



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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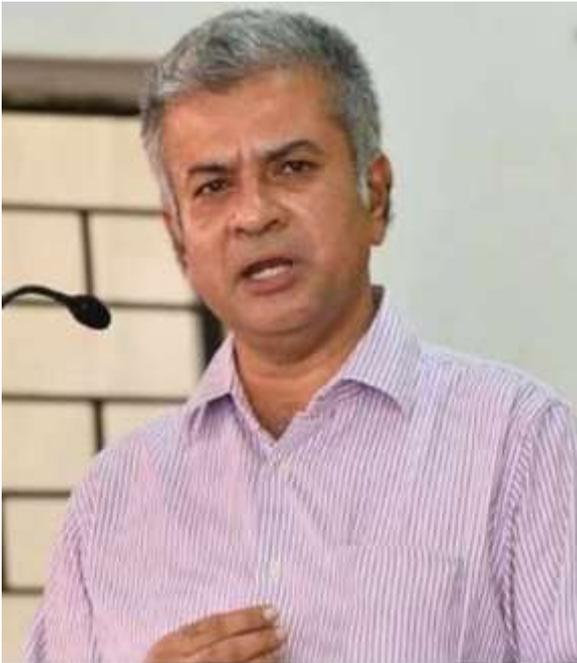
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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

# **UNIFORM CIVIL CODE: STEP TOWARDS EQUALITY OR CULTURAL EROSION -- AN INSIGHT TO THE LEGAL SOCIAL AND GENDER PERSPECTIVES**

AUTHORED BY - DITHYA JOLLY KUTTISSERY & NISHA TS

Assistant Professor

School of Legal Studies, Manjeshwaram Campus, Kannur University

## **1. Introduction**

The Uniform Civil Code (UCC), envisioned under Article 44 of the Indian Constitution, aims to create a common set of civil laws for all citizens, regardless of religion. It seeks uniformity in personal matters like marriage, divorce, inheritance, and adoption, currently governed by diverse religious laws. The Constitution's drafters, including Dr. B.R. Ambedkar, advocated for the UCC as a step toward a more just and equal society during the Constituent Assembly Debates:

“It is not the object of this particular article [Article 44] to oppose religion. The article merely seeks to ensure that in civil matters, the State should not be hampered by religious injunctions.”<sup>1</sup>

The Uniform Civil Code (UCC) is seen by some as promoting gender equality, but critics warn it may undermine India's pluralism. Scholars like Upendra Baxi caution against imposing uniformity that ignores cultural and legal diversity.<sup>2</sup> The UCC debate highlights the tension between legal equality (Article 14) and religious freedom (Articles 25–28). Supporters see it as a way to end gender discrimination; critics fear it threatens religious and cultural autonomy.<sup>3</sup> The Law Commission's 2018 report stated that a Uniform Civil Code was “neither necessary nor desirable at this stage,” advocating instead for reform within personal laws to ensure gender justice while preserving cultural diversity. The Uniform Civil Code was central to the Constitution's vision of a modern, secular India. This intent is reflected in Article 44 of the Directive Principles of State Policy, which states:

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<sup>1</sup> Constituent Assembly Debates, Volume VII, 23 November 1948, Speech by Dr. B.R. Ambedkar.

<sup>2</sup> Upendra Baxi, “Uniform Civil Code, Legal Pluralism and the Constitution of India,” in *Uniform Civil Code for India: A Critical View*, ed. B.N. Kirpal (Oxford University Press, 2008).

<sup>3</sup> Tahir Mahmood, *Personal Law in Crisis* (N.M. Tripathi, 1986), p. 62.

“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”<sup>4</sup>

Article 44 was shaped by colonial legal pluralism, where personal laws varied across communities. The British standardized criminal and commercial laws but avoided interfering in personal matters due to their religious sensitivity. Post-independence, Indian leaders saw the need to reform personal laws to promote gender justice and national unity.

## 2. Constituent Assembly Debates

The Constituent Assembly Debates reveal the sharply divided views surrounding the Uniform Civil Code (UCC). Many representatives from minority communities expressed strong reservations about its inclusion, apprehensive that it could pave the way for majoritarian control over religious practices. One such voice was that of Naziruddin Ahmad, a member of the Assembly, who cautioned:

“Each community has its own civil laws and traditions. To disturb them all at once would create chaos and discontent.”<sup>5</sup>

Dr. B.R. Ambedkar, on the other hand, firmly supported the inclusion of Article 44. He asserted that, just as India had adopted a uniform criminal code applicable to all citizens, it was both reasonable and essential to progress toward a unified set of civil laws. In his words:

“The State does not claim to regulate or control religion in its ceremonial aspects. But when it comes to regulating matters which affect civil rights, the State cannot stand still.”<sup>6</sup> Progressive women’s groups and legal reformers saw the UCC as key to dismantling injustices in personal laws, especially those discriminating against women.

### 2.1 Early Post-Independence Developments

Personal law reform began with the 1955–56 codification of Hindu laws, sparking opposition despite applying only to Hindus. Meanwhile, Muslim, Christian, and Parsi laws remained largely unchanged, reflecting a fragmented and gradual path to legal uniformity. This uneven reform led to a growing perception that the idea of the Uniform Civil Code was disproportionately aimed at minority communities, thereby turning it into a politically charged issue. Legal scholar Tahir Mahmood observes:

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<sup>4</sup> The Constitution of India, Article 44, Directive Principles of State Policy.

<sup>5</sup> Constituent Assembly Debates, Vol. VII, 23 November 1948.

<sup>6</sup> B.R. Ambedkar, Speech in Constituent Assembly, 23 November 1948.

See also: Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1999), p. 180.

“While Hindu law was codified with the aim of modernization, other communities were left to grapple with outdated and patriarchal structures—undermining the very notion of equality.”<sup>7</sup>

### 2.3 Evolution of the Debate in Judiciary

Over the decades, the judiciary has played a pivotal role in reviving the UCC debate. In *Sarla Mudgal v. Union of India* (1995), the Supreme Court called for the enactment of a UCC to prevent issues like religious conversions for marriage to evade personal law restrictions, highlighting the resulting legal ambiguity.<sup>8</sup>

In *Shah Bano v. Union of India* (1985), the Supreme Court upheld a Muslim woman’s right to maintenance, asserting constitutional rights over personal laws. Political backlash led to the 1986 Act reversing the verdict, exposing the tension between judicial progress, political appeasement, and societal resistance—underscoring the complexities of implementing a Uniform Civil Code.

## 3. Legal Analysis of Personal Laws and Gender Inequality

India’s pluralistic legal system allows communities to follow their own personal laws, preserving cultural diversity but often reinforcing gender inequality. A Uniform Civil Code is seen as a step toward both legal uniformity and gender justice.

### 3.1 Hindu Personal Law

The 1950s Hindu law reforms introduced progressive changes, but gender gaps persisted. Despite the 2005 amendment granting daughters coparcenary rights, ambiguity remained until the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* (2020) confirmed daughters’ equal rights by birth:

“Daughters must be given equal rights as sons. The very objective of the 2005 amendment was to recognise the equality of women in the Hindu Mitakshara coparcenary.”<sup>9</sup>

Despite reforms, critics argue they mostly aided upper-caste Hindu women, overlooking those in tribal, rural, and customary settings—underscoring the need for inclusive laws that address caste, class, and regional disparities in gender justice..<sup>10</sup>

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<sup>7</sup> Tahir Mahmood, *Personal Law in Crisis* (N.M. Tripathi, 1986), p. 47.

<sup>8</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>9</sup> *Ibid.*, para 86.

<sup>10</sup> Narendra Subramanian, *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India* (Oxford University Press, 2014), p. 198.

### 3.2 Muslim Personal Law

Muslim law, governed largely by uncodified customs and the Shariat, has been the focus of extensive legal and political scrutiny, especially concerning divorce and maintenance rights. The Shah Bano case (1985) highlighted the conflict between personal laws and constitutional equality. The Supreme Court upheld a divorced Muslim woman's right to maintenance under Section 125 CrPC, but conservative backlash led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which overruled the decision. Flavia Agnes called this a "retreat from gender justice in the name of religious freedom."<sup>11</sup>

The issue of triple talaq remained controversial until it was declared unconstitutional in *Shayara Bano v. Union of India* (2017). The Court held the practice to be arbitrary and violative of Article 14.<sup>12</sup> The 2019 Act banned instant triple talaq, but issues like polygamy and unequal inheritance persist, showing that personal law reform remains incomplete.

### 3.3 Christian and Parsi Personal Laws

Christian women in India faced discrimination under Section 10 of the Indian Divorce Act, 1869, which required them to prove adultery plus other grounds like cruelty or desertion—placing a heavier burden on them than on men.<sup>13</sup> These provisions were only amended in 2001, after persistent legal activism.

The Parsi Marriage and Divorce Act of 1936 provides some protections for women, but Parsi women who marry outside the community face discrimination—often losing inheritance rights and access to religious spaces—highlighting deep-rooted gender inequality.<sup>14</sup>

### 3.4 Secular Law: A Template for Uniformity?

The Special Marriage Act, 1954 provides a secular route for interfaith marriages, but its 30-day notice period often leads to harassment, deterring couples and exposing societal resistance to personal autonomy.<sup>15</sup>

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<sup>11</sup> Flavia Agnes, "Shah Bano to Shayara Bano: Contextualising the Debate on Muslim Women's Rights," *Economic and Political Weekly*, Vol. 52, No. 10, 2017.

<sup>12</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>13</sup> Law Commission of India, Report No. 90, "Christian Marriage and Matrimonial Causes," 1983.

<sup>14</sup> Roshan Rivetna, "The Future of Zoroastrians in India," *FEZANA Journal*, Vol. 25, 2011.

<sup>15</sup> Ritika Jain, "Special Marriage Act's 30-Day Notice Rule Leads to Harassment," *The Quint*, Dec. 2020.

The Special Marriage Act offers a secular model for a UCC, but experts call for simpler procedures and better safeguards, especially for interfaith couples. The 2018 Law Commission found a UCC unnecessary for now, urging reforms within personal laws to uphold gender justice without affecting religious freedom.

“The best way forward is to preserve diversity without compromising on equality... reform within communities is preferable to enforced uniformity.”<sup>16</sup>

#### **4. Social and Cultural Perspectives: Uniformity vs Pluralism**

The Uniform Civil Code (UCC), while grounded in the constitutional ideal of equality, raises complex and deeply rooted concerns surrounding cultural pluralism, identity, and religious freedom. In a nation as diverse as India—with its multitude of religions, languages, castes, and customs—the introduction of a common civil law framework must be approached with sensitivity and caution. This leads to a critical and enduring question: Can legal uniformity be harmonized with the preservation of cultural diversity, or does it risk enforcing a standardized model of citizenship that may marginalize minority identities and traditions?

##### **4.1 Cultural Identity and the Minority Question**

Religious minorities often view the Uniform Civil Code (UCC) as a majoritarian move disguised as reform. Their concern lies less with gender justice and more with the fear of imposing upper-caste Hindu norms on diverse communities, risking the erosion of cultural autonomy in the name of uniformity.

As Rajeev Dhavan notes:

“The UCC debate is not merely a legal argument but a deeply political discourse—about who gets to define the ‘Indian way of life’.”<sup>17</sup>

In India’s diverse society, personal laws reflect both legal norms and cultural identity. For communities like the Nagas, Mizos, and other Scheduled Tribes, customary laws are central and constitutionally protected under the Fifth and Sixth Schedules. Any move toward a Uniform Civil Code must respect these safeguards to avoid infringing on tribal rights and autonomy.

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<sup>16</sup> Law Commission of India, Report No. 267, “Reform of Family Law,” August 2018.

<sup>17</sup> Rajeev Dhavan, “The Politics of the Uniform Civil Code,” Seminar, No. 526, 2003.

<sup>18</sup> These communities often view the UCC as an infringement on their constitutional right to cultural self-governance under Articles 29 and 371A.

#### **4.2 Feminist Perspectives and Intersectionality**

Feminist scholars argue that true gender justice needs more than uniform laws. They advocate for context-sensitive, pluralistic reforms rooted in constitutional values to address the diverse experiences of women across religion, caste, class, and region. Nivedita Menon observes:

“Uniformity does not automatically mean equality. What women need is not a common law, but a just law.”<sup>19</sup>

Feminist critiques point to the selective nature of personal law reforms in India. While triple talaq was swiftly criminalized, issues like dowry violence, marital rape, and caste discrimination in the Hindu community remain unaddressed. This imbalance suggests reforms are sometimes used to target specific communities rather than ensuring gender justice for all.<sup>20</sup> Many women’s groups warn against using women’s rights to stigmatize minorities, noting that focusing solely on minority reforms ignores the widespread nature of patriarchy. Such selectivity risks reinforcing communal biases. Instead, reforms must be rooted in constitutional morality and inclusivity.

#### **4.3 Secularism and Legal Pluralism**

India’s secularism follows a “principled distance” model, unlike the strict church-state separation seen in the West. This approach allows the state to engage with religion when necessary to uphold constitutional values like equality and justice, balancing religious freedom with social reform and fundamental rights protection.

As legal theorist Madhavi Sunder articulates:

“Multicultural democracies must strike a balance between respecting cultural autonomy and ensuring individual rights—particularly for women within communities.”<sup>21</sup>

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<sup>18</sup> Article 371A, Constitution of India (Special provisions for Nagaland), and Article 29 (Protection of interests of minorities).

<sup>19</sup> Nivedita Menon, “Is the Uniform Civil Code the Answer?” in *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black, 2004).

<sup>20</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011), pp. 112–115.

<sup>21</sup> Madhavi Sunder, “Cultural Dissent and the State,” *Stanford Law Review*, Vol. 52, No. 4 (2000), p. 1155.

The Law Commission in its 2018 report emphasized that legal pluralism need not be seen as antithetical to equality.<sup>22</sup> Instead, progressive reform within communities—coupled with open dialogue and legislative scrutiny—can ensure gender justice without eroding cultural identities.

#### **4.4 Public Opinion and Media Narratives**

Public debate on the Uniform Civil Code is often shaped by political and media narratives that overlook minority women's voices. While many support reform, they call for inclusive, participatory processes that respect their identity and advocate gender justice from within their communities.<sup>23</sup> Moreover, the rhetoric of nationalism and uniformity often sidelines legitimate concerns about diversity. As academic Rina Verma Williams notes:

“In the Indian context, religion and personal laws are not just theological matters—they are tightly woven into the social and political fabric.”<sup>24</sup>

### **5. The Way Forward: Towards Just and Inclusive Reform**

The discourse on the Uniform Civil Code (UCC) demands more than legal reform—it requires a broader, inclusive vision of justice rooted in constitutional values. While Article 44 envisions a uniform civil code, its realization must be gradual, participatory, and shaped by democratic dialogue and constitutional morality, not political agendas. Only then can the UCC become a true tool for equality and social transformation.

#### **5.1 Balancing Equality and Diversity**

Justice must be pursued in a manner that respects and preserves India's rich cultural diversity. The Law Commission of India, in its 2018 report, explicitly stated that a Uniform Civil Code is “neither necessary nor desirable” at the current stage. Rather than enforcing blanket uniformity, the Commission advocated for piecemeal, progressive reforms within existing personal laws. This approach aims to eliminate discriminatory practices while safeguarding the core values and traditions of various communities—striking a balance between constitutional equality and cultural plurality.<sup>25</sup>

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<sup>22</sup> Law Commission of India, Report No. 267, “Reform of Family Law,” August 2018.

<sup>23</sup> Saptarshi Mandal, “A Uniform Civil Code in a Multicultural Nation: The Case of India,” *Canadian Journal of Women and the Law*, Vol. 26, No. 1 (2014), pp. 132–138.

<sup>24</sup> Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legal Legacies and the Indian State* (Oxford University Press, 2006), p. 22.

<sup>25</sup> Law Commission of India, Report No. 267, “Reform of Family Law,” 2018.

“Difference does not always imply discrimination; pluralism must not be confused with inequality.” – *Law Commission of India, Report No. 267*<sup>26</sup>

Many legal scholars advocate for an inclusive approach that blends the best practices from various communities to create progressive family laws aligned with fundamental rights. Rather than enforcing a single uniform code, this strategy promotes trust among diverse groups and advances the constitutional ideal of equality.

## 5.2 Community-Led Legal Reform

Reforms imposed from the top often encounter resistance, particularly when communities view them as externally driven. For legal reform to be effective and widely accepted, it must involve active participation from within—engaging community reformers, civil society organizations, and women's groups who understand the lived realities and cultural contexts of those affected. For example, the Hindu law reforms of the 1950s were propelled not only by legislative action but also by social reform movements and progressive public discourse. Likewise, in *Shayara Bano v. Union of India* (2017), the Supreme Court's ruling against instant triple talaq echoed the voices of Muslim women challenging patriarchal practices—demonstrating how internal advocacy can drive significant legal change.<sup>27</sup>

Grassroots initiatives like those of Bebaak Collective, Bharatiya Muslim Mahila Andolan, and other feminist groups show that community-driven reform is both possible and often more enduring. Rooted in lived realities and cultural contexts, these efforts underscore that meaningful and sustainable gender justice is best achieved through change led from within communities themselves.<sup>28</sup>

## 5.3 Codification and Reform of Personal Laws

The codification of personal laws—especially those governing Muslim and tribal communities—is both a pressing and delicate issue. In the absence of clear codified statutes, interpretations often vary widely, leading to inconsistencies and arbitrariness in legal outcomes. This lack of clarity disproportionately affects women, who are denied legal certainty and

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<sup>26</sup> Law Commission of India, Report No. 267, “Reform of Family Law,” 2018.

<sup>27</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1

<sup>28</sup> See: Bharatiya Muslim Mahila Andolan (BMMA), “Why We Want Codification of Muslim Personal Law,” 2015.

protection, making codification essential for ensuring fairness, transparency, and gender justice within these communities.

Legal experts emphasize that the codification of personal laws should be carried out through a consultative process involving religious scholars, social activists, and legal professionals. This collaborative approach helps ensure that reforms are not only aligned with constitutional values but also respectful of cultural contexts and community sensitivities—making them more effective, inclusive, and acceptable to the people they aim to serve.<sup>29</sup> Such codification can become a stepping stone toward a consensual uniformity, rather than an imposed one.

#### **5.4 Role of Judiciary and Constitutional Morality**

The judiciary has played a key role in promoting gender justice within personal laws. Landmark rulings—from *Shah Bano* to *Joseph Shine* (2018)—show the Supreme Court’s dedication to constitutional values. By applying constitutional morality, the Court has invalidated practices that violate dignity, equality, and individual rights, affirming that personal laws must align with fundamental constitutional principles.

As Justice D.Y. Chandrachud observed in the *Navtej Singh Johar* judgment:

“Constitutional morality is not limited to the text of the Constitution but includes the values that promote fraternity, liberty, and dignity.”<sup>30</sup>

Constitutional morality should guide both legislation and judicial decisions on personal law reform. A Uniform Civil Code must aim not just for legal uniformity but for a shared commitment to justice, dignity, and individual freedom—ensuring reforms align with constitutional values and address the diverse realities of all citizens.

#### **5.5 Public Dialogue and Political Will**

Going forward, fostering inclusive dialogue among all stakeholders—religious minorities, women’s groups, tribal communities, and legal experts—is vital for building consensus and crafting fair, respectful reforms. However, the politicization of the UCC debate has often derailed meaningful discussion, creating division and mistrust. A depoliticized, participatory approach is essential to making real progress on this complex issue. As Upendra Baxi warns,

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<sup>29</sup> Werner Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge University Press, 2006), pp. 217–230.

<sup>30</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

“A genuine commitment to equality requires the state to go beyond symbolism, and instead initiate reform through participatory and deliberative democracy.”<sup>31</sup>

What truly matters is not merely having a uniform law, but a shared dedication to constitutional values. This involves creating mutual understanding, promoting openness, and building trust across all communities.

## **6. Latest Judicial Pronouncements and Legal Developments on UCC**

The Indian judiciary has been instrumental in advancing the debate on the Uniform Civil Code (UCC), especially in the absence of legislative progress. Recent rulings reflect a stronger focus on gender justice, religious freedom, and constitutional values, highlighting both the need for reform and the challenges of balancing uniform laws with India’s cultural diversity.

### **6.1 Supreme Court’s Observations in *Jose Paulo Coutinho v. State of Goa (2019)***

In this case, the Supreme Court lauded Goa as a “shining example” of a state implementing a Uniform Civil Code applicable to all communities. Justice Deepak Gupta observed:

“Goa is a shining example of an Indian State which has a Uniform Civil Code applicable to all, regardless of religion.”<sup>32</sup>

Although the Court commended the Goan model, it pointed out that “successive governments have failed to take any steps” toward implementing a national Uniform Civil Code as envisioned in Article 44. Nonetheless, critics highlight that the Goa model itself contains inconsistencies—such as permitting polygamy for Muslims—suggesting that true legal uniformity has yet to be achieved.<sup>33</sup>

### **6.2 Delhi High Court in *Satprakash Meena v. State of NCT of Delhi (2021)***

In this case, the Delhi High Court echoed the call for a Uniform Civil Code, stressing its urgency in the contemporary context. Justice Prathiba M. Singh stated:

“The youth of India belonging to various communities, tribes, castes, or religions who solemnize their marriages ought not to be forced to struggle with issues arising due to conflicts in various personal laws.”<sup>34</sup>

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<sup>31</sup> Upendra Baxi, “The Struggle for a Uniform Civil Code in India,” *Social Action*, Vol. 56, 2006, pp. 17–35.

<sup>32</sup> *Jose Paulo Coutinho v. State of Goa*, (2019) 20 SCC 32.

<sup>33</sup> Faizan Mustafa, “Goa’s Uniform Civil Code: A Misleading Model,” *The Indian Express*, July 27, 2019.

<sup>34</sup> *Satprakash Meena v. State of NCT of Delhi*, W.P. (CrI.) 3388/2021, Delhi High Court.

The judgment emphasized the need for codified common laws to ensure legal certainty and equal treatment, especially in matters of marriage and divorce.

### **6.3 Supreme Court's Remarks in *Mohd. Abdul Samad v. State of Telangana* (2023)**

In this judgment concerning second marriage and bigamy under personal law, the Supreme Court pointed out the presence of gender inequality and stressed the necessity for uniform legal standards. The Court reaffirmed that:

“Personal laws cannot override fundamental rights guaranteed by the Constitution. Gender equality must be non-negotiable.”<sup>35</sup>

This ruling signifies a change in judicial tone, placing emphasis on the supremacy of the Constitution above religious traditions and reaffirming that gender justice must take precedence over religious exemptions.

### **6.4 Supreme Court *Suo Moto* Observation (2023–2024)**

In a public interest litigation (PIL), the Supreme Court asked the Union government to clarify its position on implementing the Uniform Civil Code (UCC). The Centre replied that it had referred the issue to the Law Commission for study. While the Court issued no binding directions, it emphasized the importance of addressing the matter in accordance with constitutional values and the need for thorough legal reform:

“The time may be ripe for an informed public debate on UCC, but the legislature must take the lead.”<sup>36</sup>

This highlights the judiciary's measured approach and its respect for the separation of powers, while still acknowledging the constitutional mandate outlined in Article 44.

### **6.5 Uttarakhand's Uniform Civil Code Bill, 2024**

In February 2024, Uttarakhand made history by becoming the first Indian state to enact a Uniform Civil Code Bill. This legislation aims to unify personal laws governing marriage, divorce, inheritance, adoption, and live-in relationships, applying uniformly to all residents regardless of their religious affiliation.<sup>37</sup>

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<sup>35</sup> *Mohd. Abdul Samad v. State of Telangana*, Criminal Appeal No. 552 of 2023, Supreme Court of India.

<sup>36</sup> PIL Observation on UCC by Supreme Court, 2023–2024. Reported in *The Hindu*, Nov 2023.

<sup>37</sup> Uttarakhand Uniform Civil Code Bill, 2024, Government of Uttarakhand

Although the law exempts Scheduled Tribes in accordance with constitutional provisions, it has received both praise and criticism. Supporters view it as a progressive step toward legal equality, while critics caution that, without inclusive and extensive consultation, it could become a precedent for imposing majority norms on diverse communities.

Legal scholars such as Faizan Mustafa have commented:

“A UCC must not merely unify but also democratize family law by incorporating the best practices of all religions rather than replicating a single religious template.”<sup>38</sup>

## 7. Comparative International Perspectives on Uniform Civil Code

The debate on a Uniform Civil Code (UCC) in India often references international models to examine how individual rights, religious freedom, and legal uniformity can coexist. While each country's legal system reflects its unique history and culture, global experiences provide useful insights into balancing diversity with equality.

### 7.1 France: Secularism and Civil Uniformity

France is often referenced as an example of strong legal uniformity. With the adoption of the Napoleonic Code in 1804, the country established a secular civil law system that applies equally to all citizens, regardless of their religious beliefs. The French Constitution upholds the principle of *laïcité* (secularism), which firmly separates religion from the domain of public law and governance.

As constitutional scholar Alec Stone Sweet explains:

“French *laïcité* views religion as a private affair and insists that the law must not recognize or accommodate religious particularities.”<sup>39</sup>

However, strict adherence to secularism has sparked controversy, especially around religious attire and minority rights. Critics argue that a rigid push for uniformity can marginalize cultural and religious identities, underscoring the difficulty of balancing state neutrality with individual freedoms.<sup>40</sup>

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<sup>38</sup> Faizan Mustafa, “UCC: Equality, but at What Cost?” *The Wire*, Feb 6, 2024.

<sup>39</sup> Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe*, Oxford University Press, 2000.

<sup>40</sup> John Bowen, *Why the French Don't Like Headscarves: Islam, the State, and Public Space*, Princeton University Press, 2007.

## 7.2 United Kingdom: Multicultural Legal Pluralism

In contrast to France, the United Kingdom follows a pluralistic legal model, allowing religious communities to resolve family disputes through bodies like the Jewish Beth Din and Islamic Sharia Councils. However, their decisions must comply with national law, ensuring that religious arbitration respects fundamental legal rights and protections.

Carolyn Evans observes:

“The UK reflects a commitment to multiculturalism by allowing religious laws some role in private matters, provided they don’t contradict public law or human rights.”<sup>41</sup>

This approach respects religious autonomy but raises concerns about gender bias, particularly in the operation of some informal religious courts.<sup>42</sup>

## 7.3 Tunisia: Progressive Family Law Reform

Tunisia presents a notable example of the coexistence of Islamic traditions with progressive legal reforms. The landmark Code of Personal Status enacted in 1956 abolished polygamy, introduced judicial oversight in divorce, and granted women equal inheritance rights. These reforms positioned Tunisia as a pioneer in advancing gender equality within an Islamic framework, setting a precedent across the Muslim world.<sup>43</sup>

“Tunisia’s approach demonstrates that personal law reform need not abandon religious identity but can be harmonized with modern values.” – *Asma Lamrabet, Women and Men in the Qur’an*<sup>44</sup>

Tunisia demonstrates that Islamic law and gender justice need not be in conflict, and that through contextual and progressive interpretation, meaningful legal reforms can be achieved.

## 7.4 Israel: State-Recognized Religious Jurisdictions

Israel’s legal system grants religious courts exclusive authority over personal status matters for communities like Jews, Muslims, Christians, and Druze. While this preserves religious autonomy, it often creates tensions with civil rights, especially for women. Under Orthodox

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<sup>41</sup> Carolyn Evans, *Legal Protection of Religious Freedom in Australia*, Kluwer Law International, 1999.

<sup>42</sup> Rajnaara Akhtar, “British Muslims and the Law: Principles, Practice, and Problems,” *The Law Quarterly Review*, 2016.

<sup>43</sup> Mounira Charrad, *States and Women’s Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*, University of California Press, 2001.

<sup>44</sup> Asma Lamrabet, *Women and Men in the Qur’an*, Palgrave Macmillan, 2015.

Jewish law, for example, obtaining a divorce (*Get*) can be difficult and unequal, highlighting gender disparities within the system.<sup>45</sup>

Ruth Halperin-Kaddari notes:

“Religious courts in Israel often privilege communal identity over individual autonomy, affecting women's legal standing.”<sup>46</sup>

There has been a growing demand—particularly from human rights organizations—for the establishment of civil alternatives to religious marriages and divorces. These calls aim to ensure greater individual autonomy, gender equality, and protection of civil rights, especially for those who may be disadvantaged by religious legal procedures.<sup>47</sup>

### **7.5 South Africa: Customary Law under Constitutional Review**

Post-apartheid South Africa recognizes both customary and religious legal systems, but mandates their alignment with the Constitution's Bill of Rights, especially regarding gender equality. The Recognition of Customary Marriages Act, 1998, exemplifies this by granting women in polygynous marriages legal rights to property and inheritance, ensuring traditional practices do not violate constitutional protections.<sup>48</sup>

“Pluralism in South Africa is not absolute; it is subject to the test of constitutional compatibility.” – *Christa Rautenbach, Comparative Family Law*<sup>49</sup>

This model shows that plural legal systems can thrive if bounded by constitutional principles.

## **8. Conclusion and Policy Recommendations**

### **8.1 Conclusion**

The debate surrounding the Uniform Civil Code (UCC) in India lies at the intricate crossroads of constitutional values, personal laws, gender equality, and cultural pluralism. Enshrined in Article 44 of the Directive Principles of State Policy, the UCC symbolizes the goal of ensuring legal equality for all citizens, regardless of caste, religion, or creed. However, even after more than seventy years of independence, this ideal remains unfulfilled—entangled in legal complexities, political hesitations, and socio-religious sensitivities.

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<sup>45</sup> Susan Weiss and Netty Gross-Horowitz, “Marriage and Divorce in the Jewish State: Israel's Civil War,” Jewish Women's Archive, 2008.

<sup>46</sup> Ruth Halperin-Kaddari, “Women in Israel: A State of Their Own,” *Israel Studies Review*, Vol. 19, No. 2 (2004).

<sup>47</sup> Freedom House Report on Religious Freedom in Israel, 2022.

<sup>48</sup> Recognition of Customary Marriages Act, 1998 (South Africa).

<sup>49</sup> Christa Rautenbach, “South Africa: Legal Pluralism and Constitutional Supremacy,” in *Comparative Family Law*, edited by James Dwyer, Edward Elgar Publishing, 2019

From the preceding sections, several key observations emerge:

- Judicial decisions are progressively reinforcing the supremacy of constitutional rights—especially gender equality—over personal laws that perpetuate discrimination.
- Models such as Goa’s civil code and the recent legislation in Uttarakhand reflect different strategies for achieving legal uniformity, but they also expose the limitations and challenges of fragmented or selective reforms.
- International comparisons reveal that legal uniformity and cultural pluralism are not mutually exclusive; they can harmoniously coexist when anchored in constitutional principles and shaped through democratic dialogue.
- Concerns about the loss of cultural identity often overshadow the imperative of legal equality, highlighting the need for reform processes that are inclusive, transparent, and sensitive to India’s diversity.
- The concept of a Uniform Civil Code must not be perceived as a majoritarian imposition, but rather as a universal reform rooted in the principles of consensus, inclusivity, and justice. As B.R. Ambedkar wisely cautioned: “The real test of the progress of a country is not the number of millionaires it owns, but the number of people who are free from want and fear.” This vision calls for a UCC that upholds the dignity of every individual, respects cultural diversity, and advances the constitutional promise of equality.

“It is perfectly possible to distinguish between the secular and the religious in law and to frame a UCC that is not anti-religious.”<sup>50</sup>

## 8.2 Policy Recommendations

### *1. Establish a Consultative Law Reform Commission*

There is a pressing need to establish a permanent, independent, and pluralistic law reform commission comprising legal scholars, religious representatives, gender justice advocates, and members of civil society. Such a body should be entrusted with the task of drafting a Uniform Civil Code that thoughtfully balances respect for religious and cultural sentiments with the constitutional principles of equality, justice, and individual freedom. This inclusive approach would help ensure that the UCC is not only legally sound but also socially legitimate and widely accepted.

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<sup>50</sup> Constituent Assembly Debates, Vol. VII, B.R. Ambedkar’s speech on the Hindu Code Bill, November 1948.

## 2. Codification of All Personal Laws

Before implementing a Uniform Civil Code, it is essential to first codify and rationalize all existing personal laws to eliminate internal inconsistencies and discriminatory provisions. As legal scholar Tahir Mahmood aptly observes: “*The state is duty-bound to ensure that all personal laws conform to constitutional norms and that no community is left behind in the march toward legal justice.*” This stepwise approach would lay the groundwork for a truly inclusive and equitable UCC:

“Many personal laws are themselves uncodified and inconsistent. Uniformity begins with clarity within communities.”<sup>51</sup>

## 3. Gender-Just Family Law Reform

All family laws, irrespective of religious affiliation, must remove provisions that discriminate against women—particularly in areas such as inheritance, divorce, maintenance, and guardianship. Gender justice should not be treated as a secondary issue but must form the very foundation of the Uniform Civil Code. Ensuring equality for women is essential to realizing the constitutional vision of dignity, fairness, and non-discrimination for all citizens.

## 4. Implementation in Phases

Rather than enforcing a blanket reform, the Uniform Civil Code should be implemented gradually, starting with domains where there is broad public agreement—such as inheritance, adoption, and maintenance. More sensitive and debated areas like marriage and divorce can be addressed in later stages, following thorough public consultation and consensus-building. This phased approach would allow for a smoother transition and foster greater acceptance across communities.

## 5. Educative and Awareness Campaigns

Public understanding of the Uniform Civil Code is frequently influenced by misinformation and politically charged narratives. To counter this, there is a vital need for widespread awareness initiatives—such as community workshops, educational campaigns, and integration of UCC-related themes into academic curricula. These efforts can promote informed public dialogue, dispel misconceptions, and cultivate trust among diverse communities, laying the foundation for meaningful and inclusive legal reform.

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<sup>51</sup> Tahir Mahmood, *Personal Laws in Crisis: Need for Reforms*, Universal Law Publishing, 2005.

### *6. Protection of Cultural Rights*

The Uniform Civil Code must uphold the cultural and educational rights of minorities as guaranteed under Articles 29 and 30 of the Constitution. Reform should not lead to forced assimilation or erosion of identity, but rather aim to harmonize India's diverse cultural and religious practices with the overarching principles of constitutional justice, equality, and human dignity.

### *7. Model Civil Code for Voluntary Adoption*

Introduce a Model Civil Code as an optional legal regime available to citizens who voluntarily choose to be governed by it. This promotes reform through choice rather than compulsion, respecting autonomy and pluralism.

### *Final Thoughts*

India's journey of legal reform must reflect the constitutional commitment to justice, equality, and human dignity for every citizen. A thoughtfully designed, inclusive, and democratically developed Uniform Civil Code has the potential to become a powerful instrument of nation-building. However, its success depends on it being rooted in a sensitive, secular, and rights-based framework. The UCC should not aim to erase cultural identities, but rather to empower individuals—fostering equity without imposing uniformity.