reflects diverse perspectives (Agnes, 2011).

### **8.3. Public Awareness Campaigns for Social Acceptance**

Public awareness campaigns which highlight the constitutional values of equality and justice must clarify misconceptions about the UCC and make the public support it. Legal experts, civil society organizations, and community leaders must collaborate in organizing public awareness campaigns to encourage an informed and inclusive dialogue (Press Information Bureau, Government of India, 2023).



## References

1. Agnes, F. (2011). *Family law volume I: Family laws and constitutional claims*. Oxford University Press.
2. Basu, D. D. (2020). *Introduction to the Constitution of India*. LexisNexis.
3. Chakraborty, A. (2017, September 25). Uniform civil code & the Indian judiciary. *SSRN*. <https://doi.org/10.2139/ssrn.3536262>
4. Cohn, B. S. (1996). *Colonialism and its forms of knowledge*. Princeton University Press.
5. Constitution of India. art. 44.
6. Danial Latifi v. Union of India, AIR 2001 SC 3958.
7. Derrett, J. D. M. (1968). *Religion, law, and the state in India*. Faber and Faber.
8. Fyzee, A. A. A. (2009). *Outlines of Muhammadan law*. Oxford University Press.
9. Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, India.
10. Hindu Succession (Amendment) Act, No. 39 of 2005, India Code (2005).
11. Indian Divorce Act, 2001, No. 11, Acts of Parliament, India.
12. Kumar, A. (2023, November 13). Constitutional aspects of issues in the uniform civil code: A critical analysis. *TSCLD*. <https://www.tsclcd.com/uniform-civil-code-a-critical-analysis/>
13. Kumar, V. (2000). Towards a uniform civil code: Judicial vicissitudes [From *Sarla Mudgal* (1995) to *Lily Thomas* (2000)]. *Journal of the Indian Law Institute*, 42(2/4), 314–334.
14. Law Commission of India. (2018). *Consultation paper on reform of family law*. Government of India. <https://lawcommissionofindia.nic.in>
15. Mulla, D. F. (2021). *Principles of Mahomedan law* (23rd ed.). LexisNexis.
16. Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945.
17. Noorani, A. G. (1996). The uniform civil code debate. *Economic and Political Weekly*, 31(9), 551–552.
18. Press Information Bureau, Government of India. (2023). *Uniform Civil Code: Need of the hour*. Government of India. <https://pib.gov.in>
19. Sarla Mudgal v. Union of India, AIR 1995 SC 1531.
20. Shayara Bano v. Union of India, AIR 2017 SC 4609 (India).
21. The Hindu. (2023). *Uttarakhand begins steps for UCC*. The Hindu. <https://www.thehindu.com>
22. The Hindu Marriage Act, No. 25 of 1955.
23. Thakur, E., & Saxena, H. (2023). Uniform Civil Code: Implementation & complexities. *IUT Journal of Advanced Research and Development*, 9(2), October 2023–March 2024.
24. Verma, S. K. (2001). *Annual survey of Indian law* (37, pp. 132). Indian Law Institute, New Delhi.