
UNIFORM CIVIL CODE VS. HINDU PERSONAL LAW: RECONCILING TRADITION WITH CONSTITUTIONAL MORALITY

Prem Kumar, IILM University, Greater Noida

ABSTRACT

The debate surrounding the Uniform Civil Code (UCC) and Hindu Personal Law represents one of the most persistent and deeply contested issues in Indian constitutional discourse. At its core lies a fundamental tension between the preservation of tradition and the advancement of constitutional morality, as enshrined in the ideals of equality, liberty, and secularism. Hindu law, unlike many other personal laws, has witnessed extensive codification and reform since independence, with the enactment of the Hindu Code Bills of the 1950s significantly reshaping matters relating to marriage, divorce, adoption, guardianship, succession, and inheritance. Despite such progressive reforms, the broader vision of a uniform civil framework across all religions, as mandated under Article 44 of the Directive Principles of State Policy, has remained politically sensitive and legally complex. This paper critically examines the historical development and reform of Hindu Personal Law, the constitutional promise of the UCC, and the judicial interpretation of the balance between religious freedom under Articles 25 and 26 and the right to equality under Article 14. It highlights key cases such as *Shah Bano v. Union of India*, *Sarla Mudgal v. Union of India*, and *Shayara Bano v. Union of India*, which have shaped the jurisprudential dialogue around personal laws and uniformity. Through doctrinal and comparative analysis, the paper contends that the reconciliation of tradition with constitutional morality cannot be achieved through abrupt or coercive uniformity. Instead, it calls for a dialogic and rights-based approach that respects cultural diversity while ensuring that personal laws, including Hindu law, conform to constitutional guarantees of equality, dignity, and non-discrimination.

Keywords: Uniform Civil Code (UCC), Hindu Personal Law, Article 44 of the Indian Constitution, Directive Principles of State Policy (DPSPs), Freedom of Religion.

1. Statutory and Legal Provisions Related to the UCC

Article 44 of the Indian Constitution is placed under Part IV, which contains the Directive Principles of State Policy (DPSPs). These principles serve as guiding norms, intended to help the State establish a system of governance that ensures social and economic justice. Article 44 specifically provides that “*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*”¹ Unlike the enforceable Fundamental Rights enumerated in Part III, the DPSPs, as clarified under Article 37, are not justiciable in a court of law. However, they remain fundamental to the governance of the nation and serve as a constant reminder to the legislature of the objectives it must pursue. Consequently, although Article 44 does not create a binding legal duty, it carries significant constitutional weight as a direct reflection of the framers’ vision of a cohesive legal framework for all citizens.

I. The Constitutional Scheme

Article 44, which envisions a Uniform Civil Code, often finds itself in tension with the guaranteed right to freedom of religion under Articles 25 to 28 of the Constitution. The decision to locate it in the Directive Principles of State Policy was deliberate, reflecting the framers’ cautious approach to achieving social reform without provoking immediate disruption in India’s diverse religious landscape after independence. The debates in the Constituent Assembly shed considerable light on this choice. Dr B.R. Ambedkar argued that the State must retain the authority to legislate in areas of personal law, particularly in relation to marriage and succession, to uphold principles of equality and ensure the unity of the nation. He made it clear that these aspects of personal law were not essential to religion and therefore could be reformed without violating religious freedoms. However, resistance came from several Muslim representatives, who feared that a uniform code would erode their cultural and religious identity. This clash of perspectives explains why Article 44 was ultimately shaped as a directive principle, aspirational in nature but not enforceable by courts.

II. Judicial Interpretation of Article 44

Over the years, the Supreme Court of India has consistently drawn attention to the significance of Article 44, often highlighting the State’s reluctance to take proactive

¹ D.D. Basu, *Introduction to the Constitution of India* (27th Edition, 2024)

measures towards its realization. In the landmark judgment of *Mohd. Ahmed Khan v. Shah Bano Begum*² (1985), the Court emphasised that a Uniform Civil Code would not only ensure gender justice but also promote national cohesion by eliminating inconsistencies rooted in religious doctrines. This observation sparked a nationwide debate and marked a turning point in the judicial discourse on the UCC. A decade later, in *Sarla Mudgal v. Union of India*³ (1995), the Court reiterated the urgency of a UCC while condemning practices such as conversion solely for the purpose of entering into a second marriage, which it deemed an abuse of the plurality of personal laws. Justice R.M. Sahai, concurring, observed that Article 44 had been reduced to a “dead letter” and urged the legislature to revive its constitutional promise.

At the same time, the Court has also acknowledged the inherent limits of judicial power in this sphere. In *John Vallamattom v. Union of India*⁴ (2003), while it struck down Section 118 of the Indian Succession Act⁵ for being discriminatory against Christians, the Court carefully clarified that it is ultimately the legislature’s prerogative, and not the judiciary’s, to enact a UCC. These rulings collectively reveal an evolving judicial position: one that views the UCC as a vital step towards equality and integration, but simultaneously recognises the complex realities of India’s plural society. The judiciary has therefore sought to balance constitutional morality with respect for cultural diversity, advocating a gradual, inclusive, and dialogue-driven approach to reform, rather than abrupt imposition.

2. HISTORY OF PERSONAL LAWS

In India, the foundation of personal laws has historically been closely tied to religion. In the early periods, Hindu personal law drew heavily from sacred texts such as the *Shrutis* and *Smritis*, which were regarded as supreme authorities, even beyond the control of monarchs, with sages acting as custodians of legal norms. During the medieval era, with the dominance of Muslim rule, Islamic law became prominent, and the Quran emerged as the central source of Muslim personal law. With the arrival of the British, however, this religious authority began to shift. While the colonial rulers initially adopted a non-interference approach toward religious

² *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945

³ *Sarla Mudgal v. Union of India* 1995 AIR 1531

⁴ *John Vallamattom v. Union of India, Writ Petition (C) No. 242 of 1997*

⁵ Indian Succession Act, 1925, Act No. 39 of 1925

customs, over time, they increasingly codified aspects of personal law through judicial pronouncements, thereby curtailing the influence of traditional religious scholars.

In the trajectory of codification, Hindu laws were restructured with a reformist outlook, focusing on eliminating gender-based discrimination and community inequalities. In contrast, Muslim personal laws remained largely uncoded, retaining their connection to traditional practices. Following independence, several significant statutes were enacted, including the Hindu Marriage Act, 1955⁶, the Hindu Adoption and Maintenance Act, 1956⁷, and the Special Marriage Act, 1954⁸, marking a shift toward formal legislative intervention in personal law. Yet, the compatibility of personal laws with fundamental rights has remained a contentious issue. Although the Constitution of India, adopted in 1950, guarantees equality before the law, courts have often treated personal laws as a highly sensitive domain, refraining from judicial intervention. This raises the unresolved constitutional question of whether personal laws fall within the definition of “law” under Article 13. If excluded, they remain insulated from the guarantee of equality, thereby perpetuating the risk of fundamental rights violations.

3. Uniform Civil Code and Individual Faith: A Constitutional Conundrum

The proposal for implementing a Uniform Civil Code (UCC) in India inevitably creates constitutional friction, particularly between Article 44, which envisions uniformity in civil matters, and Articles 25 and 26, which safeguard religious freedom. This tension between Directive Principles of State Policy and Fundamental Rights forms the central axis of the UCC debate, prompting larger questions about the character of Indian secularism and the permissible scope of state involvement in religious domains.

4. Constitutional Provisions in Tension

Article 25 guarantees to every individual the “freedom of conscience” and the liberty to profess, practice, and propagate religion, subject to considerations of public order, morality, and health. Complementing this, Article 26 confers on religious denominations the autonomy to manage their own religious affairs. In contrast, Article 44 directs the State towards creating a common civil code that cuts across religious divisions.

⁶ The Hindu Marriage Act, 1955, Act No. 25 of 1955

⁷ The Hindu Adoptions and Maintenance Act, 1956, Act No. 78 of 1956

⁸ The Special Marriage Act, 1954, Act No. 43 of 1954

Judicial interpretation has often grappled with this dichotomy. The Supreme Court has consistently observed that personal laws, although rooted in religious traditions, cannot be entirely insulated from constitutional review. The Bombay High Court's decision in *State of Bombay v. Narasu Appa Mali*⁹ established that personal laws are not "laws" under Article 13 and therefore beyond the direct scrutiny of fundamental rights. Yet, this reasoning has been increasingly contested, as subsequent judicial interventions have curtailed practices deemed discriminatory, particularly where they undermine gender justice and constitutional morality.

5. Indian Secularism: Between Social Reform and Religious Neutrality

The Indian understanding of secularism significantly diverges from the model of absolute separation between church and state that characterises several Western jurisdictions. Rather than adopting a framework of complete non-interference, the Indian Constitution embraces what may be described as a model of "principled distance," wherein the State retains the authority to engage with and even reform religious practices, particularly where such practices are inconsistent with constitutional values such as equality, liberty, and dignity. This distinctive approach is evident in a number of transformative social reforms initiated in the early years of independence. For instance, the constitutional abolition of untouchability under Article 17, as well as the comprehensive codification and rationalisation of Hindu personal laws in the 1950s, illustrate the willingness of the Indian State to intervene in the religious domain despite significant opposition from conservative and orthodox groups. These measures reflected the broader constitutional aspiration of harmonising religious freedom with the imperatives of social justice and constitutional morality.

A significant jurisprudential development in this regard was the Supreme Court's decision in *The Commissioner, Hindu Religious Endowments v. Shirur Mutt* (1954)¹⁰, where the Court evolved the doctrine of "essential religious practices." According to this test, only those practices deemed "essential" to a religion would fall within the protective ambit of Article 25. This judicial innovation has since become a cornerstone in determining whether particular religious customs deserve constitutional protection or whether they may be subjected to legislative or judicial reform.

⁹ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84

¹⁰ *The Commissioner, Hindu Religious Endowments v. Shirur Mutt*, 1954 AIR 282

Over the last two decades, Indian constitutional jurisprudence has witnessed a marked shift towards greater judicial intervention in personal laws and religious practices, particularly in contexts where they perpetuate discrimination or violate fundamental rights. A notable illustration is the decision in *Shayara Bano v. Union of India* (2017)¹¹, where the practice of instant triple talaq (talaq-e-biddat) was invalidated on the ground that it was manifestly arbitrary and violative of the equality guarantee enshrined in Article 14. The Court underscored that the cloak of personal law cannot shield practices that are inherently unjust or discriminatory. Similarly, in *Indian Young Lawyers Association v. State of Kerala*¹², commonly known as the Sabarimala case, the Court struck down the prohibition on women's entry into the Sabarimala temple, ruling that religious freedom cannot be employed to justify practices that infringe upon gender equality and individual dignity. Further strengthening this trajectory, the decision in *Joseph Shine v. Union of India*¹³ decriminalised adultery by striking down Section 497 of the Indian Penal Code¹⁴, with the Court firmly rejecting patriarchal norms as a legitimate basis for restricting personal liberty.

Together, these judicial pronouncements signify an evolving interpretation of Indian secularism not as a passive neutrality, but as an active and reformatory project aimed at aligning personal laws and religious customs with the overarching constitutional framework of equality, justice, and individual autonomy.

Judicial pronouncements in recent years reveal a discernible pattern: the courts have increasingly prioritised the principle of constitutional morality, which is anchored in the ideals of equality, dignity, and reason, even when this necessitates the invalidation of religious or customary practices. The controversy surrounding the Uniform Civil Code (UCC) must therefore be viewed within the broader dialectic between collective rights, such as the freedom of religion and the preservation of cultural identity, and individual rights, particularly those guaranteeing equality and non-discrimination. While collective rights play a vital role in sustaining India's pluralistic framework, they cannot operate as a justification for perpetuating practices that erode human dignity or reinforce systemic inequality.

In this context, the judiciary has repeatedly clarified that the right to freedom of religion under

¹¹ *Shayara Bano v. Union of India*, AIR 2017 SC 4609

¹² *Indian Young Lawyers Association v. State of Kerala*, AIR ONLINE 2018 SC 243

¹³ *Joseph Shine v. Union of India*, AIR 2018 SUPREME COURT 4898

¹⁴ Indian Penal Code Act No. 45 of 1860

Article 25 is not unqualified. Customs or practices that are essentially social in character and which conflict with constitutional mandates of justice, liberty, and equality remain open to state intervention and reform. Against this backdrop, Article 44 of the Constitution should not be perceived as an instrument of homogenisation or a threat to cultural diversity. Rather, it represents an endeavour to harmonise personal laws with the overarching constitutional promise of substantive equality and uniform standards of justice across communities.

Modern Legal Transformations

The debate surrounding the Uniform Civil Code (UCC) in India has recently gained momentum, with noteworthy initiatives emerging at both the state and institutional levels. While Goa has historically implemented a uniform code, the legislative step taken by Uttarakhand signals a fresh phase in this discourse. Simultaneously, the Law Commission of India has been revisiting the question of a UCC, reflecting the shifting constitutional and social perspectives that shape this contentious issue.

1. State-Led Reforms

Goa provides the most prominent precedent of a functioning UCC within India. The state continues to follow a civil code derived from the Portuguese Civil Code of 1867, which remained in force even after Goa's integration into the Indian Union in 1961. This code governs key aspects of civil life, including marriage, divorce, succession, and guardianship, uniformly across all religious communities. Importantly, it upholds equal rights for men and women, particularly in matters relating to marriage and inheritance, and has been credited with promoting both gender justice and legal uniformity.

In a landmark development, Uttarakhand became the first state in independent India to enact a UCC in 2024. The legislation seeks to harmonise personal laws across diverse religious groups, covering vital areas such as marriage, divorce, inheritance, and adoption. This initiative represents not only a significant step toward the constitutional goal envisaged under Article 44 but also sets a precedent that may influence similar measures in other states.

- I. **Marriage and Divorce:** The legislation prescribes a uniform framework by setting a minimum marriageable age of 18 years for women and 21 years for men, along with compulsory registration of marriages and common grounds applicable to

divorce across communities.

- II. **Inheritance and Succession:** It establishes gender parity by granting sons and daughters equal inheritance rights, thereby removing the legal distinction between ancestral property and property acquired individually.
- III. **Live-in Relationships:** The statute introduces mandatory registration of live-in partnerships and extends safeguards relating to maintenance and inheritance for partners as well as their children.
- IV. **Prohibition of Polygamy:** The law explicitly outlaws polygamy, making the prohibition applicable to all individuals regardless of religious affiliation.

At the same time, the Act carves out an exception for members of Scheduled Tribes, thereby recognising and preserving their distinct customary practices. While the legislation has been welcomed as a progressive step towards advancing gender justice, it has also generated criticism on grounds of personal liberty and privacy. In particular, the requirement to register live-in relationships has been viewed as an overreach, raising apprehensions of unwarranted state interference in private life.

2. The Law Commission of India

The Law Commission of India has played a pivotal role in evaluating the feasibility and implications of implementing a Uniform Civil Code (UCC) at the national level. In its 2018 consultation paper, the 21st Law Commission¹⁵ concluded that the introduction of a UCC was neither necessary nor advisable at that juncture. Rather than advocating for uniformity across personal laws, the Commission recommended targeted reforms to amend existing statutes to eliminate discriminatory provisions and ensure alignment with constitutional principles. The report emphasised the importance of preserving India's rich pluralistic fabric, cautioning that imposing a uniform civil framework without adequate consideration could potentially encroach upon religious freedoms and disrupt communal harmony.

¹⁵ Law Commission of India, *Twenty-First Law Commission of India – Reports Nos. 263-277* (Chairman: Justice B. S. Chauhan), https://lawcommissionofindia.nic.in/report_twentyfirst/

Following this, the 22nd Law Commission¹⁶, established in 2020, undertook renewed consultations on the UCC, recognising that evolving social conditions and the passage of time necessitated a re-examination of the issue. In June 2023, the Commission issued a public notice soliciting detailed inputs and opinions from both the general public and recognized religious organizations on the prospects, challenges, and scope of a UCC. Despite these efforts to engage with diverse stakeholders and build a comprehensive understanding, the Commission's work remained unfinished. Its tenure concluded in August 2024 without the submission of a final report, primarily due to the absence of a chairperson following the appointment of Justice Ritu Raj Awasthi to the Lokpal, leaving the discourse on the UCC at a standstill at the institutional level.

3. Conclusion

The pursuit of a Uniform Civil Code (UCC) in India represents a complex interplay between constitutional ideals and socio-religious realities. While Article 44 envisions a uniform legal framework for civil matters, its implementation must navigate the country's deeply pluralistic and multi-religious landscape. The historical evolution of personal laws, judicial interventions, and state-level experiments in Goa and Uttarakhand underscores that meaningful reform is possible, but only through careful, calibrated strategies rather than abrupt imposition. A phased and gradualist approach emerges as the most viable pathway, allowing incremental reforms that foster public acceptance and minimise resistance from religious communities. Codification of uncodified personal laws, particularly among minority groups, can serve as an intermediary measure to enhance transparency, ensure judicial consistency, and protect individual rights, without dismantling community-specific practices. Similarly, gender-just reforms, such as equal inheritance rights and standardised provisions in marriage and divorce laws, provide a compelling entry point for broader harmonisation, garnering both societal support and judicial endorsement.

Crucially, the success of a UCC depends on inclusive democratic processes. Public consultations, interfaith dialogues, and legal literacy initiatives are essential to dispel misconceptions and build consensus around constitutional values such as equality, secularism, and gender justice. The Law Commission's evolving engagement with the subject further

¹⁶ Law Commission of India, *Twenty-Second Law Commission Report* (Chairman: Justice Ritu Raj Awasthi), <https://lawcommissionofindia.nic.in/22nd-law-commission-of-india/>

highlights that reform must be participatory, evidence-based, and sensitive to India's diverse social fabric.

Ultimately, the UCC should be conceived not as an instrument of uniformity imposed from above, but as a means to achieve substantive equality, justice, and protection of individual rights across communities. By adopting a gradual, inclusive, and gender-sensitive approach, India can progressively realize the spirit of Article 44 while upholding its secular and multicultural ethos, ensuring that legal reform strengthens both unity and diversity in the country.