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# **UNIFORM CIVIL CODE: LEGAL, SOCIAL AND CONSTITUTIONAL IMPLICATIONS**

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## **Abstract**

The Uniform Civil Code (UCC), enshrined in **Article 44** of the Indian Constitution, remains one of the most contentious issues in the nation's legal and political discourse, oscillating between a constitutional necessity for national integration and a perceived threat to cultural pluralism. This research paper examines the historical trajectory of the UCC from the colonial "lex-loci" principle to the heated debates of the Constituent Assembly. It explores the inherent constitutional tension between **Article 44** (Directive Principles of State Policy) and **Articles 25–26** (Freedom of Religion), alongside the mandate for equality under **Articles 14–15**. Through a detailed analysis of landmark judicial interventions—including *Shah Bano*, *Sarla Mudgal*, and *Shayara Bano*—the paper highlights the judiciary's role in nudging the state toward a common code to ensure gender justice and secularism. Furthermore, it evaluates modern legislative models, such as the long-standing **Portuguese Civil Code in Goa** and the recently enacted **Uttarakhand UCC of 2024**, assessing their features and limitations. The paper concludes that while a UCC is essential for harmonizing personal laws and protecting marginalized groups, its implementation must be rooted in an inclusive, participatory approach that respects India's diversity while upholding individual rights.

**Keywords:** Uniform Civil Code, Article 44, Personal Laws, Secularism, Gender Justice, Constitutional Law.

## **Introduction**

The Constitution of India is a comprehensive document comprising 448 Articles, each playing a distinct role in governing the nation. Among these, **Article 44** occupies a unique and somewhat paradoxical position; it is the only provision that remains entirely theoretical, without practical, nationwide application since its inception. Article 44 mandates that the State "shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". The primary objective of this provision is to standardize laws related to personal matters—such as

marriage, divorce, inheritance, and adoption—creating a consistent legal framework across India’s diverse religious and cultural landscape.

Currently, India follows a system of **legal pluralism**, where different religious communities are governed by their own personal laws. For instance, Hindus (including Sikhs, Jains, and Buddhists) are governed by the **Hindu Marriage Act, 1955** and the **Hindu Succession Act, 1956**, while Muslims are primarily governed by uncodified Shariat law under the **Muslim Personal Law (Shariat) Application Act, 1937**. This fragmentation often leads to inconsistencies in legal rights, particularly in family-related matters, where traditional regulations can sometimes undermine gender equality and basic human rights.

The debate over the UCC is not merely a legal one; it is deeply social, cultural, and emotional. For proponents, the UCC represents a long-overdue step toward modernization, secularism, and the protection of women’s rights. For critics, it evokes fears of cultural erasure and the infringement of religious freedoms guaranteed under the Constitution. This paper seeks to analyse the multifaceted implications of the UCC, exploring whether it is a constitutional ideal or a social dilemma.

### **Historical Trajectory of the Uniform Civil Code**

#### The Colonial Legacy

The concept of a unified civil code traces its roots back to the British colonial period. In 1840, the **Lex-Loci Report** emphasized the necessity of a unified code for Indian laws concerning contracts, evidence, and crimes. However, the report specifically recommended that the personal laws of Hindus and Muslims be excluded from this codification. This stance was later reinforced by the **Queen’s Proclamation of 1859**, which pledged that the colonial administration would not interfere in religious matters, leaving personal laws to be governed by community-specific rules.

Despite this policy of non-interference, there were notable secular interventions during the 19th century. Lord William Bentinck declared the practice of **sati** illegal in 1829, and later, the **Hindu Widow Remarriage Act of 1856** was passed through the efforts of reformers like Ishwar Chandra Vidyasagar. Post-independence, India introduced several secular laws that took precedence over personal laws, such as the **Special Marriage Act, 1954** and the **Dowry**

**Prohibition Act, 1961**, though these remained piecemeal rather than a comprehensive code.

### **Constituent Assembly Debates**

On November 23, 1948, the Constituent Assembly engaged in a significant debate regarding Draft Article 44. The discussion revealed deep divisions. Muslim members expressed apprehension that a UCC would infringe upon their **freedom of religion** and disrupt community harmony. Conversely, supporters like **Dr. B.R. Ambedkar** and **K.M. Munshi** argued that a uniform code was essential for national unity and to uphold secular values.

Ambedkar famously noted that securing the rights of women would be impossible without such a code. Ultimately, due to the sensitivity of the issue, the UCC was placed in **Part IV** of the Constitution as a **Directive Principle of State Policy**, making it a constitutional aspiration rather than a mandatory, justiciable right.

### **Constitutional Framework and the Tussle of Rights**

The implementation of the UCC involves a complex balancing act between several constitutional provisions.

- 1. Article 44 and Article 37:** While Article 44 urges the State to secure a UCC, **Article 37** specifies that the Directive Principles are not enforceable by any court. However, they are fundamental in the governance of the country.
- 2. Equality and Non-Discrimination (Articles 14 and 15):** The UCC aligns with **Article 14**, which guarantees equality before the law, and **Article 15**, which prohibits discrimination based on religion, race, caste, sex, or place of birth. Proponents argue that diverse personal laws, which often treat women differently based on their faith, violate these fundamental rights.
- 3. Religious Freedom (Articles 25 and 26):** **Article 25** guarantees the freedom to profess, practice, and propagate religion. Critics argue that personal laws are an essential part of religious practice and that a mandatory UCC would violate this right. However, **Article 25(2)(a)** allows the state to regulate "secular activity" associated with religious practice, such as marriage and succession.
- 4. Secularism:** As a secular nation, the Preamble of India's Constitution demands that all citizens be treated equally regardless of their religion. The UCC is seen as a tool to separate religion from civil life, ensuring that legal status is not dependent on one's

faith.

### **Judicial Perspectives: Landmark Judgments**

In the absence of legislative action, the Indian judiciary has frequently addressed the disparities in personal laws, often highlighting the necessity of a UCC to ensure justice.

#### **Gender Justice and Maintenance**

In the **Shah Bano case (1985)**, the Supreme Court ruled that a divorced Muslim woman was entitled to maintenance under **Section 125 of the CrPC**, asserting that this was a religiously neutral provision aimed at preventing vagrancy. The court noted that Muslim personal law did not adequately address the support of a woman after the *iddat* period. Similarly, in **Danial Latifi v. Union of India (2001)**, the court upheld the validity of the **Muslim Women (Protection of Rights on Divorce) Act, 1986**, but interpreted it to mean that a husband's obligation to provide a "reasonable and fair provision" must cover the woman's entire future, not just the *iddat* period.

#### **Addressing Legal Fraud and Bigamy**

The cases of **Sarla Mudgal (1995)** and **Lily Thomas (2000)** addressed the issue of Hindu husbands converting to Islam solely to contract a second marriage without dissolving the first. The Supreme Court ruled such marriages void and punishable under the **Indian Penal Code**, emphasizing that a UCC would prevent the abuse of personal laws for "legal fraud".

#### **Standardizing Personal Rights**

In **John Vallamattom (2003)**, the court struck down Section 118 of the **Indian Succession Act**, which discriminated against Christians regarding property bequests for charitable purposes, as violative of **Article 14**. More recently, in **Shayara Bano v. Union of India (2017)**, the court declared the practice of **instant triple talaq** unconstitutional, calling it arbitrary and a violation of gender justice. In **Shabnam Hashmi (2014)**, the court affirmed that the right to adopt under the secular **Juvenile Justice Act** is available to all citizens, regardless of whether their personal laws recognize adoption.

### **Models of Implementation: Goa and Uttarakhand**

#### **The Portuguese Civil Code in Goa**

Goa is often cited as a model for the UCC. Following its annexation in 1961, the state continued

to apply the **Portuguese Civil Code of 1867**. Its features include mandatory registration of marriages, joint ownership of property between spouses, and equitable distribution of wealth among children regardless of gender. However, it is not without defects; for example, it provides certain privileges to Catholics regarding marriage registration and allows a specific form of polygamy for Hindus under very limited circumstances.

### **The Uttarakhand Uniform Civil Code, 2024**

In February 2024, Uttarakhand became the first state in independent India to enact a UCC. Key features include:

- A complete ban on **polygamy, nikah halala, and triple talaq**.
- Standardization of the marriageable age (18 for women, 21 for men).
- Mandatory registration of **live-in relationships** within one month.
- Equal inheritance rights for sons and daughters.
- Granting legitimacy to children born out of live-in relationships.

Despite its progressive stance on gender, the code has faced criticism for excluding Scheduled Tribes and for concerns regarding the "surveillance" of live-in couples.

### **Social and Legal Implications**

#### **Advantages of a UCC**

- 1. National Integration:** A UCC would strengthen national unity by bringing all citizens under a single legal umbrella, replacing fragmented religious identities with a common civil identity.
- 2. Gender Equality:** By eliminating discriminatory practices in personal laws regarding divorce, inheritance, and maintenance, the UCC would significantly enhance the status of women in India.
- 3. Simplification of the Legal System:** A common code would streamline the judicial process, reducing the confusion and delays caused by conflicting personal laws.
- 4. Secularism and Modernization:** It would align India with global human rights standards and modern secular values, moving away from "orthodox" laws that are no longer in consonance with contemporary society.

#### **Challenges and Concerns**

- 1. Pluralism vs. Uniformity:** Critics argue that India's strength lies in its diversity and

that a uniform code might erode unique cultural practices, such as the matrilineal systems in Meghalaya.

- 2. Minority Apprehensions:** There is a persistent fear that a UCC might be used to impose majoritarian views on minority communities, infringing upon their constitutional right to manage their own religious affairs.
- 3. Political Sensitivity:** The issue is often politicized, leading to vote-bank politics and polarized debates that hinder a rational consensus.
- 4. Legal Complexity:** Drafting a code that is fair and acceptable to all sections of a society as diverse as India is a massive administrative and legal undertaking.

### Case Analysis

The 1985 judgment in **Mohd. Ahmed Khan vs. Shah Bano Begum** is considered one of the most significant and controversial milestones in Indian legal history, primarily for its impact on the debate surrounding the **Uniform Civil Code (UCC)** and gender justice.

Its significance can be understood through the following key areas:

#### **1. Affirmation of Secular Law over Personal Law**

The Supreme Court unanimously held that **Section 125 of the Code of Criminal Procedure (CrPC)**, which deals with maintenance for wives, children, and parents, is a **religiously neutral provision**. The court ruled that this law applies to all citizens regardless of their faith—whether Hindu, Muslim, Christian, or Parsi—because its primary social purpose is to prevent **"vagrancy" and "destitution"**. Crucially, the court established that in the event of a conflict between a secular criminal law and personal law, the **CrPC would take precedence**.

#### **2. Redefining Maintenance Obligations**

The judgment challenged the traditional interpretation of Muslim personal law, which suggested a husband's obligation to maintain a divorced wife ended with the *iddat* period. The court clarified that:

- Muslim personal laws do not adequately cover situations where a woman cannot support herself after the *iddat* period.
- **Mahr** (dower) is a "marriage consideration" and not a payment occasioned by divorce, meaning its payment does not relieve a husband of the duty to provide maintenance under Section 125.

### 3. Judicial Nudge Toward a Uniform Civil Code

The Shah Bano case brought **Article 44** of the Constitution (the Directive Principle for a UCC) into the national spotlight. The judiciary used this case to highlight the disparities in personal laws and nudged the state to reform these laws to ensure **legal uniformity** and **gender justice**. This judgment served as a catalyst for the ongoing constitutional debate over whether family matters should be governed by religious texts or a common secular code.

### 4. Political and Legislative Aftermath

The ruling sparked an intense national debate, leading to significant political and religious friction. Critics argued the judgment was an interference in religious freedom, which eventually pressured the government to pass the **Muslim Women (Protection of Rights on Divorce) Act, 1986**. While this Act was seen as an attempt to effectively **annul the Shah Bano judgment** by limiting the husband's maintenance obligations, subsequent cases like *Danial Latifi (2001)* later re-interpreted the Act to ensure continued protection for divorced women.

In summary, the Shah Bano judgment was pivotal because it prioritized **individual rights and gender equality** over religious customary practices, setting the stage for decades of legal and political efforts to reform personal laws in India.

## Conclusion

The **Uniform Civil Code** remains both a "constitutional aspiration and a complex social challenge". While the judiciary has made significant strides in reforming discriminatory practices through incremental measures, these cannot replace a comprehensive, common civil code. For a UCC to be successful, it must not be seen as a tool of "compulsion" or "cultural erasure". Instead, it requires a "gradual, exemplary, and inclusive approach" involving dialogue with religious leaders, scholars, and civil society.

The ultimate goal should be a **progressive, gender-just, and secular code** that draws from the best practices of all existing laws, ensuring that individual rights are protected while the essential diversity of the Indian nation is respected. As India continues to evolve, the implementation of a UCC would signify a major advancement in its progress, fulfilling the vision of the constitutional framers to treat all citizens with equal justice and dignity.