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

With this thought, we hereby present to you

THE UNIFORM CIVIL CODE AND ITS IMPLICATIONS ON MUSLIM PERSONAL LAW: A CONSTITUTIONAL DILEMMA

AUTHORED BY - DHEERAJ SAXENA¹

ABSTRACT

This study rigorously analyses the constitutional, jurisprudential, and socio-political intricacies associated with India's Uniform Civil Code (UCC), emphasising its effects on Muslim Personal Law (MPL). Rooted in Article 44 of the Directive Principles of State Policy, the UCC proposes a cohesive structure for personal laws throughout all communities to foster equality, gender justice, and national cohesion. Nonetheless, its convergence with religious freedom under Article 25 poses a constitutional quandary that tests India's diversified legal framework.

This paper examines the historical genesis of MPL, focusing on its religious roots, colonial codification, and evolution after independence. It examines significant court rulings—namely Shah Bano, Danial Latifi, and Shayara Bano—to assess how constitutional principles of equality and secularism progressively influence the dialogue around personal law reform. The study assesses the conflicts between Fundamental Rights and Directive Principles, delineating the judiciary's role in promoting constitutional morality while reconciling individual liberty with communal rights.

An analysis of institutional mechanisms, including the All India Muslim Personal Law Board, and political narratives about minority protection is conducted to comprehend the opposition to introducing the Uniform Civil Code (UCC). This analysis evaluates comparative frameworks, gender equity imperatives, and state-level experiments (such as those in Goa and Uttarakhand) to assess reform options that honour diversity while maintaining constitutional integrity.

The research suggests that the progression towards a UCC must be gradual, deliberative, and contextually aware, emphasising inclusive legal change rather than forced uniformity. A

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unified civil code should arise not as an instrument of assimilation, but as a manifestation of India's dedication to dignity, equality, and unity in diversity.

INTRODUCTION

The constitutional vision of India is founded on the principle of unity in diversity, harmonising individual liberty with egalitarian principles. The proposal for a Uniform Civil Code (UCC), as articulated in Article 44 of the Directive Principles of State Policy, has incited ongoing discourse. The UCC aims to unify and standardise personal laws related to marriage, divorce, inheritance, and adoption under a singular civil framework, thereby fostering national unity and gender equity.

This endeavour encounters a significant constitutional quandary, particularly with Muslim Personal Law, which is grounded in legislative provisions, religious scriptures, and traditional customs. The convergence of secularism, religious freedom (Article 25), and equality (Article 14) presents intricate jurisprudential and ethical dilemmas. Can a state maintain personal law autonomy while establishing a consistent legal framework without violating minority rights?

The topic has been invigorated by significant court rulings, such as *Mohd. Ahmed Khan v. Shah Bano Begum* and *Shayara Bano v. Union of India* have rekindled discussions on gender fairness, constitutional morality, and legislative inaction. These verdicts indicate a developing constitutional awareness, highlighting political sensitivities and communal apprehensions.

This study seeks to elucidate the theoretical foundations, constitutional conflicts, and socio-political aspects of enacting the UCC in a diverse society such as India. This paper analyses the evolution of Muslim Personal Law in conjunction with judicial interpretations and legislative advancements to assess the feasibility of a harmonised civil code, questioning if its pursuit may jeopardise the heterogeneity it aims to address.

The Uniform Civil Code (UCC) is among the most persistent and acrimonious discussions in Indian constitutional and legal discourse. The UCC, conceived under Article 44 of the Directive Principles of State Policy, advocates for a uniform set of rules regulating personal issues, including marriage, divorce, inheritance, adoption, and maintenance, applicable to all people regardless of religion, caste, or community. The claimed purpose is to foster national

integration, guarantee gender justice, and defend the constitutional principles of equality and secularism. Implementing the UCC has been tricky, partly owing to the intricate relationship between religious freedom (Article 25) and equality before the law (Article 14) and the diverse character of Indian society.²

The concept of a standardised legal framework for civil concerns was first proposed during the colonial era. *The Lex Loci Report of 1840*,³ Commissioned by the British East India Company, advocated for codifying laws concerning crimes, contracts, and evidence, while cautioning against interference with the personal laws of Hindus and Muslims. The colonial heritage of legal plurality persisted after independence, since the Constituent Assembly chose to include the Uniform Civil Code (UCC) as a non-enforceable directive concept instead of a basic right. The discussions in the Assembly exposed significant divisions: liberal constitutionalists such as Dr. B.R. Ambedkar and K.M. Munshi supported a uniform civil code to promote social reform and gender equality, whereas other members, notably Muslim representatives, expressed concerns that such a code would undermine religious autonomy and minority rights.⁴

The constitutional positioning of the UCC in Part IV, as opposed to Part III, signifies a compromise between these conflicting perspectives. *Article 44 states: "The State shall strive to ensure a uniform civil code for all citizens across the territory of India."*⁵ Article 37 elucidates that directive principles are not subject to enforcement by any court, although they are essential to the nation's government. This constitutional framework has resulted in a unique circumstance where the UCC serves as both a constitutional ideal and a political controversy, selectively referenced in court decisions and electoral discourse.

India functions under a pluralistic legal framework, whereby separate personal laws regulate many religious sects. Hindus, Buddhists, Jains, and Sikhs are governed by codified laws, including the Hindu Marriage Act (1955), Hindu Succession Act (1956), and Hindu Adoption and Maintenance Act (1956). Muslims are subject to uncodified Shariat-based regulations, particularly under the Muslim Personal Law (Shariat) Application Act of 1937 and the Dissolution of Muslim Marriages Act of 1939. Christians and Parsis possess distinct legal

² Available at <https://www.tscltd.com/uniform-civil-code-a-critical-analysis> (Last access on 22/01/2025).

³ Available at <https://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/UNIT%20-%204.pdf> (Last Access on 22/01/2025).

⁴ Available at <https://amoghavarshaiaskas.in/1948-debate-on-uniform-civil-code-what-ambedkar-km-munshi-said/> (Last Access on 22/01/2025).

⁵ Article 44 of the CONSTITUTION OF INDIA.

systems, including the Indian Christian Marriage Act (1872) and the Parsi Marriage and Divorce Act (1936). The Special Marriage Act (1954) offers a secular option for inter-faith weddings; however, it is often seen as socially stigmatising and administratively burdensome. The court has been instrumental in influencing the dialogue over the UCC, often referencing it in issues related to gender justice and religious customs. The pivotal *Shah Bano case (1985)*,⁶ In which the Supreme Court affirmed a Muslim woman's entitlement to maintenance under *Section 125 of the Criminal Procedure Code, now Section 144 of the Nagarik Suraksha Sanhita, 2023*, rekindled the discourse. The Court expressed regret that Article 44 had become a “dead letter” and urged the legislature to implement a Uniform Civil Code (UCC). Nonetheless, the political repercussions from orthodox Muslim factions resulted in the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which essentially invalidated the ruling. Subsequent cases, such as *Sarla Mudgal v. Union of India (1995)*⁷ and *Shayara Bano v. Union of India (2017)*,⁸ Further highlighted the conflict between personal law liberty and constitutional morality. In *Shayara Bano*, the Court deemed triple talaq illegal, highlighting its infringement on women's equality and dignity, thereby emphasising the need for consistency in civil legislation.

Notwithstanding judicial advocacy, legislative stagnation has persisted. Political parties often use the UCC as a divisive instrument, with advocates asserting its need for national cohesion and detractors cautioning against its capacity to marginalise minorities. The Law Commission of India, in its 2018 report, determined that a Uniform Civil Code (UCC) was “neither necessary nor desirable at this stage,” advocating for the reform of discriminatory elements within current personal laws instead. This pragmatic approach acknowledges the socio-cultural sensitivities and promotes gradual transformation instead of sudden codification.⁹

The Goa Civil Code, derived from Portuguese governance, is often referenced as an exemplary example of a consistent civil code. It consistently applies to all Goans, regardless of faith, and has progressive stipulations such as equal inheritance rights and compulsory marriage registration. Critics contend that Goa's distinctive colonial history and demographic makeup render it an anomaly rather than a model for national application. Recently, Uttarakhand

⁶ AIR 1985 SUPREME COURT 945.

⁷ AIR 1995 SUPREME COURT 1531.

⁸ AIR 2017 SUPREME COURT 4609.

⁹ Available at <https://www.epw.in/journal/2023/40/commentary/law-commission-india-and-uniform-civil-code.html> (Last access on 22/01/2025).

became the first Indian state to enact a Uniform Civil Code Bill in 2024, igniting fresh debate on the practicality and desirability of state-level UCCs.¹⁰

The UCC prompts significant enquiries on the essence of Indian secularism from a constitutional standpoint. In contrast to Western approaches that promote a rigid separation of religion and state, Indian secularism is contextual and accommodating, including governmental intervention in religious activities for social betterment. This is seen in the eradication of Sati, the prohibition of untouchability, and the limitation of temple access. The difficulty is in harmonising this reformist drive with the heterogeneous nature of Indian society. Is it permissible for the state to implement a uniform code without infringing upon the cultural autonomy of religious communities? Can personal laws be reconciled with constitutional principles without eradicating varied traditions?

The discourse also overlaps with issues of gender justice, minority rights, and legal diversity. Feminist academics contend that personal laws, especially Muslim Personal Law, sustain patriarchal norms and deny women equitable rights in marriage, divorce, and inheritance. They promote a gender-equitable Uniform Civil Code that surpasses religious limitations. In contrast, minority groups argue that personal rules are essential to their religious identity and that any effort to enforce a common code would be majoritarianism. This friction is exacerbated by the substantial reform of Hindu personal laws, but Muslim laws have largely remained unaltered, resulting in a disparity in legal modernisation.

In recent years, discussions over the UCC have expanded to include intersectional issues, including the rights of indigenous groups, LGBTQ+ people, and cohabiting partnerships. The Uttarakhand UCC Bill incorporates rules for live-in relationships and succession while exempting Scheduled Tribes, demonstrating a sophisticated approach to legal harmonisation. Academics have suggested alternative frameworks, including a model UCC for voluntary community adoption, or a sectoral strategy that transforms certain domains, such as marriage and inheritance, without completely restructuring the personal law system.¹¹

¹⁰ Available at <https://www.sriramsias.com/upsc-daily-current-affairs/goa-civil-code/> (Last access on 21/01/2025).

¹¹ Available at <https://www.drishtias.com/daily-updates/daily-news-editorials/india-s-uniform-civil-code-conundrum> (Last access on 21/01/2025).

HISTORICAL DEVELOPMENT OF UCC

Pursuing a Uniform Civil Code (UCC) in India is deeply rooted in the complex history of legal plurality before colonial governance. During the pre-colonial period, sovereigns often permitted religious groups to self-administer in personal law, maintaining traditions associated with marriage, divorce, inheritance, and familial affairs. Throughout the Mughal era, Islamic doctrine mostly regulated public law for Muslims, whilst Hindus adhered to their customary practices. The British East India Company further systematised this stratified legal culture in the 18th century. In 1772, Warren Hastings institutionalised the application of Hindu law to Hindus and Muslim law to Muslims in personal affairs. This methodology was bolstered by administrative documents, such as the Cornwallis Code of 1793 and the Lex Loci Report of 1840, which advocated codifying secular laws while preserving personal laws to prevent infringing upon religious sentiments.¹²

During British control, while criminal, commercial, and procedural laws were codified by organisations like the First Law Commission of 1834 under Lord Macaulay, personal laws mainly evaded the codification initiative. Nonetheless, reformist initiatives resulted in specific legal modifications, such as the Hindu Widow Remarriage Act of 1856, the Indian Divorce Act of 1869 for Christians, and the Special Marriage Act of 1872, facilitating inter-faith relationships. The British codification efforts regarding the Muslim community resulted in the establishment of the Muslim Personal Law (Shariat) Application Act of 1937 and the Dissolution of Muslim Marriages Act of 1939. These laws sought to reinstate and govern Shariat-based principles but mistakenly reinforced conventional gender roles and religious authority.

The formulation of India's Constitution from 1946 to 1949 was crucial in the discourse on personal laws and legal consistency. The Constituent Assembly vigorously debated adopting a Uniform Civil Code in India. Although liberal constitutionalists like Dr. B.R. Ambedkar and K.M. Munshi advocated for the Uniform Civil Code (UCC) as a mechanism for social change, national cohesion, and gender equity, several Muslim legislators opposed the concept, contending that it jeopardised religious liberty and minority rights. The ideological schism led to the inclusion of the UCC in Part IV of the Constitution, categorising it as a Directive Principle of State Policy under Article 44, instead of a Fundamental Right. This enabled the

¹² Available at <https://lawandotherthings.com/uniform-civil-code-the-history-and-the-present/> (Last access on 21/01/2025).

State to pursue the implementation of a uniform civil code without making it enforceable in courts, so maintaining legal heterogeneity while establishing a foundation for future change.¹³

Article 44 of the Indian Constitution states: *“The State shall strive to ensure a uniform civil code for all citizens across the territory of India.”* Their placement inside the Directive Principles reflects the drafters' intention to establish a visionary, although non-binding, constitutional objective. Article 37 elucidates that these principles are essential to government but are not amenable to judicial enforcement. Article 44 is founded on constitutional ideals of equality, secularism, and national cohesion. It seeks to provide a cohesive legal framework for personal issues that surpasses religious differences, to actualise the commitments of Article 14 (equality before the law) and Article 15 (prohibition of discrimination), while carefully reconciling Article 25 (freedom of religion).

FUNDAMENTAL RIGHTS VS. DIRECTIVE PRINCIPLES: JURISPRUDENTIAL TENSIONS

The Indian Constitution, a notable amalgamation of liberal democratic principles with social justice objectives, establishes two fundamental pillars: Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). Fundamental Rights provide individual freedoms and are subject to judicial enforcement, while Directive Principles outline the State's socio-economic objectives and lack justiciability. This dual structure embodies the founders' intention to reconcile individual liberty with social well-being. The combination of enforceable rights and unenforceable directives has resulted in ongoing jurisprudential difficulties, especially when legislation designed to implement Directive Principles clashes with Fundamental Rights. The court has been instrumental in addressing this constitutional dialectic, transitioning from a strict emphasis on rights to a more sophisticated integration of both rules. This article examines this conflict's historical, philosophical, and judicial aspects, tracking its development through significant cases and constitutional changes, and evaluating its consequences for constitutional morality and democratic government.

The conceptual origins of this tension are in the conflicting traditions that shaped the Constitution's formulation. Fundamental Rights, influenced by the American Bill of Rights,

¹³ Available at <https://lawandotherthings.com/uniform-civil-code-the-history-and-the-present/> (Last access on 21/01/2025).

embody the liberal tradition of safeguarding individual liberties against governmental intrusion. They include rights to equality, freedom of expression, religious practice, and constitutional remedies, enforced under Articles 32 and 226. Conversely, Directive Principles, derived from the Irish Constitution and Gandhian philosophy, encapsulate the socialist and communitarian ideals of a welfare state. They implore the State to guarantee fair resource allocation, facilitate education, uphold gender justice, and advance environmental sustainability. The founders acknowledged that political democracy devoid of social and economic fairness would be superficial, and so included Directive Principles as a moral guide for government. The Constitution established a structural hierarchy that became a locus of contention by situating them in Part IV and designating them as non-justiciable under Article 37.¹⁴

The first judicial methodology reinforced this hierarchy. In *State of Madras v. Champakam Dorairajan (1951)*,¹⁵ The Supreme Court invalidated caste-based reservations in educational institutions, determining that they contravened Article 15(1) and that the Directive Principles under Article 46 could not supersede Fundamental Rights. The Court held that in instances of dispute, Fundamental Rights should take precedence. This ruling led to the First Constitutional Amendment (1951), which included Article 15(4) to facilitate affirmative action for socially and educationally disadvantaged groups. It further established Articles 31A and 31B and the Ninth Schedule to safeguard land reform legislation from judicial review. These changes initiated a constitutional conversation between Parliament and the judiciary, with Parliament endeavouring to enact socio-economic reforms while the court safeguarded individual rights.¹⁶

The tension intensified in *Golak Nath v. State of Punjab (1967)*¹⁷, whereby the Supreme Court determined that Parliament could not change Fundamental Rights to enforce Directive Principles. The Court concluded that Fundamental Rights are inviolable and not subject to Article 368. This ruling resulted in a constitutional stalemate, since it nullified many amendments intended for land redistribution and economic equity. In response, Parliament approved the 24th and 25th Amendments, reinstating its authority to change any section of the Constitution and creating Article 31C, which prioritised legislation implementing Articles

¹⁴ Available at <https://plutusias.com/fundamental-rights-vs-directive-principles/> (Last Access on 22/01/2025).

¹⁵ AIR 1951 SUPREME COURT 226.

¹⁶ Available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (Last Access on 21/01/2025).

¹⁷ AIR 1967 SUPREME COURT 1643.

39(b) and 39(c) above Articles 14, 19, and 31.¹⁸ This established the foundation for the landmark case of *Kesavananda Bharati v. State of Kerala (1973)*, in which the Supreme Court affirmed Parliament's authority to amend the Constitution while introducing the Basic Structure Doctrine, asserting that amendments could not obliterate the Constitution's fundamental characteristics, including judicial review and Fundamental Rights.¹⁹

Kesavananda Bharati signified a major transformation in jurisprudence. The Court recognised the significance of Directive Principles in fulfilling constitutional objectives, but stressed that they must be aligned with Fundamental Rights. Justice Mathew noted that the Constitution is a dynamic instrument rather than a static text, and that rights and directions should be read considering evolving social conditions. The ruling acknowledged that the Constitution anticipates a dynamic balance between individual freedom and social justice, asserting that neither can be compromised for the other. This methodology established the foundation for a more cohesive jurisprudence, as courts started incorporating Directive Principles into the interpretation of Fundamental Rights.

The integrated method was further refined in *Minerva Mills v. Union of India (1980)*,²⁰ When the Supreme Court annulled the augmented version of Article 31C established by the 42nd Amendment, which prioritised all Directive Principles above Articles 14 and 19. The Court determined that the Constitution is predicated on a balance between Parts III and IV, and that annihilating one would make the other devoid of significance. Justice Chandrachud notably asserted that “to obliterate the assurances provided by Part III in pursuit of the objectives of Part IV is unequivocally to undermine the Constitution.” The ruling reiterated that Fundamental Rights and Directive Principles are complementary and supplementary, and that the State must endeavour to actualise both without compromising. This conceptual synthesis established the foundation of constitutional interpretation in later decisions.

In *Unni Krishnan v. State of Andhra Pradesh (1993)*, the Supreme Court determined that the right to education in Article 45 may be interpreted as encompassed within Article 21, so it established it as a Fundamental Right. The 86th Amendment (2002) included Article 21A, establishing free and compulsory education for children aged 6 to 14 as a justiciable

¹⁸ Available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-fifth-amendment-act-1971> (Last Access on 22/01/2025).

¹⁹ AIR 1973 SUPREME COURT 1461.

²⁰ AIR 1980 SUPREME COURT 1789.

entitlement.²¹ In *M.C. Mehta v. Union of India*,²² the Court used Article 48A to broaden the interpretation of Article 21 to include the right to a clean environment. In *Vishaka v. State of Rajasthan (1997)*,²³ the Court used Article 15 and Directive Principles to establish standards addressing sexual harassment in the workplace. These instances demonstrate how the court has innovatively used Directive Principles to enhance and broaden Fundamental Rights, closing the gap between desire and enforcement.

Notwithstanding this harmonisation, disputes remain, particularly in economic policy and affirmative action. Laws enacting Article 39(b) and (c) remain protected by Article 31C, prompting apprehensions over the erosion of equality and property rights. The Ninth Schedule, initially designed to safeguard land reform legislation, has been used to shield various acts from judicial scrutiny, leading the Court in *I.R. Coelho v. State of Tamil Nadu (2007)*²⁴ to determine whether laws under the Ninth Schedule are subject to the Basic Structure Doctrine. The discourse around the Uniform Civil Code (Article 44) illustrates the conflict between religious liberty (Article 25) and legal uniformity. The Court has consistently pushed the State to establish a UCC, but political sensitivities and minority rights have impeded development, illustrating the intricate relationship between rights and directives.

The legal tension also prompts enquiries on constitutional morality, a notion increasingly referenced by the court to resolve discrepancies between statutory rules and ethical governance. Constitutional morality necessitates adherence to the Constitution's fundamental principles—justice, equality, liberty, and fraternity—and mandates that laws and policies be assessed on technical criteria and their congruence with these principles. In *Navtej Singh Johar v. Union of India (2018)*²⁵ and *Joseph Shine v. Union of India (2018)*²⁶ the Court invalidated colonial-era statutes against homosexuality and adultery, saying that constitutional morality must supersede cultural morality. These rulings emphasise the judiciary's function as a protector of transformational constitutionalism, dedicated to fulfilling the Constitution's promise of a fair and inclusive society.

²¹ Available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-sixth-amendment-act-2002> (Last Access on 22/01/2025).

²² AIR ONLINE 1996 SC.

²³ AIR 1997 SUPREME COURT 3011.

²⁴ Appeal (Civil) 1344-45 of 1976.

²⁵ AIR 2018 SUPREME COURT 4321.

²⁶ AIR 2018 SUPREME COURT 4898.

The conflict between Fundamental Rights and Directive Principles also illustrates wider theoretical discussions in constitutional law. Liberal thinkers contend that rights are fundamental for individual liberty and need safeguarding against majoritarian tendencies. Conversely, communitarian and egalitarian thinkers claim that rights should be contextualised within a framework of social responsibilities and distributive fairness. The Indian Constitution, characterised by its distinctive amalgamation of rights and directions, necessitates a contextually aware and purposeful interpretative approach. The judiciary's developing doctrine reflects an effort to harmonise these traditions, transitioning from formalism to substantive justice.²⁷

The conflict between Fundamental Rights and Directive Principles is an inherent characteristic of the Indian constitutional framework, rather than a deficiency. It embodies the founders' conception of a democracy encompassing political, social, and economic dimensions. With its interpretative ingenuity and dedication to constitutional principles, the court has converted this conflict into a locus of innovation and advancement. By aligning rights and directions, the Court has preserved the Constitution's integrity while promoting its transformational objectives. This legal discourse is essential for achieving constitutional justice as India confronts inequality, exclusion, and pluralism issues. The future of Indian constitutionalism is not in the dichotomy of rights and directions, but in their integration into a cohesive and empathetic legal framework.²⁸

ORIGIN AND SOURCES OF MUSLIM PERSONAL LAW IN INDIA

The origins and roots of Muslim Personal Law in India reflect a complex interaction of Islamic doctrine, historical development, colonial codification, and judicial interpretation. Muslim Personal Law (MPL) now regulates issues like marriage, divorce, maintenance, inheritance, guardianship, and wakf for Indian Muslims. Its underpinnings are rooted in traditional Islamic law, although its implementation in India has been influenced by centuries of socio-political evolution, especially during the colonial and post-independence eras. To comprehend the modern dimensions of MPL, one must investigate its origins in the early Islamic era, assess its introduction to the Indian subcontinent, and scrutinise the legal changes it experienced under

²⁷ Available at <https://blog.ipleaders.in/conflict-between-fundamental-rights-and-dpsp/> (Last Access on 23/01/2025).

²⁸ Id.

British colonial administration and beyond.²⁹

Islamic law, known as Sharia, originated in the 7th century CE with the emergence of Islam in Arabia. It was formulated via divine revelations imparted to Prophet Muhammad, documented in the Quran, and augmented by his sayings and deeds, referred to as Hadith. The Quran is regarded as the principal source of Islamic jurisprudence, with over 6,000 verses, of which roughly 200 address legal concepts, and about 80 specifically relate to personal status regulations. The Hadith, collected by academics like Bukhari and Muslim, provide background and clarification on Quranic mandates. Collectively, these texts provide the foundation of the Sunnah, the second most authoritative source of Islamic jurisprudence. In addition to these, Islamic jurisprudence acknowledges Ijma (consensus of scholars) and Qiyas (analogical reasoning) as secondary authorities. Ijma denotes the consensus of jurists on legal matters not specifically covered in the Quran or Hadith, while Qiyas facilitates the formulation of new rules by analogy. The Quran, Sunnah, Ijma, and Qiyas form the foundational framework of Islamic law, generally recognised throughout Sunni jurisprudential schools, including Hanafi, Maliki, Shafi'i, and Hanbali. The Hanafi school has traditionally been predominant among Indian Muslims due to its Mughal emperors' endorsement and adaptability to local norms.

The introduction of Islamic law to India started with Arab merchants in the 7th century and escalated with the onset of Muslim governance in the subcontinent from the 12th century forward. The Delhi Sultanate and subsequently the Mughal Empire formalised Islamic legal concepts by appointing Qazis (judges) and Muftis (jurisconsults), who dispensed justice by Sharia. Implementing Islamic law was inconsistent, coexisting with indigenous traditions and regional practices. The Fatawa-e-Alamgiri, initiated by Emperor Aurangzeb in the 17th century, was a key effort to codify Hanafi law and functioned as a reference for court determinations. Notwithstanding these efforts, the legal system persisted in its pluralism, with customary rules often dominating marriage, inheritance, and property issues, particularly among tribes such as the Khojas and Memons, who maintained Hindu customs despite their conversion to Islam.

The colonial era signified a pivotal moment in the development of MPL. Upon taking administrative authority, the British East India Company first implemented a policy of non-

²⁹ Available at <https://www.pahujalawacademy.com/origin-and-sources-of-muslim-law> (Last Access on 23/01/2025).

interference in religious affairs. The 1772 plan of Warren Hastings stipulated that Muslims would be ruled by their laws, as interpreted by Islamic experts, in matters of inheritance, marriage, and religious practices. Nevertheless, the British quickly saw the need for a more structured legal framework. They started the examination of writings such as the Hidayah, a Hanafi textbook. They translated them into English, resulting in the emergence of Anglo-Muhammadan law—a synthesis of Islamic ideas and British legal standards. The courts used these writings while integrating notions of fairness, justice, and moral conscience, particularly when religious teachings were silent or confusing. Over time, court rulings started to influence MPL, often deviating from traditional interpretations. The colonial codification culminated in implementing the Muslim Personal Law (Shariat) Application Act, 1937, which aimed to re-establish the supremacy of Sharia over customary practices. Section 2 of the Act stipulated that in issues about marriage, divorce, maintenance, inheritance, and wakf, Muslims must be regulated by their law, irrespective of any conflicting customs or practices. This Act was enacted in response to requests from Muslim leaders concerned that customary laws undermined Islamic identity and aimed to re-establish religious autonomy.³⁰

While reinforcing Islamic values, the Shariat Act of 1937 did not fully define the Muslim Personal Law. It delegated interpretation to the judiciary, which persisted in referencing classical sources and legal precedents. The Dissolution of Muslim Marriages Act, 1939, was a crucial statute that broadened the reasons for which Muslim women may petition for divorce, including cruelty, desertion, and failure to provide maintenance. This Act signified a gradual transformation, acknowledging women's rights within Islamic law. Nonetheless, the colonial legacy of MPL was fraught with ambiguities. The British courts often favoured literary interpretations above practical applications, and their dependence on translated texts resulted in distortions. Furthermore, the implementation of MPL differed throughout areas and groups, illustrating the diverse character of Indian society.³¹

Following independence, the MPL remained regulated by the Shariat Act and court interpretation. The Indian Constitution guarantees religious freedom in Article 25 and envisions a Uniform Civil Code (UCC) in Article 44. This produced a constitutional conflict between individual rights and communal sovereignty. The court has been instrumental in

³⁰ Available at <https://www.drishtijudiciary.com/ttp-muslim-law/sources-of-muslim-Law> (Last Access on 23/01/2025).

³¹ Available at <https://www.pahujalawacademy.com/origin-and-sources-of-muslim-law> (Last Access on 23/01/2025).

managing this conflict. In the pivotal Shah Bano case (1985), the Supreme Court determined that a Muslim lady was entitled to support under Section 125 of the Criminal Procedure Code, notwithstanding her divorce under the Muslim Personal Law. The ruling ignited a national discourse on secularism and minority rights, resulting in the passage of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which aimed to restrict maintenance to the iddat period. Subsequent rulings, notably *Danial Latifi v. Union of India* (2001), construed the Act to guarantee that divorced Muslim women obtained equitable and just provisions, aligning the MPL with constitutional tenets.³²

MPL acknowledges secondary sources, including customs, judicial precedents, laws, and sources. Customs and usages are valid, provided they do not contradict Islamic teachings. Judicial precedents, particularly those established by the Supreme Court and High Courts, influence the interpretation and implementation of MPL. Legislation, however restricted, has tackled certain concerns such as marital dissolution, alimony, and triple talaq. The interaction of these sources illustrates the evolving character of MPL, shaped by legal interpretation, social transformation, and constitutional adjudication.³³

The All-India Muslim Personal Law Board (AIMPLB) is a significant non-governmental organisation founded in 1973 to protect and advance the implementation of Muslim Personal Law (Shariat) in India. It arose in reaction to escalating apprehensions among the Muslim community over legislative initiatives—such as the Adoption Bill of 1972—that were seen as advancements towards a Uniform Civil Code, possibly jeopardising Islamic legal traditions. The AIMPLB is a consultative and advocacy organisation, consisting of Islamic scholars, legal professionals, and representatives from many sects and schools of thought, including Sunni and Shia populations. It offers counsel on matters like marriage, divorce, inheritance, maintenance, and wakf, significantly influencing public opinion and legal reactions to situations such as Shah Bano, Triple Talaq, and the Muslim Women (Protection of Rights on Divorce) Act.

Although it has no official legislative or judicial power, the Board exerts significant influence within the Muslim community. It often interacts with the government and courts to uphold the independence of Muslim personal laws. It also prepares model papers (e.g., Nikahnama) and

³² Available at <https://dvkjournals.in/index.php/jd/article/download/1376/1266/2759> (Last Access on 23/01/2025).

³³ Id.

manages committees dedicated to social change, legal education, and conflict resolution via institutions such as Darul Qaza (Islamic arbitration centres).³⁴

UNIFORM CIVIL CODE AND IMPLICATIONS ON MUSLIM PERSONAL LAWS

The discourse on the Uniform Civil Code (UCC) and its effects on Muslim Personal Law (MPL) in India is a longstanding and intricate constitutional dispute, highlighting the conflict between secularism, equality, and religious liberty. Article 44 of the Directive Principles of State Policy enshrines the Uniform Civil Code (UCC), which proposes a unified framework of civil rules regulating marriage, divorce, inheritance, adoption, and succession for all people, regardless of faith. The Constitution requires the State to strive towards a Uniform Civil Code. However, its implementation has proven hard owing to the diverse character of Indian culture and the sensitivities related to religious identity. The MPL has been central to this discussion owing to its unique theological basis and the socio-political factors influencing its interpretation and use. The ramifications of a UCC on MPL are complex, including constitutional, legal, social, and political aspects, necessitating a comprehensive examination that honours religious sovereignty while advancing gender justice and national cohesion.³⁵

The constitutional conflict between Article 25, which ensures religious freedom, and Article 44, which promotes a Uniform Civil Code, is central to the discourse. Article 25 safeguards the freedom to profess, practise, and promote religion, but with limitations about public order, morality, health, and other basic rights. The Supreme Court has consistently ruled that personal laws are subject to constitutional examination, particularly where they contravene the principles of equality and non-discrimination, in the pivotal case of *Mohd. Ahmed Khan v. Shah Bano Begum (1985)*,³⁶ The Court affirmed the entitlement of a divorced Muslim woman to seek maintenance under Section 125 of the Criminal Procedure Code, highlighting that secular laws take precedence over personal laws on issues of social justice. The verdict incited a political reaction, resulting in the passage of the Muslim Women (Protection of Rights on Divorce) Act, 1986, aimed at mitigating the Court's decision. Subsequent rulings, like *Danial Latifi v. Union of India (2001)*,³⁷ Construed the Act to uphold the constitutional need of gender

³⁴ Available at <https://aimplboard.org/introduction.html> (Last Access on 22/01/2025).

³⁵ Available at <https://www.getyellow.in/resources/muslim-law-in-india-personal-laws-marriage-womens-rights-estate-planning> (Last Access on 22/01/2025).

³⁶ AIR 1985 SUPREME COURT 945.

³⁷ AIR 2001 SUPREME COURT 3958.

equity. These judicial interventions emphasise the developing jurisprudence aimed at reconciling MPL with constitutional principles and illustrate the possibility of a UCC to formalise such revisions.

A primary consequence of a UCC on MPL is the possible eradication of gender-discriminatory activities. Under MPL, a Muslim male is allowed to marry up to four spouses, contingent upon the principles of justice and equality; however, a Muslim woman is not granted the same privilege. The Supreme Court deemed the practice of triple talaq unlawful in *Shayara Bano v. Union of India* (2017), since it infringed upon basic rights, allowing a man to unilaterally divorce his wife by uttering "talaq" three times. The passing of the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalised immediate triple talaq and represented a pivotal advancement in gender equality. Nonetheless, traditions such as polygamy, inequitable inheritance rights, and the idea of halala remain prevalent, prompting questions over the alignment of MPL with constitutional values. A UCC aims to eradicate such inequities by creating a standardised framework that ensures equal rights for men and women in marriage, divorce, and succession, thereby promoting gender justice.

Inheritance under MPL is regulated by intricate laws distinguishing between male and female heirs. A son receives double the inheritance of a daughter, while the entitlements of widows and mothers are restricted compared to male kin. Although these regulations are grounded in Islamic doctrine and mirror historical socio-economic settings, they are being contested for sustaining gender inequity. Establishing a UCC would include enacting a standardised inheritance law that grants equitable rights to all heirs, regardless of gender or religion. This will address past injustices and harmonise personal laws with the constitutional principles of equality stipulated in Article 14 and non-discrimination outlined in Article 15. Critics assert that these measures might violate religious freedom and disturb community traditions, while proponents say that constitutional morality should take precedence over religious dogma in civil rights issues.

The registration of marriage is another vital area in which the UCC might provide consistency. Marriage registration is not obligatory under MPL, resulting in complications of verification, validity, and legal acknowledgement. A UCC would require the registration of all weddings, regardless of faith, thereby improving legal clarity and safeguarding the rights of spouses and children. It would also enhance the enforcement of marital rights, including support, custody,

and divorce, while diminishing the potential for fraudulent and coerced marriages. Additionally, standardised marriage rules will streamline interfaith weddings, now regulated under the Special Marriage Act of 1954, which can include bureaucratic obstacles and societal shame.³⁸

The establishment of a UCC would also affect conflict resolution systems within the Muslim community. Institutions like Darul Qaza (Islamic arbitration centres) and the All-India Muslim Personal Law Board (AIMPLB) are essential in interpreting and applying MPL. Although these entities provide community-based conflict resolution, their rulings are not legally enforceable and may lack procedural protections. A UCC would subject all civil disputes to secular tribunals, guaranteeing consistency, openness, and accountability. This would strengthen the rule of law and improve access to justice, particularly for women and marginalised populations.³⁹

Notwithstanding its prospective advantages, the execution of a UCC encounters considerable obstacles. The concern among minority populations that a Uniform Civil Code would enforce majoritarian principles and undermine religious identity is a significant barrier. Historical events like the Shah Bano issue have heightened apprehensions of political exploitation and cultural uniformity. To mitigate these issues, the UCC must be developed via inclusive and collaborative procedures, including religious academics, legal experts, civil society, and community leaders. The aim should not enforce uniformity but guarantee equality and justice within a diverse context. The 21st Law Commission said in its 2018 report that modifying personal laws to achieve gender equity is preferable to implementing a universal code. The recent implementation of a UCC in Uttarakhand and the current discussions in other states indicate an increasing impetus towards legal consistency.

The ramifications of the Uniform Civil Code on Muslim Personal Law are significant and complex. MPL reflects religious traditions and communal identity, although it also sustains gender inequalities and legal contradictions that contradict constitutional values. A UCC promises legal consistency, gender justice, and national unification, but must be implemented with care, inclusion, and respect for variety. The difficulty is not in harmonising religion with law, but in aligning personal laws with the constitutional ideals of equality, decency, and

³⁸ Available at <https://blog.ipleaders.in/ucc-in-muslim-personal-law/> (Last Access on 23/01/2025).

³⁹ Available at <https://blog.ipleaders.in/ucc-in-muslim-personal-law/> (Last Access on 23/01/2025).

secularism. As India progresses in legal modernisation and social transformation, the UCC is a crucial but controversial milestone, requiring careful consideration and bold leadership.

CONCLUSION

The constitutional progression towards a Uniform Civil Code (UCC) in India symbolises the nation's persistent effort to harmonise the principles of secularism, equality, and legal plurality within a dynamic democratic framework. This study has rigorously analysed the historical origins, intellectual foundations, and progressive constitutional dialogue related to the UCC, focusing on its influence on Muslim Personal Law (MPL). It has highlighted the intricate legal contradictions between Fundamental Rights and Directive Principles, demonstrating how the Indian court has progressively endeavoured to reconcile social justice with religious liberty.

The UCC argument centres on a constitutional quandary: guaranteeing gender equity and legal equality while honouring the many cultural and religious identities within India's multicultural community. Muslim Personal Law, based on Quranic directives and traditional jurisprudence, remains mostly uncodified and resistant to change, positioning it as a central issue in discussions on the practicality and appropriateness of legal uniformity. This study has examined case law—from Shah Bano and Shayara Bano to Danial Latifi—highlighting the judiciary's gradual but intentional endeavours to promote constitutional morality and individual rights while respecting community-specific customs.

The quest for a Uniform Civil Code cannot be separated from India's socio-political context. Legislative stagnation, societal apprehensions, and identity politics have perpetually hindered substantial change, while institutional entities like the All-India Muslim Personal Law Board play a crucial role in influencing opposition. The UCC discussion should be recontextualised not as a clash between secularism and religion, but as a constitutional initiative dedicated to inclusive legal change, participatory discourse, and progressive harmonisation.

This study emphasises that uniformity does not equate to fairness. A transformational civil code must be constitutionally robust, socially grounded, attentive to historical disparities, and relevant to current gendered situations. States such as Goa and Uttarakhand are implementing localised civil laws, providing exemplary models that reconcile variety with moral equality. Ultimately, the future of the UCC is rooted in constitutional incrementalism, anchored in

Article 44 but influenced by the practical implications of Article 25. Amending personal laws, especially MPL, to align with constitutional principles of dignity, non-discrimination, and human autonomy is a legal need and a moral obligation. The difficulty for India lies not in adopting a Uniform Civil Code, but in its implementation, ensuring that the quest for legal consistency does not undermine the heterogeneity characterising its democracy.

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