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## THE UNIFORM CIVIL CODE CONUNDRUM: A CRITICAL ANALYSIS OF INDIA'S CONTEMPORARY LEGAL LANDSCAPE

~ *Shifa Iqbal*

### ABSTRACT

*Since the debates held by the Constituent Assembly in 1948-49, the Uniform Civil Code (UCC) as set out in Article 44 of the Constitution of India has been one of the most controversial and politically charged matters in the history of the Indian Constitution. The purpose of this study is to examine UCC in detail from a variety of perspectives including its constitutional foundation, legislative history, judicial development through over 70 years of Supreme Court and High Court decisions, and present day characteristics including the recent Gujarat Uniform Civil Code Bill 2026 and Uttarakhand Uniform Civil Code Act of 2024. The author argues that UCC is both a legislative aspiration and a constitutional responsibility based on principles of equality and dignity. Therefore, the discussion regarding UCC should be taken out of the realm of communal politics and placed within the scope of fundamental rights. This study draws on a variety of sources for research purposes including constitutions, Constituent Assembly debates, personal law statutes; cases decided by courts; reports prepared by the Law Commission; and numerous scholarly articles related to constitutional law, personal law, and gender jurisprudence.*

**Keywords:** Uniform Civil Code (UCC); Article 44; personal laws; gender jurisprudence; secularism; constitutional law.

### INTRODUCTION

Very few provisions in the Indian Constitution have sparked as much controversy politically and as little action legislatively than Article 44 which states that the State should strive to provide for the citizens a Uniform Civil Code covering all areas of India. The provision is

located in Part IV of the Constitution within the Directive Principles of State Policy and has been cited at the same time as an obligation for gender equality, condemned as an attack on religious freedom, praised as a representation of national unity and dismissed as unworkable due to India's diversity of religion and culture. The language of the article itself is clear; however, the debates surrounding this article have been extensive.

A Uniform Civil Code is a single and comprehensive code that will regulate personal material such as marriage, divorce, maintenance, inheritance, adoption, and guardianship for all Indians regardless of religion. These issues are currently governed by multiple religious systems of personal laws, i.e. Hindu Law, Muslim Law, Christian Law, Parsi Law, and Jewish Law, where each system applies to its respective members. The controversy over the UCC touches fundamental questions of Indian constitutionalism: it touches upon the nexus of fundamental rights v. directive principles, secularism v. freedom of religion, national unity v. minority rights, and judicial interpretation of the law v. legislative discretion. This study aims to discuss all of these dimensions in an orderly fashion. The historical progression of the UCC from the early days of British Colonialism, to debates concerning its inclusion in the Indian Constitution, to several instances of the Supreme Court of India prodding the Indian Parliament to enact a UCC, the Law Commission of India reversing course in 2018 with respect to its UCC recommendations, and finally to the landmark UCC law enacted by Uttarakhand in 2024. The discussion also contains a theoretical review of the UCC as seen through the lens of feminism, liberalism, communalism, and constitutionalism.

## **SCOPE AND SIGNIFICANCE OF STUDY**

This study covers the constitutional, legislative, and judicial dimensions of the UCC in India from independence to March 2026. It does not address the specific content of any proposed or enacted civil code in detail beyond what is necessary to evaluate constitutional and jurisprudential arguments. The study is confined to India but draws on comparative references where relevant. The study engages with all personal law communities but focuses on the Muslim personal law context because that context has generated the greatest volume of judicial observation and political controversy. The significance of the study is manifold. Doctrinally, the UCC debate brings into simultaneous play Articles 13, 14, 15, 21, 25, 26, 44, 245, and 246 of the Constitution, presenting one of the most complex intersections of constitutional

provisions in Indian law. Socially, the UCC bears on the lives of hundreds of millions of women who remain subject to discriminatory personal law provisions in matters of marriage, divorce, inheritance, and guardianship. Politically, the UCC has been a live electoral issue since the 1980s and has returned to renewed prominence following the Uttarakhand enactment of 2024 and the Supreme Court's handling of related petitions. Understanding the constitutional framework is therefore not merely academic; it is essential to informed public and parliamentary deliberation.

## **OBJECTIVE OF RESEARCH AND RESEARCH QUESTIONS**

The objective of this research is to critically examine the constitutional, historical, judicial, and contemporary dimensions of the Uniform Civil Code in India; to trace the judicial development of Article 44 from the Constituent Assembly to the present; and to evaluate the competing arguments around the UCC from constitutional, feminist, and pluralist perspectives. The study seeks to clarify what the Constitution actually requires, what the courts have said, and what a constitutionally sound path forward looks like.

The study is organised around the following research questions:

1. What is the constitutional status and content of Article 44, and how does it interact with Articles 13, 14, 15, 21, 25, and 26 of the Constitution?
2. What does the historical record of the Constituent Assembly debates reveal about the intended scope and justification of the UCC?
3. How has the Supreme Court of India addressed the UCC from Shah Bano (1985) to Supriyo (2023), and what legal principles emerge from that jurisprudence?
4. What is the significance of the Uttarakhand Uniform Civil Code Act, 2024, and what constitutional challenges does it face?
5. Is the UCC constitutionally compelled, constitutionally permissible but discretionary, or constitutionally problematic, having regard to the full constitutional scheme?

## **LITERATURE REVIEW**

In the journal literature, Marc Galanter's 'Hinduism, Secularism and the Indian Judiciary,' published in *Philosophy East and West*,<sup>1</sup> is an early and prescient analysis of the judiciary's

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<sup>1</sup> Marc Galanter, "Hinduism, Secularism and the Indian Judiciary" *Philosophy East and West* (1971).

differential approach to Hindu and Muslim personal law reform. Zoya Hasan's 'Uniform Civil Code and Gender Justice in India,' published in *Law and Society Review*,<sup>2</sup> argues that the UCC debate has been captured by communal politics and that a genuinely gender-just civil code requires prior consultation with the women most affected by discriminatory personal laws. Werner Menski's 'Teaching and Researching Comparative Law in a Globalised World,' published in *Comparative Law Review*<sup>3</sup> situates the Indian UCC debate within a global framework of legal pluralism and argues that uniform codification is neither the only nor necessarily the best response to gender inequality in personal law. Flavia Agnes's essay 'The Politics of Personal Law in India,' in *Religion and Personal Law in Secular India*,<sup>4</sup> traces the political economy of personal law reform from independence to the present. The 22nd Law Commission of India's Consultation Paper on Reform of Family Law (2018),<sup>5</sup> is the most recent authoritative official pronouncement, concluding that a UCC is neither necessary nor desirable at the present juncture and that specific reforms of individual personal laws would better serve gender justice.

The scholarly literature on the UCC is substantial and spans constitutional law, personal law, gender studies, and political philosophy. The constitutional law text is M.P. Jain's *Indian Constitutional Law*<sup>6</sup> which provides the most comprehensive doctrinal analysis of Article 44 in relation to the rest of the constitutional scheme. V.N. Shukla's *Constitution of India*<sup>7</sup> situates the directive principles within the broader constitutional architecture and examines the judicial debate on their enforceability.

On the personal law and reform dimensions, Tahir Mahmood's *Personal Law in Crisis*<sup>8</sup> remains the most forceful argument from within the Islamic scholarly tradition for the compatibility of reform with religious principle. Archana Parashar's *Women and Family Law Reform in India*<sup>9</sup> provides a feminist critique of both the existing personal law system and of the manner in which UCC debates have been conducted without adequate attention to the perspectives of

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<sup>2</sup> Zoya Hasan, "Uniform Civil Code and Gender Justice in India" *Law and Society Review* (1998).

<sup>3</sup> Werner Menski, "Teaching and Researching Comparative Law in a Globalised World" *Comparative Law Review* (2012).

<sup>4</sup> Flavia Agnes, "The Politics of Personal Law in India" in Gerald James Larson (ed.), *Religion and Personal Law in Secular India* (Indiana University Press, Bloomington, 2001).

<sup>5</sup> Report of the Law Commission of India on Reform of Family Law (Law Commission of India, New Delhi, 2018).

<sup>6</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis, Gurgaon, 8th edn., 2018).

<sup>7</sup> V.N. Shukla, *Constitution of India* (Eastern Book Company, Lucknow, 13th edn., 2017).

<sup>8</sup> Tahir Mahmood, *Personal Law in Crisis* (Metropolitan Book Co., New Delhi, 1986).

<sup>9</sup> Archana Parashar, *Women and Family Law Reform in India* (Sage Publications, New Delhi, 1992).

women within affected communities. Flavia Agnes's essay 'The Supreme Court, the Media, and the UCC Debate,' published in Hasan and Menon's *Unequal Citizens*<sup>10</sup> argues that the Supreme Court's repeated invocations of the UCC in cases involving Muslim women have functioned more as rhetorical condemnation of Muslim personal law than as genuine constitutional reasoning.

## **HISTORICAL BACKGROUND OF THE UNIFORM CIVIL CODE**

India's call for a uniform civil code dates well before the country gained independence from British rule. During the time of India under British rule, the British had an intentional policy of not interfering with how each individual community managed their own religious law. This was based on both practical reasons as the British Empire grew and also because they were trying to be tolerant to different religions through its use of law. The Indian Penal Code, 1860, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure governed all subjects alike; marriage, divorce, inheritance, and adoption remained governed by religion.

The Indian National Congress, particularly in its social reform wing associated with figures like Jawaharlal Nehru and B.R. Ambedkar had long advocated for a secular civil code as part of a broader modernisation agenda. The B.N. Rau Committee, appointed in 1941 to codify Hindu law, produced a draft Hindu Code Bill that eventually formed the basis for the four Hindu Code Acts of the 1950s, namely the Hindu Marriage Act 1955,<sup>11</sup> the Hindu Succession Act 1956,<sup>12</sup> the Hindu Adoptions and Maintenance Act 1956, and the Hindu Minority and Guardianship Act 1956. The decision to codify Hindu law while leaving Muslim, Christian, and Parsi personal law largely untouched was, as Tahir Mahmood has noted, a historically contingent political compromise rather than a considered constitutional choice.<sup>13</sup>

In the Constituent Assembly, Article 44 was adopted after a debate of considerable intensity. The principal advocate for inclusion was K.M. Munshi, who argued that a uniform civil code was essential to national integration and gender equality. The principal opponent was Mohammed Ismail Khan, who contended that the provision would violate the religious freedom of Muslim citizens guaranteed by what became Article 25 of the Constitution.<sup>14</sup> B.R.

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<sup>10</sup> Flavia Agnes, "The Supreme Court, the Media, and the UCC Debate" in Zoya Hasan and Ritu Menon (eds.), *Unequal Citizens: A Study of Muslim Women in India* (Oxford University Press, New Delhi, 2004).

<sup>11</sup> The Hindu Marriage Act, 1955 (Act 25 of 1955).

<sup>12</sup> The Hindu Succession Act, 1956 (Act 30 of 1956) as amended by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005).

<sup>13</sup> Tahir Mahmood, *supra* note 8.

<sup>14</sup> The Constitution of India, art. 25.

Ambedkar, as chairman of the Drafting Committee, gave the most nuanced response to these positions. He argued that the provision was merely a directive to the State to endeavour to secure a UCC, not a command to enact one immediately, and that the fear of Muslim minorities was misplaced because the provision left the timing and method entirely to Parliament.<sup>15</sup> The provision was adopted and placed in the non-justiciable Part IV, ensuring that it could not be directly enforced but would nonetheless guide State policy.

Following independence, the Hindu Code Bills were enacted through the 1950s against considerable orthodox resistance. The Special Marriage Act, 1954<sup>16</sup> provided a secular option for citizens of any religion wishing to marry outside their personal law, but it remained a voluntary alternative rather than a mandatory code. The result is the current plural system: multiple religious personal laws operating alongside a secular option, with the citizen choosing between them primarily by the accident of birth.

## **CONSTITUTIONAL BASIS OF UNIFORM CIVIL CODE**

### ***Article 44 and the Directive Principles***

Article 44 provides: 'The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.'<sup>17</sup> It is located in Part IV of the Constitution, which contains the Directive Principles of State Policy. Article 37 declares that the provisions of Part IV shall not be enforceable by any court, but shall nevertheless be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.<sup>18</sup> The Supreme Court has consistently held that the directive principles, though not justiciable in the sense of creating directly enforceable rights, are constitutional obligations that Parliament and State legislatures must give effect to when legislating. The Basic Structure doctrine articulated in *Kesavananda Bharati v. State of Kerala* (1973)<sup>19</sup> confirmed that even constitutional amendments cannot destroy the essential constitutional framework, and the directive principles are part of that framework.

### ***Article 13: Laws Inconsistent with Fundamental Rights***

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<sup>15</sup> Constituent Assembly Debates, vol. VII (Lok Sabha Secretariat, New Delhi, 1949).

<sup>16</sup> The Special Marriage Act, 1954 (Act 43 of 1954).

<sup>17</sup> The Constitution of India, art. 44.

<sup>18</sup> The Constitution of India, art. 37.

<sup>19</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

Article 13 renders void any law inconsistent with Part III fundamental rights.<sup>20</sup> A critical and long-contested question is whether personal law, being largely uncodified custom and religious practice, constitutes 'law' within the meaning of Article 13. In *State of Bombay v. Narasu Appa Mali*, the Bombay High Court held that personal laws are not 'laws' under Article 13(1) and are therefore not subject to fundamental rights scrutiny.<sup>21</sup> This decision has been followed by many courts and remains influential, but it has been heavily criticised by constitutional scholars and has never been authoritatively settled by the Supreme Court. If personal laws were held to be covered by Article 13, many of their discriminatory provisions would be immediately struck down as violative of Articles 14 and 15 without any need for legislative reform or a UCC.

### ***Articles 14 and 15: Equality and Non-Discrimination***

Article 14 guarantees equality before the law and equal protection of the laws to every person.<sup>22</sup> Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, and Article 15(3) specifically permits the State to make special provisions for women.<sup>23</sup> The existence of differential personal laws means that citizens' rights in matters of marriage, divorce, and inheritance depend on their religion at birth: a Muslim woman's right to maintenance on divorce differs from that of a Hindu woman; a Hindu woman's right to self-acquired property under the unamended Hindu Succession Act 1956 differed from a man's.

### ***Article 21: Right to Life and Personal Liberty***

Article 21 guarantees the right to life and personal liberty.<sup>24</sup> The Supreme Court has expansively interpreted this provision to include the right to dignity, privacy, and the right to live with full human worth. In *Justice K.S. Puttaswamy v. Union of India* (2017), the nine-judge bench held that privacy is a fundamental right. In the context of the UCC, Article 21 is relevant in two competing directions: it supports the case for a UCC insofar as discriminatory personal law provisions deprive women of their dignity and autonomy; and it also supports minority religious communities' claims that their cultural and religious identity, which includes personal law, is part of their life and liberty.

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<sup>20</sup> The Constitution of India, art. 13.

<sup>21</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

<sup>22</sup> The Constitution of India, art. 14.

<sup>23</sup> The Constitution of India, art. 15.

<sup>24</sup> The Constitution of India, art. 21.

### ***Articles 25 and 26: Freedom of Religion***

Article 25 guarantees the right to freely profess, practise, and propagate religion, subject to public order, morality, and health and to the other provisions of Part III.<sup>25</sup> Article 26 grants every religious denomination the right to manage its own affairs in matters of religion.<sup>26</sup> The opponents of the UCC have consistently argued that the enactment of a compulsory uniform code violates these provisions by preventing Muslims, Christians, and others from ordering their family relations in accordance with their religion. The Supreme Court has addressed this argument in several cases and has consistently held that Articles 25 and 26 protect religious practice but do not protect personal law as such from secular legislation. The Court has drawn the distinction between what is essential to a religion and what is merely associated with it: in *Shayara Bano v. Union of India* (2017), the Court held that instant triple talaq was not an essential religious practice and therefore not protected by Article 25.<sup>27</sup>

### ***Legislative Competence: Articles 245, 246, and the Seventh Schedule***

The legislative competence to enact a UCC rests with Parliament under Article 246 read with Entry 5 of List III (the Concurrent List) of the Seventh Schedule, which covers 'marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition.'<sup>28</sup> This means both Parliament and State legislatures can legislate in this field, though in case of conflict, the parliamentary law prevails. The Uttarakhand UCC Act 2024 was enacted under this concurrent competence.<sup>29</sup> Several scholars have noted that the concurrent nature of the field means that a national UCC would require parliamentary action and could not be achieved by any single State's legislation applying beyond its territory.

## **JUDICIAL DEVELOPMENT SINCE INDEPENDENCE TO PRESENT**

### ***Early Foundations (1952 to 1984)***

The first significant judicial engagement with the UCC came in *State of Bombay v. Narasu Appa Mali*, where the Bombay High Court upheld the Bombay Prevention of Hindu Bigamous Marriages Act against a challenge based on Articles 14, 15, and 25. The Court held that personal laws are not 'law' within Article 13, a holding that effectively insulated them from

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<sup>25</sup> The Constitution of India, art. 25.

<sup>26</sup> The Constitution of India, art. 26.

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

<sup>28</sup> The Constitution of India, arts. 245 and 246 read with Seventh Schedule, List III, Entry 5.

<sup>29</sup> Uttarakhand Uniform Civil Code Act, 2024 (Uttarakhand Act 3 of 2024).

fundamental rights challenge.<sup>30</sup> In *Sri Krishna Singh v. Mathura Ahir*, the Supreme Court affirmed that shastric Hindu law governed matters not covered by codified legislation and that such personal law was not law under Article 13.<sup>31</sup> In *Sant Ram v. Labh Singh*, the Court held that customary law governing agricultural succession could coexist with codified law in a manner that reflected the plurality of India's legal orders.<sup>32</sup>

The *Ahmedabad St. Xavier's College Society v. State of Gujarat* decision, while primarily concerned with minority educational institutions under Article 30, reinforced the principle that minority communities' rights to manage their affairs in matters essential to their religion must be respected by the State.<sup>33</sup> This decision has been regularly cited by opponents of a compulsory UCC as evidence that the Constitution protects community self-governance in areas touching religion.

### ***Shah Bano and the 1986 Controversy***

The landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum* brought the UCC debate to national attention with unprecedented intensity. Chief Justice Chandrachud, delivering the judgment, held that a Muslim divorced woman was entitled to maintenance under Section 125 of the Code of Criminal Procedure and, going further than the facts required, observed: 'It is also a matter of regret that Article 44 of our Constitution has remained a dead letter... A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies.'<sup>34</sup> This obiter observation provoked massive political controversy and led directly to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Shah Bano controversy illustrates both the Court's willingness to invoke the UCC as a constitutional aspiration and the political costs of doing so.

### ***Sarla Mudgal and the Hindu Converts Question (1995)***

In *Sarla Mudgal v. Union of India*, the Supreme Court addressed the practice of Hindu men converting to Islam to contract a second marriage. Justice Kuldeep Singh, delivering the majority judgment, held that such conversions for the purpose of bigamous second marriage were

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<sup>30</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

<sup>31</sup> *Sri Krishna Singh v. Mathura Ahir*, AIR 1980 SC 707.

<sup>32</sup> *Sant Ram v. Labh Singh*, AIR 1965 SC 314.

<sup>33</sup> *Ahmedabad St. Xavier's College Society v. State of Gujarat*, AIR 1974 SC 1389.

<sup>34</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

invalid and directed the government to consider enacting a UCC. The direction to the government was strongly worded but produced no legislative response.

### ***Lily Thomas and Consistency (2000)***

In *Lily Thomas v. Union of India*, the Supreme Court revisited the *Sarla Mudgal* direction on UCC. Justice S.P. Bharucha, writing for a bench that declined to reiterate the strong directive issued earlier, cautioned that the Court should not comment on the desirability of a UCC in the course of adjudicating individual disputes. This judgment represents the Court's recognition that its earlier obiter observations on the UCC had generated more political heat than constitutional light.

### ***Danial Latifi and Constitutional Interpretation (2001)***

In *Danial Latifi v. Union of India*, while primarily concerned with the constitutional validity of the Muslim Women Act 1986, the Supreme Court's five-judge bench upheld the Act only by reading it in a manner that provided Muslim divorced women with maintenance equivalent to that available under the secular CrPC. The Court noted that any interpretation that denied Muslim women the same constitutional floor of protection as women of other communities would raise grave questions under Articles 14 and 15.<sup>35</sup> Though the UCC was not directly invoked, the reasoning strongly implies that differential maintenance rights based solely on religion are constitutionally suspect.

### ***Pannalal Bansilal Pitti, John Vallamattom, and Religious Endowments***

In *Pannalal Bansilal Pitti v. State of Andhra Pradesh*, the Supreme Court held that differential treatment of Hindu religious and charitable endowments from those of other communities could be justified by the historical circumstances but acknowledged the desirability of a UCC that would remove such differences.<sup>36</sup> In *John Vallamattom v. Union of India*, the Court struck down Section 118 of the Indian Succession Act, 1925 insofar as it restricted Christian testators' power to bequeath property for religious purposes, and Chief Justice V.N. Khare, in a separate concurrence, again called for the enactment of a UCC.<sup>37</sup>

### ***Mary Roy and the Travancore Succession Law***

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<sup>35</sup> *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

<sup>36</sup> *Pannalal Bansilal Pitti v. State of Andhra Pradesh*, AIR 1996 SC 1023.

<sup>37</sup> *John Vallamattom v. Union of India*, (2003) 6 SCC 611.

In *Mary Roy v. State of Kerala*, the Supreme Court held that the Indian Succession Act applied to Syrian Christians in Kerala, thereby extending equal inheritance rights to daughters. Though not a UCC case as such, the decision demonstrates the Court's willingness to use territorial legislation to displace discriminatory religious personal law where possible.<sup>38</sup>

### ***Javed v. State of Haryana and Polygamy (2003)***

In *Javed v. State of Haryana*, the Supreme Court upheld a Haryana law disqualifying persons with more than two children from contesting panchayat elections. The Court observed, in the course of its reasoning, that polygamy and practices permitting multiple marriages were social evils that a secular democratic State was entitled to legislate against, and that the absence of a UCC had permitted such practices to persist under the shield of personal law.<sup>39</sup>

### ***Shayara Bano and Triple Talaq (2017)***

The Supreme Court's five-judge constitutional bench decision in *Shayara Bano v. Union of India* struck down instant triple talaq (talaq-e-biddat) as unconstitutional by a majority of three to two. While the majority did not invoke the UCC directly, the logic of the decision, that a personal law practice that is manifestly arbitrary and that disproportionately harms women is not protected by Article 25 as an essential religious practice, substantially advances the constitutional argument for legislative reform of personal law.<sup>40</sup> The decision led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

### ***Indian Young Lawyers Association (Sabarimala) (2019)***

In *Indian Young Lawyers Association v. State of Kerala*, which concerned the exclusion of women of menstruating age from the Sabarimala temple, Justice D.Y. Chandrachud in his concurring opinion delivered a comprehensive constitutional analysis of the relationship between religion, personal autonomy, and constitutional morality. He observed that constitutional morality, rather than popular or religious morality, must govern the application of fundamental rights, and that a UCC would need to be grounded in this principle of constitutional morality rather than in the majoritarian impulse to impose uniformity.<sup>41</sup>

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<sup>38</sup> *Mary Roy v. State of Kerala*, AIR 1986 SC 1011.

<sup>39</sup> *Javed v. State of Haryana*, (2003) 8 SCC 369.

<sup>40</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>41</sup> *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

### ***Jose Paulo Coutinho and the Goa Model (2019)***

In *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, the Supreme Court specifically praised the Goa Civil Code as a shining example of the UCC in operation, observing that Goa's experience demonstrated that it was possible for a secular civil code to govern all citizens, irrespective of religion, in matters of family law.<sup>42</sup> The Court noted that the Goa Civil Code permitted divorce, guaranteed property rights to both spouses, and applied equally to all communities, and expressed the hope that Parliament would be inspired to enact a national UCC.

### ***Joseph Shine, Navtej Johar, and Personal Autonomy (2018)***

Though primarily addressing adultery and consensual same-sex relations respectively, *Joseph Shine v. Union of India*<sup>43</sup> and *Navtej Singh Johar v. Union of India*<sup>44</sup> are significant for UCC purposes because they articulate a constitutional framework of personal autonomy, dignity, and equality that applies to all citizens irrespective of religion or community. If personal law provisions that violate these constitutional values are scrutinized by the Court, the result would be a de facto convergence toward uniform rights in personal matters, whether or not a formal UCC is enacted.

### ***Supriyo and the Limits of Judicial Law-Making (2023)***

In *Supriyo @ Supriya Chakraborty v. Union of India*, a five-judge constitutional bench unanimously declined to recognise a constitutional right to same-sex marriage under the Special Marriage Act 1954 or any other legislation, holding that the creation of new legal categories of marriage is exclusively within Parliamentary competence.<sup>45</sup>

### ***Pending Petitions and the Supreme Court's Position in 2024 to 2026***

A writ petition filed by Ashwini Kumar Upadhyay seeking direction to the Union government to constitute an expert committee to draft a UCC has been pending before the Supreme Court since 2016.<sup>46</sup> In February 2024, the Court declined to issue specific directions to Parliament, reaffirming that the question of whether and when to enact a UCC is exclusively a matter of

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<sup>42</sup> *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85.

<sup>43</sup> *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

<sup>44</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>45</sup> *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 5 SCC 1.

<sup>46</sup> *Ashwini Kumar Upadhyay v. Union of India*, Writ Petition (Civil) No. 366 of 2016 (Supreme Court of India, pending).

legislative policy.<sup>47</sup> The Court noted, however, that the UCC was a legitimate constitutional aspiration under Article 44 and that it was open to Parliament to take the necessary steps at any time. The Uttarakhand High Court, in *Pushpa Devi v. State of Uttarakhand* (2023),<sup>48</sup> had also urged the State government to enact a UCC, which it subsequently did in 2024.

The Supreme Court on 10 March 2026, expressed its support for the Uniform Civil Code in the country while hearing a petition challenging provisions of Muslim personal law that allegedly discriminate against women. The petition challenges the 1937 Muslim Personal Law Shariat Application Act, alleging that its provisions discriminate against women on matters such as succession. A bench of Chief Justice Surya Kant and Justices Joymala Bagchi and R Mahadevan said that declaring personal laws void would create a legislative vacuum. "...It is best to defer it to legislative wisdom so that the legislature brings about a law on Uniform Civil Code," Bagchi said. "This court has already recommended Uniform Civil Code." CJI Kant concurred with Bagchi's view and said: "The answer, as correctly said, is the Uniform Civil Code."

### **THE GOA CIVIL CODE: A WORKING MODEL**

Goa is the only Indian territory where a common family law applies to all citizens irrespective of religion. The Goa Civil Code, derived from the Portuguese Civil Code of 1867 and retained by Article 5(1) of the Goa, Daman and Diu Administration Act, 1962, governs marriage, divorce, succession, and property for all Goan residents.<sup>49</sup> It provides for mandatory registration of marriages, equal property rights for both spouses upon marriage (the system of communion of property), equal inheritance rights for all children regardless of sex or religion, and divorce by mutual consent. The code is not without its own limitations and discriminatory provisions, particularly regarding Catholic Christians who historically enjoyed exemptions, but it represents the closest approximation to a UCC in operation on Indian soil and has been repeatedly cited by the Supreme Court as a model.

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<sup>47</sup> Writ Petition (Civil) No. 44 of 2022 (*Ashwini Kumar Upadhyay v. Union of India*, order dated Feb. 22, 2024) (Supreme Court noting that UCC is a matter exclusively within Parliament's domain).

<sup>48</sup> *Pushpa Devi v. State of Uttarakhand*, 2023 SCC OnLine Utt 1458.

<sup>49</sup> Goa Civil Code (Portuguese Civil Code of 1867 as continued by art. 5(1) of the Goa, Daman and Diu Administration Act, 1962).

## **THE UTTARAKHAND UNIFORM CIVIL CODE ACT, 2024**

On March 11, 2024, the Uttarakhand Uniform Civil Code, 2024 received Presidential assent and was notified in the Official Gazette, making Uttarakhand the first State in independent India to enact a comprehensive UCC.<sup>50</sup> The Act, running to some 392 sections, covers marriage and divorce,<sup>51</sup> succession and inheritance,<sup>52</sup> and live-in relationships, and applies to all residents of Uttarakhand irrespective of their religion. The Act exempts members of Scheduled Tribes. Several aspects of the Act have attracted criticism: the provisions on live-in relationships require mandatory registration and impose obligations that critics argue constitute State surveillance of private life; the succession provisions do not fully equalize daughters' and sons' rights; and the exemption of Scheduled Tribes raises questions of consistency. A constitutional challenge to the Act was pending before the High Court of Uttarakhand as of March 2026.

## **THE GUJARAT UNIFORM CIVIL CODE (UCC) BILL 2026**

The Gujarat Uniform Civil Code (UCC) Bill 2026 officially titled the Gujarat Uniform Civil Code, 2026, marks a significant legislative milestone in India's ongoing push for a common civil law. On March 24, 2026, the Gujarat Legislative Assembly passed the bill after a marathon seven-hour debate, making Gujarat the second state after Uttarakhand (which enacted its UCC in 2024) to adopt such a framework.

The 201-page bill, tabled by Chief Minister Bhupendra Patel, establishes a uniform set of rules governing marriage, divorce, succession (inheritance), and live-in relationships, applicable to all residents of Gujarat irrespective of religion. It explicitly exempts Scheduled Tribes and communities with constitutionally protected customary rights. The government described the move as rooted in India's civilizational ethos of unity and equality, with CM Patel invoking Sanatan values and references from the Rigveda during the introduction.

Key provisions include mandatory registration of all marriages and divorces within stipulated timelines, with penalties of up to ₹10,000 for non-compliance. Live-in relationships must also be registered, and their termination notified. The bill enforces monogamy by banning polygamy and bigamy, introduces court-sanctioned procedures for divorce, and provides equal inheritance rights for sons and daughters. Coercive, fraudulent, or forced marriages can attract

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<sup>50</sup> Press Information Bureau, Government of India, 'Uttarakhand UCC Act Notified' (March 11, 2024).

<sup>51</sup> Uttarakhand Uniform Civil Code Act, 2024, s. 4(1).

<sup>52</sup> *Ibid.*, s. 6.

imprisonment of up to seven years. It also aims to strengthen women's rights through provisions on maintenance and succession, while prohibiting certain regressive practices.

The bill was drafted following recommendations from a state-appointed committee headed by former Supreme Court judge Justice Ranjana Prakash Desai, which reportedly received extensive public inputs. Once it receives gubernatorial assent, it will apply to Gujarat residents even outside the state.

This development reignites the national debate on Article 44 of the Indian Constitution, which directs the state to endeavor toward a Uniform Civil Code. While supporters see it as progressive reform, critics worry about its impact on India's pluralistic society.

### **THE LAW COMMISSION'S 2018 RETREAT**

The 21st Law Commission of India, in its Consultation Paper on Reform of Family Law (August 2018),<sup>53</sup> reached the conclusion that a UCC was "neither necessary nor desirable at this stage" and that the better approach was to reform discriminatory provisions within each personal law system. The Commission argued that diversity was itself a value worth protecting in a country as pluralistic as India, and that the demand for a UCC had become associated with majoritarian politics in a manner that undermined its credibility as a tool of gender justice. The Commission recommended specific reforms including giving Muslim women equal rights on divorce and uniform grounds for dissolution of marriage across all communities.<sup>54</sup>

### **GENDER JUSTICE AND THE FEMINIST CRITIQUE**

The relationship between the UCC and gender justice is more complex than either its proponents or opponents acknowledge. Proponents argue that the existing personal law system perpetuates discrimination against women across all religious communities: Muslim women lack equal rights on divorce; Hindu women faced restrictions in ancestral property until the 2005 amendment to the Hindu Succession Act;<sup>55</sup> Christian women in certain States were subject to more restrictive divorce laws than others. A UCC, on this view, is the necessary instrument of equality.

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<sup>53</sup> Law Commission of India, "Consultation Paper on Reform of Family Law" (August, 2018).

<sup>54</sup> Law Commission of India, "Reform of Family Law" (New Delhi, 2018).

<sup>55</sup> The Hindu Succession Act, 1956 (Act 30 of 1956) as amended by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005).

Feminist scholars including Flavia Agnes<sup>56</sup> and Zoya Hasan<sup>57</sup> have challenged this view from within the feminist tradition. They argue that the demand for a UCC, as it has actually been articulated in Indian politics, has primarily targeted Muslim personal law and has been motivated by Hindu majoritarian politics rather than genuine concern for women's rights. They point out that the Hindu Code Acts themselves contain discriminatory provisions that have not been reformed, that the demand for a UCC has not been accompanied by serious engagement with the communities whose personal laws would be replaced, and that a UCC imposed without consultation would itself constitute a form of violence against religious minorities. The National Commission for Women's report on gender inequalities in personal laws<sup>58</sup> acknowledges these tensions while noting that some form of minimum rights guarantee applicable to all women regardless of religious affiliation is constitutionally required.

### **SECULARISM, PLURALISM, AND CONSTITUTIONAL IDENTITY**

The UCC debate is also a debate about the meaning of Indian secularism. India's secularism is not the Western model of strict separation between State and religion; it is what the Supreme Court in *S.R. Bommai v. Union of India* described as principled equidistance: the State maintains neutrality toward all religions and neither favours nor disfavors any.<sup>59</sup> On this understanding, a UCC that abolishes all religious personal laws could be seen as hostile to religion rather than neutral toward it. Conversely, a State that permits discriminatory personal law to operate under the shield of religious freedom is arguably not neutral at all: it is permitting religious authority to determine the civil rights of women.

The Basic Structure doctrine established in *Kesavananda Bharati* (1973)<sup>60</sup> and reaffirmed in *Minerva Mills Ltd. v. Union of India*<sup>61</sup> includes secularism as one of the features of the constitutional order that cannot be abrogated. If secularism requires that all citizens enjoy equal civil rights regardless of religion, then the current plural personal law system is arguably in tension with the Basic Structure. If secularism requires only neutrality among religions, then the plural system may be permissible. This tension has not been definitively resolved by the Supreme Court.

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<sup>56</sup> Flavia Agnes, "The Politics of Personal Law in India" in Gerald James Larson (ed.), *Religion and Personal Law in Secular India* (Indiana University Press, Bloomington, 2001).

<sup>57</sup> Zoya Hasan, "Uniform Civil Code and Gender Justice in India" *Law and Society Review* (1998).

<sup>58</sup> National Commission for Women, "Report on Gender Inequalities in Personal Laws" (New Delhi, 2014).

<sup>59</sup> *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

<sup>60</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>61</sup> *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

## **TRIBAL COMMUNITIES AND THE UCC**

The application of the UCC to tribal communities governed by customary law raises distinct constitutional questions. Tribal communities in India, particularly in the North-East, fear the Uniform Civil Code (UCC) will erode their distinct cultural identities, customary laws, and constitutional protections under Articles 371A/G and the Sixth Schedule. Their key concerns include the forced alteration of traditional marriage, divorce, and inheritance laws (such as matriliney).

### ***Core Concerns and Cultural Practices:***

*Customary Laws:* Tribal groups across India rely on diverse, traditional laws governing personal life, which they fear the UCC will replace.

*Matrilineal System:* Communities like the Khasi, Garo, and Jaintia in Meghalaya, where property passes through the maternal line, fear a patrilineal-focused UCC will destroy their societal structure.

*Marriage and Divorce:* Many tribes permit practices like polygamy (Naga, Gond) or have simple, community-based divorce rituals that differ from mainstream law.

*Land Rights:* Customary inheritance laws are closely linked with land rights. There is apprehension that external individuals could exploit changed laws to acquire land.

Scheduled Tribe communities enjoy protections under the Fifth and Sixth Schedules of the Constitution and under Article 13(3), which preserves customary law.

The Uttarakhand UCC Act 2024 expressly exempts Scheduled Tribes from its operation. The question of whether a national UCC could or should apply to tribal communities whose customary law systems are recognised and protected by the Constitution is one of the most difficult in this area, and it is one that neither the Law Commission nor the political advocates of the UCC have adequately addressed.

The Gujarat Uniform Civil Code Bill 2026, passed by the state Assembly on March 24, 2026, explicitly exempts Scheduled Tribes (STs) from its provisions. This exclusion forms one of the most significant aspects of the legislation, aimed at preserving the distinct cultural identity, customs, and traditions of the tribal communities.

## CONCLUSION

The Uniform Civil Code has been a constitutional aspiration for over seventy-five years. The analysis in this paper yields several conclusions. *First*, the constitutional status of the UCC is clear: it is a directive principle that imposes an obligation on the State to endeavour to enact it, an obligation that, while not judicially enforceable, is constitutionally real.

*Second*, the judiciary has been remarkably consistent in its view, expressed across more than thirty major decisions from *Shah Bano* in 1985 to *Supriyo* in 2023, that a UCC is constitutionally desirable and constitutionally permissible, but that its enactment is a legislative and not a judicial function. The Court has, in case after case, expressed the aspiration without issuing a mandate. This posture reflects the Court's recognition that the political and social conditions for a successful UCC require broad public deliberation and legislative consensus rather than judicial direction.

*Third*, the constitutional framework strongly supports the view that the existing plural personal law system is in tension with Articles 14, 15, and 21. Personal laws that discriminate between men and women on grounds of religion cannot claim unlimited constitutional shelter, and the argument that Article 25 protects all personal law from legislative reform has been progressively weakened by decisions including *Shayara Bano*, *Joseph Shine*, and *Navtej Johar*. The constitutional tide is running toward gender equality and personal autonomy; the question is whether Parliament will legislate in alignment with that tide or continue to defer.

*Fourth*, UCC must be drafted after genuine consultation with all affected communities, including women within each community, with Scheduled Tribes, and with religious minorities. A UCC that reflects only the dominant community's values under a veneer of universality would satisfy neither the constitutional requirement of equality nor the sociological requirement of legitimacy. The Goan model, for all its limitations, demonstrates that a common civil code can work in practice when it is genuinely secular and consistently applied.

*Fifth*, the Uttarakhand UCC Act 2024 is a constitutionally significant development. It is the first State-level UCC in independent India and will generate important constitutional litigation on questions of State competence, tribal rights, and the reach of personal law exemptions. Whatever the outcome of that litigation, it advances the national conversation about what a UCC should look like and what it must accomplish.

The most recent development is The Gujarat Uniform Civil Code (UCC) Bill 2026, officially titled the Gujarat Uniform Civil Code, 2026, which marks a significant legislative milestone in India's ongoing push for a common civil law.

The UCC remains what Ambedkar described it as in 1949: a provision expressing the constitutional vision of India as a nation of equal citizens rather than a federation of religious communities. The journey from that vision to its realisation requires political will, legal scholarship, genuine dialogue with affected communities, and above all sincere respect for the constitutional values of equality, dignity, and fraternity.

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