
UNIFORM CIVIL CODE AND THE RIGHT TO MARRY: MYTH, REALITY, AND CONSTITUTIONAL LIMITS

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ABSTRACT

The Uniform Civil Code (UCC) has occupied a contested space in Indian constitutional discourse since the founding of the Republic. While Article 44 of the Constitution directs the State to endeavour to secure a uniform civil code for all citizens, the provision has remained an unfulfilled Directive Principle for over seven decades. This article examines the intersection of the UCC debate with the fundamental right to marry — a right judicially recognised under Articles 21, 19, and 25 of the Constitution. It interrogates the myth that a UCC will straightforwardly advance gender equality and national integration, confronts the political realities that have stalled legislative action, and maps the constitutional limits within which any uniform code must operate. Drawing on landmark Supreme Court decisions, international human rights norms, comparative analysis of the Goan Civil Code, and critical socio-legal scholarship, the article argues that the right to marry occupies a protected constitutional space that a future UCC must affirm rather than abridge. The article further contends that the real constitutional challenge lies not in uniformity per se, but in crafting a rights-compliant framework that dismantles patriarchal personal laws across all communities without instrumentalising reform for majoritarian ends.

Keywords: Uniform Civil Code, Right to Marry, Article 44, Secularism, Personal Law, Fundamental Rights, Constitutional Limits, Gender Justice, Religious Freedom

I. Introduction

The idea of a Uniform Civil Code for India is simultaneously one of the oldest promises and the most persistently deferred commitments of its constitutional democracy. Anchored in Article 44 of the Constitution, which places the UCC in the Directive Principles of State Policy, it has been invoked with passionate intensity across the political spectrum as an emblem of national unity, gender equality, and constitutional modernity on one side, and as an instrument of cultural erasure and minority subjugation on the other.¹

At the heart of this debate lies a cluster of deeply personal legal relationships — inheritance, adoption, maintenance, and above all, marriage. The right to marry, and to choose whom one marries, has been steadily recognised by the Supreme Court of India as part of the fundamental right to life and personal liberty under Article 21. Any legislative intervention in the sphere of marriage — whether through a UCC or otherwise — must therefore navigate an increasingly robust body of constitutional jurisprudence that places individual autonomy and dignity at its centre.²

This article proceeds in seven parts. Part II traces the constitutional history of Article 44 and the legislative inaction that has characterised the UCC's journey from founding aspiration to political football. Part III analyses the nature and scope of the right to marry under the Indian Constitution and international human rights law. Part IV examines the principal myths surrounding the UCC — particularly the myth of its gender-equalising potential and civilisational neutrality. Part V confronts the political and sociological realities that complicate uniform codification in a pluralist democracy. Part VI maps the constitutional limits that any uniform code must respect, with particular attention to the right to marry. Part VII concludes with a plea for a rights-centred framework for civil law reform.

II. Article 44 and the Constitutional History of the UCC

A. The Founding Compromise

The insertion of Article 44 in Part IV of the Constitution was itself a product of a

¹*S.R. Bommai v. Union of India*, AIR 1994 SC 1918. The Court affirmed that secularism is a basic feature of the Constitution, placing limits on State action in religious affairs.

²Constitution of India, Art. 44: "*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*"

carefully managed political compromise in the Constituent Assembly. The ambition of a uniform civil code was supported by Dr. B.R. Ambedkar, who viewed personal laws as instruments of caste and gender oppression, and by Jawaharlal Nehru, who associated legal uniformity with national integration. However, Muslim members of the Assembly, led by Mohammed Ismail Khan and Pocker Sahib Bahadur, strenuously objected, arguing that Muslim personal law was an integral component of religious identity protected by the right to freedom of religion.³

The compromise was architecturally elegant but politically evasive: the UCC was placed in the Directive Principles rather than the Fundamental Rights chapter, rendering it a non-justiciable aspiration rather than an enforceable command. As Ambedkar acknowledged in the debates, no one should be apprehensive that the State would immediately impose a single code upon all communities. The placement signified aspiration, not obligation.⁴

B. Judicial Nudges and Legislative Silence

The Supreme Court has periodically nudged the legislature toward enacting a UCC, most notably in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), *Sarla Mudgal v. Union of India* (1995), and *John Vallamattom v. Union of India* (2003). In *Shah Bano*, the Court's observation that Article 44 had remained a dead letter was followed almost immediately by the Muslim Women (Protection of Rights on Divorce) Act, 1986, which the government passed to overrule the judgment an act widely condemned as the paradigmatic instance of minority appeasement in Indian constitutional history.⁵

In *Sarla Mudgal*, Kuldip Singh J. issued a strong direction to the Government of India to take steps toward enacting a UCC. Yet the direction was treated as obiter dicta, and no legislative action followed.⁶

The Law Commission of India addressed the UCC most recently in its 2018

³*Constituent Assembly Debates*, Vol. VII (17 December 1946), pp. 540–553. Dr. B.R. Ambedkar placed Art. 44 in Part IV as a directive, conscious of the sensitivity of the subject.

⁴*Constituent Assembly Debates*, Vol. VII (23 November 1948), p. 781 (Dr. B.R. Ambedkar): 'No one need be apprehensive that if the State has the power, the State will immediately proceed to execute... the Hindu Code or the Mohammadan Code.'

⁵*Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945; See also B.P. Jeevan Reddy J. in *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

⁶*Sarla Mudgal v. Union of India*, AIR 1995 SC 1531. Kuldip Singh J. directed the government to look into Art. 44 but the direction was treated as obiter. The government has not acted on it for nearly three decades.

Consultation Paper, which concluded, perhaps surprisingly, that a UCC is 'neither necessary nor desirable at this stage.' Instead, it recommended the amendment of discriminatory provisions within each community's personal law, while preserving diversity.⁷

III. The Right to Marry: Constitutional and International Dimensions

A. Constitutional Foundations

The right to marry in India does not appear as an explicit textual provision in the Constitution. It has instead been constructed by the judiciary as a fundamental right through the interpretive expansion of Article 21 (right to life and personal liberty), Article 19(1)(a) (freedom of expression, including intimate expression), and Article 25 (freedom of conscience and religion). This judicial architecture has been built over several decades and has accelerated significantly in the post-2017 period.⁸

The watershed moment came in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), the Privacy judgment, in which all nine judges of the Supreme Court unanimously held that privacy is a fundamental right under Article 21. The judgment has far-reaching implications for marriage law: it explicitly recognises the autonomy to make intimate decisions including decisions about one's partner — as constitutionally protected. Chandrachud J.'s plurality opinion described the right to make decisions about intimate relations as lying at the 'core of the right to life.'⁹

The right to choose a marital partner was most explicitly stated in *Shafin Jahan v. Asokan K.M.* (2018), the *Hadiya* case, where the Supreme Court overturned a High Court order annulling a marriage on grounds of undue influence, holding that the right to choose a partner is an expression of individual liberty that courts must respect and protect. The case involved an interfaith marriage and raised acute questions about State paternalism in personal relationships.¹⁰

⁷Law Commission of India, Consultation Paper on Reform of Family Law (2018), p. 7. The Commission notably concluded that a UCC is neither necessary nor desirable at this stage.

⁸*Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368. The Supreme Court held that the right to choose a spouse is a facet of individual liberty under Art. 21.

⁹*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. All nine judges unanimously held that the right to privacy is a fundamental right under Art. 21, with profound implications for personal and family autonomy.

¹⁰*Hadiya Case*: The Court's intervention in annulling the marriage at the High Court stage was itself criticized as

In *Navtej Singh Johar v. Union of India* (2018), Chandrachud J. articulated the principle that constitutional morality rooted in individual dignity, liberty, and equality must prevail over popular morality. While the case concerned consensual same-sex relations under Section 377, its broader constitutional reasoning powerfully supports the view that the State may not deny or burden the right to marry on grounds of religion, caste, or community.¹¹

B. International Human Rights Framework

India's obligations under international human rights law reinforce the constitutional right to marry. Article 16 of the Universal Declaration of Human Rights (UDHR) guarantees the right of men and women to marry and to found a family, without any limitation due to race, nationality, or religion, and requires that marriage be entered into only with the free and full consent of the intending spouses.¹²

Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) both oblige State parties to ensure equality in marriage and family life. These instruments, to which India is a party, create treaty obligations that any domestic reform including a UCC must honour.¹³

IV. Myths Surrounding the Uniform Civil Code

A. The Myth of Gender Justice

The most powerful argument in favour of the UCC is its promise of gender equality. Personal laws across communities Hindu, Muslim, Christian, and Parsi have historically privileged male members in matters of inheritance, divorce, and custody. A uniform code, the argument goes, would level the playing field by replacing patriarchal customary law with a modern, rights-respecting framework.¹⁴

an encroachment on personal autonomy. See Tarunabh Khaitan, 'Koushal and the Non-Discrimination Principle' (2015) 5(1) NUJS L Rev 9.

¹¹*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1. Per Chandrachud J.: The Constitution must be interpreted in a manner that advances rather than diminishes the dignity of individuals.

¹²Universal Declaration of Human Rights, Art. 16(1): Men and women of full age have the right to marry and to found a family without limitation due to race, nationality or religion.

¹³ICCPR, Art. 23(2); CEDAW, Art. 16. India is a party to both instruments, creating treaty obligations relevant to legislative reform.

¹⁴Flavia Agnes, *Family Law Vol. I: Family Laws and Constitutional Claims* (OUP, 2011), pp. 45–60. Agnes

This argument is not entirely without merit, but it depends on a crucial assumption that is frequently left unexamined: that the uniform code enacted would itself be gender-just. Critics such as Flavia Agnes and Nivedita Menon have pointed out that uniformity in itself guarantees nothing about content. If a future code were to replicate the patriarchal assumptions embedded in existing Hindu law as some proposals have suggested its imposition on other communities would represent regression, not progress. The benchmark must be not uniformity but gender justice, and the two are not synonymous.

Moreover, as the Law Commission of India observed in 2018, discrimination and prejudice can exist within a community as much as between communities. Reforming personal laws from within empowering women within their communities rather than imposing external uniformity may better serve the lived realities of Indian women, particularly in rural and semi-urban contexts where community belonging is central to social protection.

B. The Myth of National Integration

A second myth holds that the plurality of personal laws is a source of social fragmentation, and that a uniform civil code would strengthen national unity. This argument conflates legal pluralism with political disunity — a conflation that does not survive careful empirical scrutiny. India has maintained remarkable social and political cohesion despite, and arguably because of, its accommodation of religious and cultural plurality in the private sphere.¹⁵

The comparative evidence is illuminating. Israel, which maintains a system of religious personal laws for marriage, has not thereby fragmented as a nation-state. Conversely, France's aggressive legal uniformism has not prevented deep social tensions around religious identity. The relationship between legal uniformity and national integration is far more complex than the UCC's proponents acknowledge.

C. The Myth of the Goan 'Model'

Goa is routinely cited as proof that a common civil code can work in India. The Goan

argues that a gender-just code requires dismantling patriarchal provisions across all personal laws, not their uniform imposition.

¹⁵Marc Galanter & Jayanth Krishnan, 'Personal Law Systems and Religious Conflict: A Comparison of India and Israel' in Gerald James Larson (ed), *Religion and Personal Law in Secular India* (Indiana Univ Press, 2001), pp. 16–18.

Civil Code — essentially the Portuguese Civil Code of 1867 as applicable in Goa — applies to all residents regardless of religion. However, a closer examination reveals significant qualifications to the 'model' narrative.¹⁶

The Goan code permits certain forms of Hindu bigamy under specific property-related conditions, retains provisions that are arguably inconsistent with modern gender equality norms, and was a product of colonial imposition rather than democratic deliberation. The Supreme Court upheld its validity in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira* (2019) but acknowledged its colonial origins. Replicating a colonial code across India as a model of progressive reform presents obvious ironies.¹⁷

V. Political and Sociological Realities

A. Instrumentalisation and Majoritarian Politics

Perhaps the most significant obstacle to a constitutionally legitimate UCC is the political context in which it is currently being debated. The UCC has in recent years become increasingly associated with Hindu nationalist politics, and its advocacy has been accompanied by rhetoric that frames Muslim personal law as uniquely backward and resistant to modernity. This framing is both historically inaccurate — as scholars such as Tahir Mahmood have demonstrated, Muslim personal law has been reformed in virtually every Muslim-majority country — and constitutionally dangerous.¹⁸

When reform is pursued not out of a genuine commitment to gender justice across all communities but as an instrument of political mobilisation against a particular minority, it ceases to be a tool of constitutional secularism and becomes its opposite. The basic structure of the Constitution, as defined in *Kesavananda Bharati*, includes secularism and the protection of religious minorities. Legislation that, under the guise of uniformity, targets minority

¹⁶Goa Civil Code (Portuguese Civil Code, 1867, as applicable in Goa). Goa is frequently cited as a working example of UCC, though scholars note it retains Hindu succession provisions and permits bigamy in certain circumstances, complicating the 'model' narrative.

¹⁷*Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85. The Supreme Court upheld Goa's common civil code as constitutionally valid, while acknowledging its historical and colonial origins.

¹⁸Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* (Vikas Publishing, 1977), pp. 85–90. Mahmood argues that Muslim personal law has already been substantially reformed in most Muslim-majority nations, weakening the 'authentic tradition' argument.

religious practices may be open to challenge as violating these basic constitutional features.¹⁹

B. Socio-Legal Pluralism and the 'Living Law'

Werner Menski's concept of 'living law' draws attention to the gap between official State law and the norms actually operative within communities. Even if a UCC were enacted, its penetration into the daily lives of communities that have for centuries governed their intimate relationships through custom and religious precept would be limited and contested. Legal pluralism is not merely a feature of India's statute books; it is a sociological reality.²⁰

The Special Marriage Act, 1954 which already provides a secular, religion-neutral legal framework for marriage open to all Indians has been deliberately underutilised because of its burdensome notice and registration requirements, which courts and commentators have noted expose interfaith couples to harassment and social ostracism. The failure of the SMA is not primarily a failure of law; it is a failure of social and administrative conditions. A UCC would face similar barriers unless these conditions are addressed.²¹

VI. Constitutional Limits on the Uniform Civil Code

A. The Directive Principle and Its Limits

Article 44 is a Directive Principle, not a Fundamental Right. This has two important constitutional consequences. First, it is not enforceable in a court of law by way of a writ petition; no citizen can demand as a matter of right that Parliament enact a UCC. Second, while Directive Principles may inform the interpretation of Fundamental Rights, as confirmed in *Minerva Mills*, they cannot override them. Any UCC legislation that, in practice, burdens or abridges a recognised Fundamental Right — such as the right to marry, the right to privacy, or the freedom of religion — would be vulnerable to constitutional challenge.²²

¹⁹*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461. The basic structure doctrine limits Parliament's amending power and protects core constitutional values including secularism.

²⁰Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (OUP, 2003), pp. 313–320. Menski's concept of 'living law' emphasizes how communities practice law differently from State-enforced norms.

²¹*Special Marriage Act*, 1954 (Act No. 43 of 1954). The SMA provides a civil marriage option but has been criticized for its notice-period and public notice requirements that expose interfaith couples to harassment.

²²*Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789. The Court held that Fundamental Rights and Directive Principles are complementary, neither having absolute primacy.

B. Freedom of Religion and the Right to Marry

Articles 25 and 26 of the Constitution guarantee freedom of conscience and the right to manage religious affairs, subject to public order, morality, and health, and to the other provisions of Part III. The relationship between personal law and religious identity is complex: not all personal law is religious in origin, and the State has the power to regulate 'secular activities associated with religious practice.' However, the regulation of marriage — a ceremony imbued with religious significance for most Indians — requires care.²³

In *Indian Young Lawyers Association v. State of Kerala* (Sabarimala, 2019), the Supreme Court held that religious practice cannot override fundamental rights, and that women's constitutional rights to equality and dignity trump exclusionary religious custom. The principle is double-edged: it supports the reform of discriminatory religious customs, but it equally protects the right of individuals to choose marital partners in conformity with their religious beliefs, free from State coercion in the opposite direction.²⁴

C. Article 15 and Anti-Discrimination Norms

Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Any UCC that treats communities differently, or that imposes burdens disproportionately on a particular community, would raise serious Article 15 concerns. The provision against discrimination on grounds of sex is particularly relevant: a UCC must not replicate the gendered assumptions of any existing personal law system, whether Hindu, Muslim, Christian, or Parsi.²⁵

The continuing controversy over *State of Bombay v. Narasu Appa Mali* (1952), in which the Bombay High Court held that personal law is not 'law' within Article 13 and therefore immune from fundamental rights scrutiny, illustrates the structural tensions in the current system. If personal laws cannot be challenged as violating fundamental rights, the case for

²³*Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908. The Court distinguished between the right to propagate religion (protected) and the right to convert others (not an absolute right), illustrating the tension between religious freedom and social reform.

²⁴*Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (Sabarimala). The Court held that religious practice cannot override fundamental rights, suggesting that faith-based restrictions on marriage entry or partner selection face constitutional scrutiny.

²⁵*State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84. The Bombay High Court held that personal law is not 'law' within Art. 13, a controversial ruling that has shielded personal laws from direct fundamental rights challenge for decades.

legislative reform through a UCC becomes stronger — but it also makes clear that the impetus for reform must be gender justice, not majoritarian uniformity.

D. The Right to Marry as a Constitutional Limit

If the right to marry is a fundamental right — as established by *Shafin Jahan, Puttaswamy*, and the broader trajectory of Article 21 jurisprudence — then it operates as a constitutional limit on all legislation, including a UCC. This has several specific implications.

First, a UCC may not impose a minimum age of marriage that falls below internationally accepted standards without adequate justification. India has already enacted the Prohibition of Child Marriage Act, and further raising the minimum age through a UCC must be assessed against both empirical evidence and the rights of young adults.

Second, a UCC must protect the right to enter into an interfaith or inter-caste marriage without State or social obstruction. The Special Marriage Act's notice period — which has been misused by families and vigilante groups to intercept interfaith couples — must be replaced by a rights-affirming registration procedure.

Third, a UCC may not deny or abridge the right of any adult individual to choose a partner of the same sex, in light of the constitutional trajectory established by *Navtej Singh Johar*. The omission of same-sex couples from the definition of marriage in any future code would raise serious constitutional questions.

Fourth, a UCC must respect the right to marry within one's religious tradition while simultaneously ensuring that religious rites do not provide cover for coercion or discrimination. The balance between collective religious identity and individual autonomy is one of the most difficult in constitutional adjudication, and a well-crafted UCC must navigate it with precision.

VII. Conclusion: Toward a Rights-Centred Framework

The Uniform Civil Code debate in India has for too long been conducted at the level of abstraction — invoked as a symbol of national progress or communal threat, but rarely examined in its concrete legal and constitutional dimensions. This article has attempted to shift the terms of that debate by centring the constitutional right to marry and the limits it places on any future codification exercise.

The principal findings may be summarised as follows. First, Article 44 is a directive aspiration and not a mandate; it creates no obligation on Parliament to enact a UCC within any particular timeframe, and legislation inspired by it remains subject to the full force of fundamental rights scrutiny. Second, the right to marry has been recognised by the Supreme Court as a facet of the fundamental right to life and privacy under Article 21, creating a constitutional framework that any UCC must respect. Third, the myths of gender justice and national integration that animate much of the UCC advocacy are only partially supported by evidence, and the experience of the Goan Civil Code confirms that uniformity in itself is no guarantee of rights-compliance.

Fourth, the political context in which the UCC is currently being pursued — characterised by majoritarian rhetoric and the scapegoating of Muslim personal law — raises serious concerns about the constitutionality of any code enacted under such auspices. The basic structure of the Constitution, the guarantee of secularism, and the protection of religious minorities together set outer limits on what can be achieved through the uniform code mechanism.²⁶

What India needs is not a choice between communally coded personal laws and a potentially majoritarian UCC, but a third path: a systematic, community-sensitive, and constitutionally grounded reform of personal laws that advances gender justice, protects individual autonomy, and respects the plural civilisational inheritance of the Indian people. The right to marry — freely, fully, and with equal dignity — must be the constitutional lodestar of that reform, not an afterthought to it.

²⁶Uday Mehta, *Liberalism and Empire* (Univ of Chicago Press, 1999), pp. 77–81. Mehta's critique of liberal universalism is relevant to understanding how ostensibly neutral law can mask majoritarian preferences.