
THE UNIFORM CIVIL CODE: BETWEEN PRINCIPLE AND PRAGMATISM

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ABSTRACT

The Uniform Civil Code (UCC) has re-entered Indian constitutional life not as an abstract Directive Principle but as operative state legislation. Between February 2024 and July 2026, four states Uttarakhand, Gujarat, Assam, and Madhya Pradesh enacted their own civil codes, converting a seven-decade-old constitutional aspiration under Article 44 into a contested field of ongoing legislative practice.

This article departs from the largely descriptive treatment the UCC debate has received in much doctrinal writing and instead asks a narrower, more testable question: has the constitutional case for uniformity, as developed through Constituent Assembly debate, Supreme Court precedent, and Law Commission inquiry, actually been made out, or has it been assumed?

Engaging critically with the reasoning not merely the holdings of Shah Bano, Sarla Mudgal, and Shayara Bano, and situating that case law against the competing normative accounts offered by constitutional historians and feminist legal scholars, the article argues that the judiciary's repeated invocation of Article 44 has functioned more as rhetorical reinforcement than as legal reasoning, and that the 21st Law Commission's 2018 conclusion that a uniform code is "neither necessary nor desirable" at this stage remains, on the evidence, more persuasive than either the judiciary's obiter enthusiasm or the recent state legislative wave's practical execution.

The article's contribution is to compare the four post-2024 state codes on their own terms, evaluate them against three foreign implementation models, and defend a specific, non-neutral position: that comprehensive, gender-just codification of each personal law rather than uniform imposition is what Articles 14, 15, and 21 actually require of the state at this stage, with a national uniform code remaining a legitimate longer-term horizon rather than an immediate constitutional command.

Keywords: Uniform Civil Code; Article 44; Constitutional Morality; Legal Pluralism; Transformative Constitutionalism.

CHAPTER 1: INTRODUCTION

A Uniform Civil Code is a single body of law governing marriage, divorce, adoption, succession, guardianship, and maintenance, applicable to all citizens regardless of religion. That much is settled. What is not settled and what most treatments of the subject pass over too quickly is whether the Constitution actually requires such a code, or merely permits the state to pursue one at its own pace. This article takes that unsettled question as its starting point.

The stakes are no longer theoretical. Uttarakhand enacted India's first post-independence state UCC in February 2024;¹ Gujarat and Assam followed in 2026;² and on 21 July 2026 the day before this article was finalised the Madhya Pradesh Legislative Assembly passed its own Uniform Civil Code Bill by voice vote amid opposition protest.³ Four states now operate under some version of a civil code. None of them is genuinely uniform: all four exempt Scheduled Tribes, and no two are textually identical. This is the empirical reality the literature has not yet caught up with.

LITERATURE REVIEW

The scholarship on the UCC divides, roughly, into four camps, and a competent article must locate itself among them rather than simply summarising all four.

(a) The constitutional-history account

Granville Austin's classic institutional history treats Article 44 as a deliberate compromise: the framers wanted uniformity in principle but distrusted the state's readiness to impose it, and so lodged the aspiration in Part IV rather than Part III.⁴

H.M. Seervai's textualist commentary goes further, insisting that the non-justiciability of Article 44 was not an oversight but a considered constitutional choice that courts are not entitled to override through interpretive enthusiasm.⁵ Vasudha Dhagamwar took a more critical view of the same history, describing the deferral as, in substance, a broken promise to Indian

¹ The Uttarakhand Uniform Civil Code Act, 2024 (Act No. 15 of 2024).

² Gujarat Uniform Civil Code, 2026; Assam Uniform Civil Code, 2026.

³ MP Assembly Passes Uniform Civil Code Bill amid Congress Protest", The Federal (Jul. 21, 2026).

⁴ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 78-82 (1966); Granville Austin, *Working Democratic Constitution: The Indian Experience* 60-65 (1999).

⁵ H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, vol. 2, 1996-2001 (4th ed. 1993).

women that successive governments have found politically convenient never to redeem.⁶

(b) The reformist-doctrinal account

Tahir Mahmood's writing on Muslim personal law shifted markedly over four decades from cautious defence of legal pluralism in the 1970s to, by 2013, a considered argument that codification (though not necessarily uniformity) had become unavoidable given the internal inconsistency of uncoded Muslim law across Indian states.⁷

Faizan Mustafa has more recently argued that the binary between uniformity and pluralism is a false one the real constitutional deficiency, in his account, is the absence of codification within each personal law, which could deliver most of the gender-justice gains attributed to a UCC without the majoritarian risk.⁸ This is, on the present analysis, the most persuasive of the reformist positions, and this article ultimately builds on it rather than departing from it.

(c) The feminist-critical account

Flavia Agnes has argued consistently that invoking the UCC as the primary vehicle for Muslim women's rights as the Court did, gratuitously, in *Shah Bano* actually damaged the cause of gender justice by allowing the debate to be captured by majority-minority politics rather than resolved on its own terms.⁹

Archana Parashar reaches a related conclusion by a different route, arguing that the state's engagement with family law reform has historically been more concerned with signalling modernity than with substantively redistributing power within the family, a critique that applies with equal force to some of the post-2024 state codes.¹⁰

Nivedita Menon and, separately, Ratna Kapur and Brenda Cossman push the critique

⁶ Vasudha Dhagamwar, *Towards the Uniform Civil Code* 211-219 (1989).

⁷ Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 22-24, 88-95 (2013); cf. Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* 145-150 (1977) (earlier, more pluralism-protective position).

⁸ Faizan Mustafa, "Uniform Civil Code: Need for Legal Reform, Not Uniformity", *The Wire* (2016, republished in updated form 2023).

⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 100-118 (1999); Flavia Agnes, *Family Law and Constitutional Claims: Marriage, Divorce and Matrimonial Litigation* 205-224 (2011).

¹⁰ Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* 250-268 (1992).

furthest, contending that a state-imposed uniform code risks entrenching a single, majority-derived model of the family as the national norm, achieving formal equality at the cost of substantive pluralism in how women actually live.¹¹

Madhu Kishwar's early and influential intervention in Manushi made substantially the same point outside the academy, warning that a UCC pursued by a majoritarian political formation would function less as gender reform than as an instrument of minority discipline.¹²

(d) The transformative-constitutionalism account

Gautam Bhatia reads the post-2017 privacy-and-dignity jurisprudence, including Puttaswamy and Navtej Singh Johar, as evidence that the Court now treats the Constitution as an instrument for transforming social relations rather than merely adjudicating disputes within them a reading that, if correct, would supply the missing justiciable content behind Article 44's aspiration even without formal amendment.¹³

Upendra Baxi is more cautious, warning against what he calls “judicial populism” in family-law matters the temptation for courts to reach for grand constitutional pronouncements on UCC in cases that do not actually require deciding the question, a pattern this article identifies directly in the Shah Bano and Sarla Mudgal judgments discussed in Chapter 4.¹⁴

Two gaps emerge from this literature that the present article addresses. First, almost none of the doctrinal or feminist scholarship above post-dates the 2024 Uttarakhand enactment, let alone the 2026 wave; the empirical object of analysis has changed faster than the literature responding to it. Second, remarkably little of the existing writing engages the 21st Law Commission's 2018 Consultation Paper on its own terms as an official state body concluding, after extensive public consultation, that a uniform code was “neither necessary nor desirable at this stage” even though that conclusion sits in direct tension with the judiciary's repeated Article 44 dicta.

¹¹ Nivedita Menon, "State/Gender/Community: Citizenship in Contemporary India", 33 Econ. & Pol. Wkly. PE3, PE3-PE10 (1998); Ratna Kapur & Brenda Cossman, Subversive Sites: Feminist Engagements with Law in India 92-118 (1996).

¹² Madhu Kishwar, "Codified Hindu Law: Myth and Reality", 24 Econ. & Pol. Wkly. 2145, 2145-2161 (1994).

¹³ Gautam Bhatia, The Transformative Constitution: A Radical Biography in Nine Acts 287-312 (2019).

¹⁴ Upendra Baxi, "The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]Justice", in Fifty Years of the Supreme Court of India 156, 178-183 (S.K. Verma & Kusum eds., 2000).

STATEMENT OF THE RESEARCH PROBLEM

The research problem is accordingly reframed from the conventional “for-or-against UCC” question to a sharper one: given that the Supreme Court has repeatedly gestured toward Article 44 without ever holding it enforceable, and given that the state's own Law Commission has explicitly rejected uniformity as the correct remedy, what precisely is the constitutional content of the state's obligation, and do the 2024-2026 state codes discharge it or merely perform it?

The objectives are to test the persuasiveness (not merely trace the existence) of the judicial reasoning invoking Article 44; to establish, through comparative tables, exactly what the four state codes do and do not achieve; and to defend a specific normative conclusion rather than a balanced non-conclusion.

METHODOLOGY AND LIMITATIONS

The study is doctrinal and comparative, built on primary constitutional text, Constituent Assembly debates, reported judgments, Law Commission reports, and state legislation, read against secondary scholarship identified above. It does not undertake empirical fieldwork on the lived effects of the 2024-2026 state codes, which is a genuine limitation given how recent three of the four enactments are; conclusions about their practical operation are necessarily provisional.

CHAPTER 2: HISTORICAL EVOLUTION OF PERSONAL LAWS AND THE CONSTITUENT ASSEMBLY DEBATES

Classical Hindu law was never a single code. It was Dharmashastra text refracted through regional custom and, after 1772, further refracted through Anglo-Hindu case law that colonial judges constructed often inaccurately from Sanskrit commentaries they read in translation. Islamic personal law in India drew on Quranic text, Hadith, and competing Sunni and Shia schools, applied with real regional and sectarian variation. The common claim that either tradition was a fixed, ancient, internally coherent body of law is, on the historical record, simply wrong; both were judicial and administrative constructions as much as religious ones.

Colonial policy formalised rather than caused this pluralism. Warren Hastings' 1772 Plan directed that Hindus and Muslims be governed by their own scriptural law in matters of

inheritance and marriage,¹⁵ a policy of administrative convenience the 1858 Proclamation reaffirmed as a promise of religious non-interference.¹⁶

Where the colonial state did codify the Shariat Application Act, 1937,¹⁷ the Dissolution of Muslim Marriages Act, 1939¹⁸ it did so community by community, which entrenched pluralism rather than dissolving it. This is worth stating plainly because it undercuts a claim frequently made on both sides of the modern debate: that either uniformity or pluralism represents the historically “authentic” Indian position. Neither does; both are products of contingent nineteenth- and twentieth-century state choices.

THE CONSTITUENT ASSEMBLY DEBATES

The Assembly debate on 23 November 1948 was not a genteel exchange of views; it was a genuine and, at points, sharp disagreement about what secularism required. Dr B.R. Ambedkar defended the clause but was careful to note that a uniform code already existed, in effect, wherever couples chose to marry under the Special Marriage Act, 1872 his argument was that Article 44 merely extended an existing option, not that it compelled an immediate universal code.¹⁹

K.M. Munshi took a considerably harder line, arguing that treating personal law as untouchable religious territory was itself a colonial-era fiction that an independent, secular republic had no obligation to preserve.²⁰ Alladi Krishnaswami Ayyar supported Munshi on essentially majoritarian-instrumental grounds national integration required legal uniformity a rationale later echoed, not coincidentally, in the Supreme Court's *Shah Bano* and *Sarla Mudgal* dicta discussed in Chapter 4.²¹

Mohammad Ismail Sahib's opposition was not, on a fair reading of the record, a defence of gender-discriminatory practice as such; it was a warning that a numerical majority could use a formally neutral uniformity clause to override minority religious practice without minority

¹⁵ Warren Hastings, Plan for the Administration of Justice (1772), reprinted in M.P. Jain, *Outlines of Indian Legal and Constitutional History* 74-76 (7th ed. 2014).

¹⁶ Proclamation of Queen Victoria to the Princes, Chiefs, and Peoples of India (Nov. 1, 1858).

¹⁷ The Muslim Personal Law (Shariat) Application Act, 1937 (Act No. 26 of 1937).

¹⁸ The Dissolution of Muslim Marriages Act, 1939 (Act No. 8 of 1939).

¹⁹ Constituent Assembly Debates, Vol. VII, 550-554 (Nov. 23, 1948) (speech of Dr. B.R. Ambedkar).

²⁰ Constituent Assembly Debates, Vol. VII, 547-549 (Nov. 23, 1948) (speech of K.M. Munshi).

²¹ Constituent Assembly Debates, Vol. VII, 549-550 (Nov. 23, 1948) (speech of Alladi Krishnaswami Ayyar).

consent a concern the drafting history does not fully answer even today.²²

Naziruddin Ahmad's objection was narrower and more procedural: he did not oppose eventual uniformity but objected to its being pursued without the explicit consent mechanism that, he argued, minority protection under a future Article 25 would require.²³

Two things follow from this record that much secondary literature elides. First, the disagreement in 1948 was not simply reform versus tradition; it was a disagreement about process and consent that remains almost entirely unresolved in 2026 the state UCC enactments discussed in Chapter 6 have been passed by simple legislative majority, precisely the mechanism Ismail Sahib warned against, with no distinct minority-consent procedure attached.

Second, Ambedkar's own framing that Article 44 formalises an already-available option rather than compelling universal application sits closer to the phased, opt-in model this article ultimately recommends than to the mandatory state codes actually enacted since 2024.

CHAPTER 3: THE CONSTITUTIONAL FRAMEWORK OF UCC

Article 44's placement in Part IV means it is, under Article 37, unenforceable by any court, though “fundamental in the governance of the country.”²⁴ That much is textually clear. What is less clear, and more interesting, is how far courts have been willing to let Directive Principles inform as opposed to formally override Fundamental Rights adjudication.

In *State of Kerala v. N.M. Thomas*, Justice Krishna Iyer read Directive Principles as interpretive aids capable of colouring the meaning of Article 14 itself, a technique that, if applied consistently to Article 44, would go some distance toward converting a non-justiciable aspiration into an interpretive presumption favouring gender-equal outcomes within personal law adjudication.²⁵

THE FUNDAMENTAL RIGHTS IN CONFLICT

Articles 14 and 15 supply the equality claim against differentiated personal law;²⁶

²² Constituent Assembly Debates, Vol. VII, 541-544 (Nov. 23, 1948) (speech of Mohammad Ismail Sahib).

²³ Constituent Assembly Debates, Vol. VII, 544-547 (Nov. 23, 1948) (speech of Naziruddin Ahmad).

²⁴ INDIAN CONST. art. 37.

²⁵ *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310, ¶¶ 68-72 (Krishna Iyer, J.).

²⁶ INDIAN CONST. arts. 14, 15.

Article 21, after Puttaswamy, supplies a dignity-and-autonomy claim that cuts in two directions at once toward gender-equal family law, but equally toward protecting individual and communal choice against state-imposed uniformity, since autonomy over intimate life is precisely what Puttaswamy protected.²⁷

This bidirectionality is under-examined in UCC scholarship, which tends to treat Article 21 as straightforwardly supporting uniformity; on a closer reading of Puttaswamy's own language, it supports gender equality within family law and resists a state-imposed single model of family life, which are not the same thing and can genuinely conflict.

Articles 25 and 26 protect religious freedom and denominational autonomy but are explicitly subject to public order, morality, and the other Part III guarantees,²⁸ and it is this internal qualification not some free-standing state power to override religion that the Court has used, correctly in this article's view, to distinguish essential religious belief from social practice merely claiming religious sanction. Articles 29 and 30 protect minority cultural and educational rights,²⁹ and Article 13 voids any law inconsistent with Part III, the provision doing the actual analytic work in *Shayara Bano*.³⁰

CONSTITUTIONAL MORALITY

The Court's constitutional-morality reasoning in *Navtej Singh Johar*³¹ and *Indian Young Lawyers Association*³² tested specific religious or customary practices against constitutional text and struck down what it found wanting. That is a defensible judicial method. What is harder to defend is the asymmetry in how it has been applied: instant triple talaq was struck down through this kind of scrutiny in *Shayara Bano*, but comparably discriminatory provisions within, for instance, uncodified aspects of Christian succession or customary Hindu practice outside the codified 1956 Acts have received far less judicial attention, arguably because litigation has clustered around Muslim personal law in ways that reflect political salience more than comparative severity of discrimination.

²⁷ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶¶ 297-300 (Chandrachud, J.) (recognising decisional autonomy over family and intimate matters as part of the right to privacy).

²⁸ INDIAN CONST. arts. 25(1), 26.

²⁹ INDIAN CONST. arts. 29, 30.

³⁰ INDIAN CONST. art. 13; *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

³¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, ¶¶ 253-256 (Misra, C.J.).

³² *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1, ¶¶ 268-271 (Chandrachud, J., concurring).

This asymmetry is a genuine weakness in the judiciary's claim to be applying constitutional morality even-handedly, and it is a point the transformative-constitutionalism literature, including Bhatia's account, does not fully confront.³³

CHAPTER 4: COMPARATIVE PERSONAL LAWS AND JUDICIAL INTERPRETATION

Before turning to the case law, it is useful to see the inconsistency the courts have been responding to in a single comparative view, rather than the community-by-community description most UCC articles default to.

Aspect	Hindu Law	Muslim Law	Christian Law	Parsi Law	Special Marriage Act
Governing statute(s)	Hindu Marriage Act, 1955	Shariat Application Act, 1937; largely uncodified fiqh	Indian Christian Marriage Act, 1872; Indian Divorce Act, 1869 (amended 2001)	Parsi Marriage and Divorce Act, 1936	Special Marriage Act, 1954
Min. age (M/F)	21 / 18	Puberty under classical law; Prohibition of Child Marriage Act, 2006 applies as general law	21 / 18	21 / 18	21 / 18
Polygamy	Prohibited (s. 5)	Permitted up to four wives	Prohibited	Prohibited	Prohibited
Divorce	Judicial; fault + mutual consent	Talaq, khula, judicial divorce (1939 Act); instant triple talaq criminalised (2019)	Judicial; fault-based, liberalised 2001	Judicial; fault-based	Judicial; fault + mutual consent

³³ Cf. Gautam Bhatia, *The Transformative Constitution* 301-309 (2019) (acknowledging selective judicial engagement but treating it as an implementation gap rather than a structural feature of litigation-driven reform).

Daughters' intestate succession	Equal coparcenary right (2005 amendment)	Fixed Quranic share, generally half a son's share	Equal share among children	Equal share among children	Governed by Indian Succession Act, 1925
Maintenance	S. 125 Cr.P.C./BNSS + personal law	S. 125 Cr.P.C./BNSS + 2019 Act, subject to Danial Latifi line	S. 125 Cr.P.C./BNSS + 1869 Act	S. 125 Cr.P.C./BNSS + 1936 Act	S. 125 Cr.P.C./BNSS

Table 1: Comparative snapshot of personal law regimes on five recurring points of inconsistency.

JUDICIAL TRENDS: A CRITICAL PERSPECTIVE

Mohd. Ahmed Khan v. Shah Bano Begum (1985)

The actual holding was narrow: a divorced Muslim woman was entitled to maintenance under the secular Section 125 Cr.P.C.³⁴ The Court did not need to say anything about Article 44 to reach that result, and yet it devoted several paragraphs to lamenting that a common civil code would help national integration.³⁵ On close reading, this is precisely the kind of obiter Upendra Baxi warns against: a constitutional pronouncement reached for its symbolic weight in a case that did not require it.³⁶

The consequence was not trivial: the obiter, not the holding, triggered the political backlash that produced the Muslim Women (Protection of Rights on Divorce) Act, 1986, widely read as a legislative dilution of the maintenance right itself.³⁷ Flavia Agnes's critique is worth taking seriously here: by reaching beyond the maintenance question to make a civil-code argument, the Court converted a straightforward gender-justice case into a majority-minority political flashpoint, and arguably delayed rather than advanced the underlying maintenance right, which had to be substantively restored fifteen years later in *Danial Latifi*.³⁸ The lesson

³⁴ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556, ¶¶ 19-24 (Chandrachud, C.J.).

³⁵ Id. ¶ 32.

³⁶ Upendra Baxi, "The Avatars of Indian Judicial Activism", in *Fifty Years of the Supreme Court of India* 156, 178 183 (S.K. Verma & Kusum eds., 2000).

³⁷ The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act No. 25 of 1986).

³⁸ Flavia Agnes, *Family Law and Constitutional Claims* 205-210 (2011); *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (reading the 1986 Act compatibly with Article 14 to preserve the substance of the maintenance right).

for the present debate is that judicial UCC dicta have a documented history of being politically counterproductive to the very gender-justice goals they invoke.

Sarla Mudgal v. Union of India (1995)

The Court held that a Hindu husband who converted to Islam solely to contract a second marriage without dissolving the first remained liable for bigamy under Section 494 IPC.³⁹ That holding is defensible on its own narrow facts it prevents opportunistic misuse of religious conversion to evade a criminal prohibition.

But the Court again went further, treating the case as an occasion to press Parliament toward a uniform code,⁴⁰ a move criticised by several commentators as using an individual bad-faith prosecution to make a generalised argument about an entire community's personal law, when the actual mischief being addressed was narrow: opportunistic conversion, not Muslim personal law as such. The doctrinal cost of this overreach is that *Sarla Mudgal* is frequently cited today, including in political debate, as judicial authority for a general UCC mandate that its own holding does not support.

Lily Thomas v. Union of India (2000) and John Vallamattom v. Union of India (2003)

Lily Thomas clarified, correctly, that conversion alone does not dissolve a subsisting Hindu marriage, closing a loophole *Sarla Mudgal* had left open.⁴¹ John Vallamattom struck down Section 118 of the Indian Succession Act, which restricted testamentary bequests for religious or charitable purposes by Christians, as an Article 14 violation.⁴²

Both judgments are analytically tighter than *Shah Bano* or *Sarla Mudgal*: the discriminatory provision, the comparator class, and the equality violation are all clearly specified, and the Article 44 references are comparatively restrained. This suggests a pattern worth naming explicitly: the Court's UCC reasoning is most persuasive precisely when it is least invoked when the judgment does the equality analysis directly rather than gesturing at uniformity as a substitute for it.

³⁹ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635, ¶¶ 27-31 (Kuldip Singh, J.).

⁴⁰ *Id.* ¶¶ 32-33.

⁴¹ *Lily Thomas v. Union of India*, (2000) 6 SCC 224, ¶¶ 40-42.

⁴² *John Vallamattom v. Union of India*, (2003) 6 SCC 611, ¶¶ 38-40 (Khare, C.J.).

Shayara Bano v. Union of India (2017)

The 3:2 outcome is often flattened in secondary literature into a single clean holding, but the split is analytically important. Justices Nariman and Lalit, in the operative majority, struck down instant triple talaq as manifestly arbitrary under Article 14 read with Article 13 a statutory-recognition argument, since the practice was struck down as arbitrary “law” recognised under the 1937 Act, not as a free-standing constitutional violation of Article 25.⁴³ Justice Joseph concurred in the result but on a narrower ground, that the practice was un-Quranic and therefore not protected as an essential religious practice in the first place.⁴⁴

Chief Justice Khehar and Justice Abdul Nazeer dissented, preferring a six-month legislative injunction over judicial invalidation in effect, the dissent, not the majority, was the opinion most directly grounded in Article 44's institutional logic of deferring to the legislature.⁴⁵ The result is that Shayara Bano, frequently cited as the high-water mark of judicial support for UCC-style reform, is on close reading a case in which no majority opinion actually endorsed judicially compelled uniformity; the majority struck down one specific practice on arbitrariness grounds while declining to reach the broader Article 25 question at all. Treating Shayara Bano as authority for a general UCC mandate significantly overstates what the Court actually decided.

The dignity cluster: Puttaswamy, Navtej Singh Johar, Joseph Shine, Sabarimala

Puttaswamy's recognition of decisional privacy,⁴⁶ Navtej Singh Johar's decriminalisation of consensual same-sex relations,⁴⁷ Joseph Shine's invalidation of adultery as a criminal offence rooted in marital proprietorship over women,⁴⁸ and the majority and dissenting opinions in the Sabarimala case⁴⁹ together establish dignity and autonomy as operative constitutional values in family and intimate life.

But Justice Indu Malhotra's dissent in Sabarimala is the case in this cluster most directly relevant to UCC analysis and the least discussed in UCC literature: she argued that

⁴³ *Shayara Bano v. Union of India*, (2017) 9 SCC 1, ¶¶ 57-59 (Nariman, J.).

⁴⁴ Id. ¶¶ 174-182 (Joseph, J., concurring).

⁴⁵ Id. ¶¶ 6-8 (Khehar, C.J., dissenting).

⁴⁶ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴⁸ *Joseph Shine v. Union of India*, (2019) 3 SCC 39, ¶¶ 44-46 (Misra, C.J.).

⁴⁹ *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1 (see especially Indu Malhotra, J., dissenting, on the limits of judicially imposed uniformity over denominational practice).

constitutional morality cannot simply mean judicial preference substituted for denominational practice, and that pluralism itself carries constitutional weight under Articles 25 and 26. Her reasoning, transposed to the UCC debate, supplies exactly the counter-argument the majoritarian-uniformity position needs to answer and, in this article's assessment, has not yet adequately answered.

CHAPTER 5: THE DEBATE AND THE LAW COMMISSION'S FINAL POSITION

The Case In Favour

The strongest version of the pro-UCC argument is not the national-integration argument Alladi Krishnaswami Ayyar made in 1948⁵⁰ that argument, resting on assimilationist premises, sits uneasily with Article 29's protection of minority culture.⁵¹ The strongest version is the gender-justice argument: unequal succession shares, permitted polygamy, and inconsistent divorce grounds are not abstract inequalities but concrete, ongoing violations of Articles 14 and 15 experienced by identifiable women today, and the state's failure to correct them cannot indefinitely be excused by reference to religious sensitivity.⁵²

Zoya Hasan's empirical work on Muslim women's political and legal status reaches a compatible conclusion from outside pure doctrinal analysis, showing that the absence of codified reform, not the presence of religious identity as such, correlates most closely with continuing economic vulnerability after divorce.⁵³

On this narrower, rights-based formulation, the case for reform is close to unanswerable; the genuinely contested question is whether uniformity is the necessary remedy, or merely one possible remedy among several.

The Case Against

The strongest version of the opposing argument is not a claim that discrimination should be tolerated, but a claim about method: that uniform imposition by a religious-majority-dominated legislature, without a distinct minority-consent mechanism, risks achieving formal

⁵⁰ Constituent Assembly Debates, Vol. VII, 549-550 (Nov. 23, 1948) (speech of Alladi Krishnaswami Ayyar).

⁵¹ INDIAN CONST. art. 29.

⁵² See Flavia Agnes, *Family Law and Constitutional Claims* 211-218 (2011) (documenting continuing succession and maintenance disparities).

⁵³ Zoya Hasan, *Gender, Religion, and Democratic Politics in India* 142-158 (2018).

equality while inflicting a dignitary and political harm on minority communities that a differently sequenced reform could avoid.⁵⁴

Rajeev Dhavan makes a related institutional point: Indian secularism, unlike the French or Turkish model, has always been premised on accommodating rather than dissolving religious difference, and a uniform code enacted without minority buy-in would mark a genuine departure from that constitutional settlement rather than a fulfilment of it.⁵⁵

This is a procedural rather than a substantive objection, and it is answerable through consultation, phased implementation, or an opt-in model in a way the gender-justice claim on the other side is not simply answerable away. That asymmetry matters for the conclusion this article reaches.

What The Law Commission Actually Said

It is a striking gap in much popular and even some academic UCC commentary that the 21st Law Commission's own 2018 conclusion is rarely quoted directly. After extensive public consultation, the Commission concluded: "This Commission has therefore dealt with laws that are discriminatory rather than providing a uniform civil code which is neither necessary nor desirable at this stage."⁵⁶

This is not a marginal or dissenting academic opinion; it is the considered position of the state's own official law reform body, reached after the most extensive public consultation process the UCC question has received. The 22nd Law Commission reopened the question with a fresh public notice in 2023,⁵⁷ but has not, as of this writing, published a report displacing the 2018 conclusion. Any argument that a uniform code is a settled constitutional necessity has to reckon with the fact that the body Parliament itself created to answer precisely this question concluded the opposite.

⁵⁴ Tahir Mahmood, *Uniform Civil Code: Fictions and Facts* 40-52 (2013).

⁵⁵ Rajeev Dhavan, "The Road to Xanadu: India's Quest for Secularism", in *Religion and Personal Law in Secular India: A Call to Judgment* 301, 315-322 (Gerald James Larson ed., 2001).

⁵⁶ Law Commission of India, *Consultation Paper on Reform of Family Law*, ¶ 1.4 (Aug. 31, 2018).

⁵⁷ 22nd Law Commission of India, *Public Notice on Uniform Civil Code* (Jun. 14, 2023).

CHAPTER 6: COMPARATIVE LEGAL AND CONSTITUTIONAL PERSPECTIVES

Comparative UCC discussion too often lists countries without a common analytical frame. The table below applies four consistent criteria constitutional approach, implementation process, judicial role, and outcome across five foreign models, allowing an actual comparison rather than a survey.

Jurisdiction	Constitutional approach	Implementation process	Judicial role	Outcome
France	Strict laicite; single secular code	Revolutionary rupture (1804), imposed top-down	Applies code uniformly; no religious carve-outs	High uniformity; periodic friction with minority religious practice
Turkey	Historically secular constitutional order	Swiss Civil Code adapted, imposed 1926 by state fiat	Secular judiciary; religious family law abolished	Rapid uniformity via authoritarian modernisation, weak grassroots consent
Tunisia	Muslim-majority, codified internal reform	1956 Code of Personal Status, drafted with religious-scholarly input	Applies codified, reformed Islamic law	Gradual reform model; polygamy banned without abandoning religious framing
Malaysia / Indonesia	Dual civil/religious system	Religious family law separately codified	Separate Syariah and civil courts	Persistent pluralism; documented gender-equity limitations remain
UK / US / South Africa	Secular civil law, limited religious/customary arbitration	Statutory floor with opt-in religious or customary arrangements	Courts strike down terms conflicting with the statutory floor	“Uniform floor, plural ceiling”; broadly regarded as balancing autonomy and equality.

Table 2: Comparative implementation models assessed on four consistent criteria.

The “uniform floor, plural ceiling” model is not merely theoretical. South Africa's Recognition of Customary Marriages Act, 1998, gives customary marriages full legal recognition while subjecting them to constitutional equality guarantees that override discriminatory customary terms;⁵⁸ the United Kingdom's Arbitration Act, 1996, permits religious tribunals, including Sharia councils, to arbitrate civil disputes only within the boundaries of, and subject to appeal to, ordinary civil courts;⁵⁹ and the United States Supreme Court's early ruling in *Reynolds v. United States* established, over a century before Puttaswamy, that religious belief cannot immunise a practice (there, polygamy) from an otherwise valid and neutrally applicable civil law a precedent India's own Article 25(1) qualification tracks quite closely in structure, if not in outcome.⁶⁰

For India, the Tunisian and “uniform floor, plural ceiling” models are the most transferable, because both achieve substantial gender-justice gains without requiring the wholesale abandonment of religious framing that the French and Turkish ruptures demanded and that a religiously plural, democratic India is unlikely to sustain politically.

The Malaysia-Indonesia model shows that pluralism can persist without necessarily worsening outcomes further, but its documented gender-equity limitations mean it should be read as a cautionary comparator, not an aspirational one.⁶¹

CHAPTER 7: CHALLENGES, RECOMMENDATIONS, AND CONCLUSION

CHALLENGES

Political challenges include UCC legislation becoming entangled with electoral mobilisation independent of its actual text a risk realised, at least in the opposition's framing, in Madhya Pradesh's contested passage.⁶² Legal challenges include drafting provisions that survive simultaneous scrutiny under Articles 14, 15, 21, 25, and 26, and managing transition for existing marriages and vested succession rights.

Administrative challenges include building registration infrastructure adequate to

⁵⁸ South Africa, Recognition of Customary Marriages Act 120 of 1998, ss. 6, 7(1).

⁵⁹ United Kingdom, Arbitration Act 1996, c. 23, s. 46.

⁶⁰ *Reynolds v. United States*, 98 U.S. 145, 166-167 (1878).

⁶¹ See Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 546-556 (2003) (comparative assessment of plural-floor family law models).

⁶² MP Assembly Passes Uniform Civil Code Bill amid Congress Protest", *The Federal* (Jul. 21, 2026).

enforce mandatory live-in registration without disproportionately burdening rural populations. Social resistance is not simply manipulation from above; tribal communities' insistence on customary-law protection under the Fifth and Sixth Schedules reflects a constitutionally recognised interest, not an obstacle to be engineered around.⁶³

RECOMMENDATIONS

- Complete comprehensive codification of Muslim personal law before pursuing further uniform legislation the single largest source of legal uncertainty the current patchwork creates, and the reform on which Mahmood's later work and Mustafa's codification thesis converge.⁶⁴
- Adopt an initially optional model, modelled on the Special Marriage Act, 1954, rather than mandatory application by default consistent with Ambedkar's own framing of Article 44 as extending an existing option rather than compelling universal application.⁶⁵
- Separate the marriage/succession provisions of state UCCs from mandatory live-in relationship registration, given that the two raise distinct constitutional questions (equality versus privacy) that a single undifferentiated statute currently conflates.⁶⁶
- Establish a genuine, minority-inclusive consent mechanism at the drafting stage not merely post-enactment tribal exemption responsive to the procedural objection Ismail Sahib and Naziruddin Ahmad raised in 1948 and that remains unanswered in the 2024-2026 state codes.⁶⁷
- Task the 22nd Law Commission with either substantiating or formally revisiting the 21st Commission's 2018 conclusion in light of the state-level legislative wave, since current national policy formally rests on a finding the subsequent Commission has neither affirmed nor withdrawn.⁶⁸

⁶³ INDIAN CONST. schedule V, VI.

⁶⁴ Faizan Mustafa, "Uniform Civil Code: Need for Legal Reform, Not Uniformity", *The Wire* (2016).

⁶⁵ Constituent Assembly Debates, Vol. VII, 550-554 (Nov. 23, 1948) (speech of Dr. B.R. Ambedkar).

⁶⁶ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, ¶¶ 297-300 (Chandrachud, J.).

⁶⁷ Constituent Assembly Debates, Vol. VII, 541-547 (Nov. 23, 1948) (speeches of Mohammad Ismail Sahib and Naziruddin Ahmad).

⁶⁸ 22nd Law Commission of India, Public Notice on Uniform Civil Code (Jun. 14, 2023).

- Establish an independent expert body to harmonise the four existing state codes, to prevent the inter-state divergence Chapter 6's comparison already documents from hardening into a durable, uncoordinated patchwork.⁶⁹

CONCLUSION

This article has tried to avoid the conventional move of presenting both sides fairly and declining to choose between them. Having examined the reasoning rather than merely the holdings of the leading cases,⁷⁰ the actual text of the Constituent Assembly debate,⁷¹ and the Law Commission's own considered 2018 finding,⁷² the position defended here is specific: a nationally uniform civil code is not, at present, a constitutional necessity flowing directly from Articles 14, 15, or 21.

What those provisions do require is the comprehensive, gender-just codification of every personal law regime, including the still largely uncoded areas of Muslim personal law a narrower but more defensible obligation than uniformity itself, and one the state has not yet discharged.

The 2024-2026 state codes are best read not as fulfilment of Article 44 but as a partial, procedurally imperfect down payment on this narrower obligation real in their gender-justice gains on succession and polygamy, genuinely troubling in their mandatory relationship-registration provisions, and honest, through their uniform tribal exemption, about the limits of their own uniformity.⁷³

A Union-level uniform code remains a legitimate long-term aspiration, one Ambedkar himself did not foreclose.⁷⁴ But treating it as the only constitutionally serious answer to personal-law discrimination misreads both the drafting history and the case law this article has examined. The correct near-term constitutional demand is codification, not uniformity and the burden now lies with the state to complete the former before insisting, again, on the latter.

⁶⁹ INDIAN CONST. sch. VII, List III, entry 5.

⁷⁰ See Chapter 4, *supra* (critical analysis of Shah Bano, Sarla Mudgal, Lily Thomas, Vallamattom, and Shayara Bano).

⁷¹ Constituent Assembly Debates, Vol. VII, 541-554 (Nov. 23, 1948).

⁷² Law Commission of India, Consultation Paper on Reform of Family Law, ¶ 1.4 (Aug. 31, 2018).

⁷³ See Table 3, Chapter 6, *supra*.

⁷⁴ Constituent Assembly Debates, Vol. VII, 550-554 (Nov. 23, 1948) (speech of Dr. B.R. Ambedkar).

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