
BUILDING A UNIFORM STRUCTURE FOR MARRIAGE AND DIVORCE LAWS IN INDIA

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ABSTRACT

Article 44 of the Directive Principles of State Policy in the Indian Constitution calls for a Uniform Civil Code (UCC) to ensure justice and equality. India's diverse religions have their own personal laws on marriage, divorce, inheritance, and adoption,¹ which often lead to inequalities, especially for women. While Hindus have codified laws since 1955, Muslim personal laws follow Shariat principles, and Christians and Parsis have their own regulations. The UCC aims to provide a common legal framework that respects cultural diversity while protecting individual rights and reducing gender-based discrimination. This study examines the history, legal framework, and challenges of implementing a UCC in India, highlighting its importance in promoting equality, social justice, and national integration.

Keywords: Uniform Civil Code (UCC), Personal Laws, Marriage, Divorce, Religion, Equality, Justice.

¹ Madhav Khaneja, *Uniform Civil Code: A Critical Analysis of Its Application in Contemporary India*, 6 International Journal for Multidisciplinary Research (IJFMR) (2024).

1. Introduction

Article 44 of the Directive Principles of State Policy of the Indian Constitution stresses the need for a uniform civil code.² India has many different religious sects, which are governed by their own personal laws. The Uniform Civil Code intends to create a common family law that will replace the personal laws that govern Hindus, Muslims, Christians, Parsis, and Jews, supporting the concept of a standard set of laws for the entire country. Hindus were governed by their own set of laws prior to independence, but in 1955, many old Hindu laws were codified. On the other hand, Shariat-based personal laws continue to govern the Muslim community. While the Muslim system is based on the Quran and other religious teachings, the Hindu system is based on the Dharmashastras. Even though India has embraced the idea of a secular nation, even Christians and Parsis have different rules on marriage and divorce. Since there are significant inequalities in personal laws, it is necessary to guarantee uniformity and give all citizens a sense of equality, irrespective of their sex, caste, or religion. The UCC aims to eliminate barriers to equality created in the name of caste, religion, custom, or tradition. This has been a demand of the women's movement since before independence. As a result, the concept of a "universal civil code" actually refers to a "uniform family code" for all communities, to guarantee social justice for marginalized groups in areas like marriage and divorce.³

1.1 Statement of Problem

The legal system in India continues to be burdened by the fact that various religious communities follow their own personal laws. On paper, this appears to be respect for diversity, but in reality, it results in uneven treatment, especially in matters of marriage and divorce. For instance, under personal law, a Muslim man is permitted to have several wives, whereas a Hindu man is not. In comparison to Hindus or Parsis, Christian couples must separate for a longer period of time before getting a divorce. These differences are not just technical; they impact the reality of women, who often face discrimination.

Articles 14, 15, and 21 of the Indian Constitution guarantee equality, yet personal laws still discriminate based on gender and religion. The debate about this issue has lasted for decades.

² *Uniform Civil Code In India: A Constitutional Mandate or a Cultural Conundrum?*, THE LAWWAY WITH LAWYERS JOURNAL (May 26, 2025), <https://thelawwaywithlawyers.com/uniform-civil-code-in-india-a-constitutional-mandate-or-a-cultural-conundrum/>.

³ Anukriti Rastogi & Diya Shekhawat, A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

In judgments like *Shah Bano* and *Sarla Mudgal*, courts have suggested that a Uniform Civil Code might offer a more balanced framework; yet, the issue remains unsolved due to social opposition and political reluctance. Convincing citizens that their cultural identity will not be erased is just as difficult as creating a uniform civil code. Therefore, the challenge is to balance plurality with equality in a society as diverse as India.

1.2 Research Questions

1. What is the purpose of implementing a Uniform Civil Code in India?
2. How can a Uniform Civil Code promote equality and justice for all citizens, especially women?
3. How do personal laws for Hindus, Muslims, Christians, and Parsis differ in India, and what challenges arise from these differences?
4. In what ways have landmark court cases highlighted the need for a Uniform Civil Code in India?
5. Could a Uniform Civil Code bring people together, or would it make some communities feel left out?
6. What practical lessons can India learn from Goa's Civil Code and the Special Marriage Act when considering a nationwide Uniform Civil Code?

1.3 Significance of Research

This research shows how personal laws in India often create unfair treatment, especially for women and weaker sections of society. Even though the Constitution guarantees equality, different religious rules on marriage and divorce can still lead to discrimination. Landmark judgments suggest that the courts have tried to protect women, but laws or social factors sometimes get in the way. A Uniform Civil Code (UCC) may help by providing the same rules for everyone, while still allowing cultural differences.

The study also makes it clear that uniform doesn't mean erasing religion or tradition. The civil code in Goa and the Special Marriage Act show that, despite there being obstacles and challenges, a common law governing all religions can exist. Putting a UCC in place is complicated because it involves politics, religion, and social beliefs. People need time and trust

to accept change, or it may feel forced.

A UCC seems likely to reduce discrimination, simplify the legal system, and make people feel more equal under the law. This research is important because it examines why a UCC is needed in India and the challenges involved.

1.4 Scope and Limitation of Research

This research examines the need for a Uniform Civil Code in India. It looks at how personal laws across different religions create unequal treatment, especially for women and marginalised groups. The study analyses landmark court cases, such as Shah Bano, Sarla Mudgal, and Shayara Bano, to show judicial perspectives on gender equality and personal laws. It also evaluates existing laws like the Special Marriage Act and Goa's civil code as examples of partial uniformity. The research considers social, political, and legal challenges in implementing a UCC and highlights its potential benefits for equality, social justice, and national unity.

The research does not provide a detailed step-by-step plan for implementing a Uniform Civil Code (UCC). It focuses on the personal laws of Hindus, Muslims, Christians, and Parsis; hence, it does not cover all religious laws in India. While social attitudes and regional differences are mentioned, they are not fully explored. The study relies on legal cases and secondary sources, which may not accurately reflect public opinion or the practical challenges of applying a UCC.

1.5 Objective of Research

1. To study the scheme of the Uniform Civil Code and understand how it differs from the personal laws that exist today.
2. To analyse Article 44 of the Constitution and trace the background of the UCC in India.
3. To evaluate landmark case laws and examine the role of the Special Marriage Act as a secular alternative to personal laws.
4. To review the personal laws of Hindus, Muslims, Christians, and Parsis to identify issues of inequality, gender bias, and conflicts with fundamental rights.
5. To assess India's requirement for a UCC and discuss the challenges in implementing it, particularly in a diverse and federal structure.

1.6 Research Methodology

This research is mainly qualitative, descriptive, and analytical. It focuses on how personal laws in India affect marriage and divorce, especially for women and marginalised groups. The study is qualitative because it examines legal provisions and court judgments rather than using numbers or statistics. It is descriptive as it explains the current system of personal laws, the Special Marriage Act, and examples of a Uniform Civil Code in Goa and Uttarakhand. It is analytical because it looks closely at important court cases like Shah Bano (1985), Sarla Mudgal (1995), Lily Thomas (2000), and Shayara Bano (2017), showing how personal laws sometimes conflict with constitutional guarantees of equality and justice.

The research relies on secondary sources and uses a comparative approach by studying the Special Marriage Act and the Goa Civil Code to understand how a common law could exist while respecting cultural diversity. This approach provides a clear understanding of why a UCC is needed, the obstacles in implementing it, and how it could promote equality, social justice, and national unity in a diverse country like India.

2. Literature Review

2.1 Primary sources

❖ Constitutional Provisions

- **Article 44 – Directive Principles of State Policy**

This Article says that the State shall work towards securing a Uniform Civil Code (UCC). The idea is to have one common set of personal laws for all citizens, regardless of religion, so that issues like marriage, divorce, inheritance, and adoption are governed uniformly. Even though it is only a Directive Principle and not enforceable by courts, it acts as a guiding principle for lawmakers to ensure equality and secularism in personal laws.⁴

- **Article 14 – Right to Equality**

This Article guarantees equality before the law and equal protection of laws for every individual in India. It ensures that no person is subjected to arbitrary or discriminatory treatment by the

⁴ The Constitution of India, 1950

State. It forms the foundation of fairness in personal laws, and any law that treats men and women unequally can be challenged as violating Article 14.⁵

- **Article 15 – Prohibition of Discrimination**

This Article prohibits discrimination on the basis of religion, race, caste, sex, or place of birth. It strengthens the idea of gender justice in personal laws and stops the State from making laws that treat people differently based on these grounds. It also empowers the State to make special provisions for women and children for their upliftment.⁶

- **Article 21 – Right to Life and Personal Liberty**

Initially, this Article only meant the right to live and not be deprived of life except by a procedure established by law. Over time, the Supreme Court has expanded its meaning. Now, Article 21 includes the right to live with dignity, privacy, and even gender justice. In matters of marriage and personal life, this Article ensures that individuals can make choices freely without unfair restrictions.⁷

- **❖ Statutes and Codes**

- **CrPC Section 125 – Maintenance**

This section provides a quick remedy for the maintenance of wives, children, and parents who cannot maintain themselves. It applies to all religions, making it a secular provision. The section ensures that no dependent person is left destitute, regardless of personal law.⁸

- **IPC Section 494 – Bigamy**

This provision makes it a criminal offense to remarry while a spouse is still alive and the first marriage remains valid. It enforces the principle of monogamy in India, except for Muslims, where personal law permits limited polygamy. The law protects the sanctity of marriage and

⁵ The Constitution of India, 1950

⁶ The Constitution of India, 1950

⁷ The Constitution of India, 1950

⁸ The Code of Criminal Procedure, 1973

safeguards the rights of the first spouse.⁹

- **IPC Section 497 – Adultery**

Earlier, this section treated adultery as a criminal offence, punishing only men who had relations with another man's wife without his consent. However, in *Joseph Shine v. Union of India (2018)*, the Supreme Court struck it down for being discriminatory and violating equality and personal liberty. Now adultery is no longer a crime, though it may still be a ground for divorce.¹⁰

- **Hindu Marriage Act, 1955**

This law codified Hindu marriage and divorce. It makes monogamy compulsory, lays down conditions for a valid marriage, and provides grounds for divorce, annulment, and judicial separation. It also ensures that widows and divorced women can remarry. This Act modernized Hindu personal law and introduced gender-just reforms.¹¹

- **Hindu Widow Remarriage Act, 1856**

This Act legalized widow remarriage in India. It was a landmark reform during British times, as Hindu widows were earlier forced to live a life of strict social restrictions. The law gave widows a right to rebuild their lives through remarriage.¹²

- **Hindu (Bigamy Prevention and Divorce) Act, 1949**

Before the Hindu Marriage Act, this law was enacted to restrict bigamy among Hindus and to allow divorce under certain circumstances. It marked an important step towards codifying Hindu marriage law.¹³

- **Special Marriage Act, 1954**

This Act allows two individuals from different religions, faiths, or castes to marry without converting. It also bans polygamy and provides grounds for divorce and maintenance in a

⁹ The Indian Penal Code, 1860

¹⁰ The Indian Penal Code, 1860

¹¹ The Hindu Marriage Act, 1955

¹² The Hindu Widow Remarriage Act, 1856

¹³ The Hindu (Bigamy Prevention and Divorce) Act, 1949

secular framework. It is an important tool for inter-religious and inter-caste marriages.¹⁴

- **Muslim Women (Protection of Rights in Divorce) Act, 1986**

This law was passed after the famous Shah Bano case. It limited the right of divorced Muslim women to claim maintenance under Section 125 of the CrPC, instead restricting it to the iddat period. This Act was criticized, as it restricted women's rights in the name of personal law.¹⁵

- **Muslim Women (Protection of Rights on Marriage) Act, 2019**

This Act criminalized the practice of instant triple talaq (talaq-e-biddat). It declared the practice unconstitutional, making it a punishable offence and ensuring better protection for Muslim women from arbitrary divorce.¹⁶

- **Indian Christian Marriage Act, 1872**

This law lays down the rules and procedures for solemnizing Christian marriages in India, including age requirements, consent, and registration.¹⁷

- **Indian Divorce Act, 1869**

This Act provides the grounds and procedures for divorce among Christians. It governs issues like judicial separation, annulment, and dissolution of marriage.¹⁸

- **Parsi Marriage and Divorce Act, 1936**

This Act governs marriage and divorce among Parsis. It is unique because it allows community institutions like Parsi matrimonial courts to resolve disputes.¹⁹

- **Goa Civil Code (Portuguese Civil Code, 1867)**

Goa is the only State in India that has a uniform set of civil laws for all communities. This code covers marriage, divorce, succession, and adoption in a uniform way. It functions like a mini-

¹⁴ The Special Marriage Act, 1954

¹⁵ The Muslim Women (Protection of Rights in Divorce) Act, 1986

¹⁶ The Muslim Women (Protection of Rights on Marriage) Act, 2019

¹⁷ The Indian Christian Marriage Act, 1872

¹⁸ The Indian Divorce Act, 1869

¹⁹ The Parsi Marriage and Divorce Act, 1936

Uniform Civil Code and is often cited as an example for the rest of India.²⁰

2.2 Secondary sources

Mohammad Ahmed Khan v. Shah Bano Begum (1985)

Shah Bano, a 73-year-old Muslim woman, approached the Court after her husband divorced her through the Triple Talaq method and refused to provide maintenance beyond the iddat period. The Supreme Court held that, under Section 125 of the CrPC, she was entitled to maintenance irrespective of religious personal laws. The judgment highlighted that morality and religion operate on separate grounds and urged the Parliament to consider a Uniform Civil Code to ensure equality for all women.²¹

Sarla Mudgal v. Union of India (1995)

This case involved a Hindu man who, already married under the Hindu Marriage Act, converted to Islam in order to marry again. The Supreme Court ruled that converting to another religion does not automatically dissolve the first marriage, and entering into a second marriage while the first spouse is still alive is illegal under Section 494(5) of the Indian Penal Code (IPC). The Court noted that loopholes in personal laws can be misused and emphasized the need of a Uniform Civil Code to ensure that marriage and divorce laws are fair and just for everyone.²²

Lily Thomas v. Union of India (2000)

The Court emphasised that uniform does not mean similar laws for everyone, but rather laws that promote equality, especially regarding gender and religion, highlighting the balance needed between legal uniformity and societal acceptance.²³

Shayara Bano v. Union of India (2017)

Shayara Bano challenged the legality of Triple Talaq, polygamy, and Nikah Halala. The Supreme Court declared Triple Talaq unconstitutional, leading to the Muslim Women (Protection of Rights on Marriage) Act, 2019. The ruling reinforced legal protection for Muslim

²⁰ The Portuguese Civil Code, 1867

²¹ Mohd. Ahmad Khan v. Shah Bano Begum, 1985 AIR 945

²² Smt. Sarla Mudgal, President, Kalyani & Ors v Union Of India & Ors, 1995 AIR 1531

²³ Lily Thomas v. Union of India, AIR 2000 SC 1650

women and emphasised the need for a common legal framework to prevent genderbased discrimination in personal laws.²⁴

Seema v. Ashwani Kumar (2006)

The Supreme Court has mandated that marriage registration is required for all states and religions. This decision aimed to prevent child marriages, protect women's rights to maintenance and stop discriminatory practices in marital laws.²⁵

Joseph Shine v. Union of India (2018)

The Court struck down Section 497 IPC, which criminalised adultery. It held that genderbiased laws violate women's dignity and equality. This case showed that even personal laws or outdated criminal provisions must comply with constitutional guarantees of gender justice.²⁶

2.3 Articles

- **Uniform Civil Code: One Code, One Rule by Dr Prachi Tyagii and Adrija Ghose**

The authors explain that India's diversity in religion, caste, and gender has created different personal laws for marriage, divorce, and succession. They observe that while Hindu and Christian personal laws have been codified, the Muslim community continues to follow the Shariat-based law, leading to inequality. The authors also argue that a Uniform Civil Code could provide a single legal framework for all communities, promoting gender justice without interfering with religious practices. They note that women's groups and liberals support UCC but face opposition from those worried about minority freedoms. The authors use landmark court judgments to show why a UCC is legally and socially relevant.²⁷

- **A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India by Anukriti Rastogi and Diya Shekhawat**

The authors trace the history of UCC and its constitutional basis in Article 44. They highlight

²⁴ Shayara Bano v. Union of India and Ors. AIR 2017 SC 4609

²⁵ Seema v. Ashwani Kumar, 2006 (2) SCC 578

²⁶ Joseph Shine v. Union of India, 2018 SC 1676

²⁷ Prachi Tyagi & Adrija Ghose, Uniform Civil Code: One Code, One Rule, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

that personal laws for Hindus, Muslims, Christians, Parsis, and Jews vary widely, creating inequalities, especially for women. They suggest that codifying a uniform family law could modernise marriage, divorce, inheritance, and adoption laws while promoting social justice. They explain that political, historical, and social obstacles have prevented the implementation of the UCC, despite its importance.²⁸

- **Uniform Civil Code: A Fundamental Necessity by Nitin M Maurya**

The author notes that India's personal laws, inherited from the colonial period, often conflict with one another and create inequality. He presents UCC as a solution to replace personal laws with a single civil code applicable to all citizens. He outlines three primary challenges; legal validity, gender equality, and the treatment of minors compared to adults. The author argues that a unified code is necessary to protect individual rights, uphold secularism, and align with the constitutional vision of one nation, one law.²⁹

- **Examining the Feasibility of a Uniform Civil Code in India by Yagya Bharadwaji**

The author traces the story of UCC from the British era to the present. He explains how political, social, and religious factors have delayed its implementation. He points out that existing personal laws often discriminate against women and violate constitutional rights. The author argues that UCC is needed to uphold equality, protect human rights, and maintain secularism. He clarifies that UCC does not interfere with religious rituals but ensures that civil matters are treated fairly for all citizens.³⁰

3. Scheme of Study

A Uniform Civil Code is a set of regulations governing all civil affairs under a single common law. It establishes a standard law that applies to everyone under its jurisdiction, regardless of their personal beliefs or religion.

Personal laws, which are specific to each religion, govern civil matters such as marriage,

²⁸ Anukriti Rastogi & Diya Shekhawat, A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

²⁹ Nitin M. Maurya, Uniform Civil Code: A Fundamental Necessity, 5 INT'L J.L. MGMT. & HUMAN. 1482 (2022).

³⁰ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

divorce, inheritance, adoption, and maintenance in India. At present, the Portuguese Civil Code of 1867 serves as the basis for the uniform civil law that only Goa has. The code manages family issues consistently.³¹ The first state in independent India to enact a Uniform Civil Code Bill was Uttarakhand.³²

3.1 Article 44 of the Indian Constitution

The Directive Principles of State Policy, which are rules for the Indian government that the state is expected to follow while creating laws and policies, include Article 44 of the Indian Constitution. In particular, Article 44 declares that the state must work to ensure that its citizens have access to a uniform civil code across India. This implies that the government should make an effort to enact laws that are equally applicable to every person, irrespective of their religious practices or beliefs. According to Article 44, the Indian government should work to create a uniform Civil Code (UCC) throughout the nation. Article 44 is significant in India because it can work towards social justice and equality. Furthermore, India currently has a system of personal laws that promote the spiritual beliefs of the people in charge of various religious communities; this will lead to discrimination and inequality, particularly against women and marginalised groups. Article 44 seeks to address these issues by creating a UCC, which ensures that all citizens are subject to the same laws regardless of their religious beliefs. Article 44 also has the ability to foster a sense of shared citizenship and national solidarity. A single set of laws that all residents must abide by could promote a feeling of national identity and belonging in a nation as diverse as India. This could be especially crucial during periods of social unrest or conflict, when a feeling of national togetherness may preserve societal stability. Overall, Article 44 of the Indian Constitution is an important component due to its ability to contribute to social justice, equality, and Indian unity. Even if putting a UCC into effect is a controversial and challenging topic, the Indian government should work towards it.³³

3.2 Background of UCC in India

During the British Raj, personal laws were created for the Muslim and Hindu communities.

³¹ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

³² Malti Rawat, *Disadvantages Of Uniform Civil Code (UCC)*, Key Challenges (July 10, 2025), <https://restthecase.com/knowledge-bank/disadvantages-of-uniform-civil-code-ucc>.

³³ Nitin M. Maurya, Uniform Civil Code: A Fundamental Necessity, 5 INT'L J.L. MGMT. & HUMAN. 1482 (2022).

Women campaigners first called for a Uniform Civil Code at the start of the 20th century in the hope of securing "rights for women, equality, and secularism." However, the National Planning Commission, which was established by the Congress in the 1940s to examine women's position and suggest changes to individual laws regarding gender equality, came up with the concept for this unified code. During the Constituent Assembly, Dr B.R. Ambedkar later strongly argued for this to be included in the Constitution. Therefore, it is included in Part IV of the Directive Principle of State Policy as a responsibility of the state.³⁴

The current personal law system has its origins in colonial governance, where the British government codified and frequently revised religious customs through a colonial legal lens while adopting a policy of non-interference in religious matters in accordance with the Queen's Proclamation of 1858. This resulted in a hierarchical legal system where many groups were subject to their own particular laws on inheritance and family relationships. Debates in the constituent assembly following independence revealed significant differences on the subject of personal laws, with conservative voices from a range of communities raising concerns about cultural homogenization and progressive members calling for instant uniformity. The 1950s Hindu Code Bills, which modernized and codified Hindu personal laws while mostly preserving minority personal laws, were one of the selective changes that took place in the years after independence. This limited approach "established a paradigm of asymmetric secularism that has shaped subsequent debates on legal uniformity in India," according to Krishnaswamy (2019).³⁵

3.3 Case laws

Mohammad Ahmed Khan v. Shah Bano Begum (1985)³⁶

For the first time, the Supreme Court reiterated the statement of then Chief Justice Y.V. Chandrachud in the 1985 case of Mohammad Ahmed Khan v. Shah Bano Begum "A common civil code will help the cause of national integration by removing disparate loyalties to law

³⁴ Prachi Tyagi & Adrija Ghose, Uniform Civil Code: One Code, One Rule, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

³⁵ Shivanand Singh & Dr. Arvind Kumar Singh, *Decoding the Uniform Civil Code: Evolution, Implications and Challenges in Contemporary India*, 5 INDIAN JOURNAL OF LEGAL REVIEW (2025).

³⁶ Mohd. Ahmad Khan v. Shah Bano Begum, 1985 AIR 945

which have contracting ideologies."³⁷ The court in this case directed the Parliament to draft a Uniform Civil Code. Shah Bano, a 73-year-old woman, had gone to court to demand maintenance from her husband under section 125 of the Criminal Procedure Code. The husband had divorced her through Triple Talaq after 40 years of marriage and had refused to pay her regular maintenance after the iddat period; Muslim personal law allowed for this kind of unilateral divorce. According to the Supreme Court, Muslim women are entitled to maintenance under Criminal Procedure Code (CrPC) s.125. Additionally, the court determined that Section 125 of the Criminal Procedure Code is secular in nature since it requires "individuals to maintain close relatives who are indigent as their obligation towards society in order to prevent destitution and vagrancy." This is the law's moral decree; therefore, morality and religion are incompatible. Due to the widespread unrest, the Rajiv Gandhi Government implemented the Muslim Women (Right to Protection on Divorce) Act 1986, which limited Muslim women's ability to claim support under s.125 CrPC and overturned the Supreme Court's decision in the case.³⁸ The Act declared that Muslim women were exempt from Section 125 of the CrPC, which stated that maintenance was only owed to a divorced wife during the time of iddat and not afterwards. The Minister of Social Welfare, Rajendra Kumar Bajpai, stated in 1987 that the Waqf Board did not provide maintenance to any women in 1986. Once more, women's lives were ruled by religious regulations rather than secular ones, which also hindered the Women's Movement in India throughout the 1980s. However, the Muslim Women (Protection of Rights in Divorce) Act, 1986, was declared invalid when the Supreme Court affirmed the Shah Bano ruling in the Daniel Latifi and Shamima Farooqui rulings.³⁹

Sarla Mudgal v. Union of India (1995)⁴⁰

In *Sarla Mudgal v. Union of India*, the Supreme Court emphasised the need for the government to implement Article 44 for the second time. The case concerned whether a Hindu man who had previously been married under the Hindu Marriage Act of 1955 could convert to Islam and formally consummate his second marriage. It was decided that conversion to Islam would not

³⁷ Dhananjay Mahapatra, *Supreme Court seeks govt response on uniform marriageable age*, Times of India (Dec. 10, 2022), <https://timesofindia.indiatimes.com/india/supreme-court-seeks-govt-response-on-uniformmarriageable-age/articleshow/96119269.cms?from=mdr>.

³⁸ Prachi Tyagi & Adrija Ghose, *Uniform Civil Code: One Code, One Rule*, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

³⁹ Yagya Bharadwaj, *Examining the Feasibility of a Uniform Civil Code in India*, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

⁴⁰ Smt. Sarla Mudgal, *President, Kalyani & Ors v Union Of India & Ors*, 1995 AIR 1531

end the initial marriage, and that a marriage consummated under the Hindu Marriage Act could only be dissolved under the same Act. Actually, getting married again when a husband or wife is still alive would be illegal under IPC s.494(5). It suggested it was time to implement the Uniform Civil Code and remove Article 44 from the cold storage.⁴¹

Lily Thomas V. Union of India (2000)⁴²

Finally, the Supreme Court ruled in Lily Thomas v. Union of India that "the desirability of Uniform Civil Code can hardly be doubted." However, it is only possible if the social atmosphere is improved and elected officials step up to encourage the public to embrace the shift. Additionally, the court also emphasised that "uniform" would refer to having laws that are similar for everyone with regard to gender justice and religious equality, rather than the same laws for everyone.⁴³

Shayara Bano V. Union of India (2017)⁴⁴

Shayara Bano's husband of fifteen years used the Triple Talaq method (talaq-e-biddat) to file for divorce. She petitioned the Supreme Court to declare three customs unconstitutional; polygamy, talaq-e-biddat, and nikah-halala (which requires a divorced Muslim woman who wishes to remarry her husband to consummate a marriage and obtain a divorce from a second husband before returning to her first). The concept of Triple Talaq was found unconstitutional by the court, which decided in her favour. The practice is illegal under the Muslim Women (Protection of Rights on Marriage) Act, which was passed in 2019 and went into effect immediately on September 19, 2018. The Act also allows a woman who feels wronged to claim support for her dependent children. The ruling was a step towards eliminating arbitrary personal regulations and protecting Muslim women's rights in marriage.⁴⁵ This case showed the limited rights granted to women by their religion and created discrimination based on gender within the personal law itself by favouring men over women, arguing that a uniform civil code is

⁴¹ Prachi Tyagi & Adrija Ghose, Uniform Civil Code: One Code, One Rule, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

⁴² Lily Thomas v. Union of India, AIR 2000 SC 1650

⁴³ Prachi Tyagi & Adrija Ghose, Uniform Civil Code: One Code, One Rule, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

⁴⁴ Shayara Bano v. Union of India and Ors. AIR 2017 SC 4609

⁴⁵ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

necessary.⁴⁶

3.4 Special Marriage Act

In 1954, the Special Marriage Act was passed, allowing any citizen to marry or allowing any Indian national to marry in another nation regardless of their religious beliefs. This law allows people to marry outside of their religion's personal laws. Polygamy is made illegal under this Act. The Act covers divorce and maintenance for divorced wives. This is especially useful for Muslim women who do not have the same rights under personal laws. The Special Marriage Act was the parliament's attempt to establish a secular, universal code for Indian nationals, replacing personal laws with a common code.⁴⁷

3.5 Personal laws

Hindu law

India has no official religion and is a secular state and country, indicating it does not practice any particular religion. India is home to a wide variety of languages and religions, and people of many faiths have long been subject to their own set of rules. As a result, different types of people are treated differently under their own laws. "Hindu weddings were viewed as a sacred and ceremonial relationship, rather than a commercial partnership." "The fundamental concepts of Hindu law are contained in the 'Vedas,' which are said to be divinely inspired." Prior to independence, women faced many social challenges and lacked equal status, which led to discrimination, inequality, and the practice of sati. Later, a social battle against forced widowhood, sati, and sex inequality was started by Raja Ram Mohan Roy and other social reformers. When the cruel practice of Sati was made illegal, he backed the government and successfully fought against a petition to repeal the Act filed by the orthodox portion of the public before the Privy Council. The Hindu Widow Remarriage Act was passed in 1856 as a result of the campaign. In 1955, the Hindu Marriage Act granted couples the right to divorce, judicial separation, and other marital remedies, challenging the sacramental nature of marriage. Although not many Hindus practised it, polygamy was originally permitted by Hindu law,

⁴⁶ Prachi Tyagi & Adrija Ghose, Uniform Civil Code: One Code, One Rule, 4 INT'L J.L. MGMT. & HUMAN. 3201 (2021).

⁴⁷ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

allowing a Hindu man to wed as many women as he pleased. The Indian

Parliament passed the Hindu Marriage Act in 1955, prohibiting polygamy and requiring all Hindus to practice monogamy. It also made divorce legal. The Act's main objective was to amend and codify the Hindu marriage law. All Hindus were guaranteed to be governed by the same set of laws according to this statute; however, the state of Goa is exempt from the Hindu Marriage Act, 1955. "The' Goa Civil Code, 'commonly known as the Goa Family Law, is a series of civil laws that regulate the people of the Indian state of Goa." Religion-specific civil laws that govern people of different faiths separately exist throughout India. Goa is an exception to this rule since it has a single secular code of law that applies to all Goans, irrespective of their nationality, religion, or language. The Hindu Marriage Act of 1955 includes provisions for judicial separation, divorce, and annulment of marriages (Sections 10, 13, 14, and 11, 12), as well as provisions for the restoration of conjugal rights and the right to remarry after an official divorce (Section 15). It also includes provisions about the age of marriage and the requirements for a valid marriage. The Hindu (Bigamy Prevention and Divorce) Act of 1949 and the Special Marriage Act were among the numerous laws passed and enacted during the first few years after independence. "In Hindu Law, the issue arises with marriage registration and, as a result, the inability to cancel child marriages." Since child marriages are accepted customs in practically every Indian religious group, they cannot be documented because they do not adhere to the minimum marriage age. A growing number of intercaste weddings are taking place these days, which is leading to a number of marital issues. In *Seema v. Ashwani Kumar*⁴⁸, the Supreme Court of India mandated that all Indian states enact laws requiring mandatory wedding registration, irrespective of religious affiliation, within a specific time frame. Encouraging women's rights to maintenance, inheritance, and housing, prohibiting child marriages, prohibiting marriages without the parties' consent, prohibiting bigamy and polygamy, discouraging men from abandoning women, and prohibiting the trade in of young girls under pretences of marriage have all been made possible by this reform. It's crucial to remember that, in spite of the strict laws against conversion and bigamy outlined in the Hindu Marriage Act of 1955, there have been many instances of people in the country converting to Islam in order to get married again, which is against the law. As a result, even if laws specifically protecting Hindus were created, there are a number of issues that demonstrate how

⁴⁸ *Seema v. Ashwani Kumar*, 2006 (2) SCC 578

poorly the law was applied.⁴⁹

Muslim Law

The Supreme Court has ruled that the Triple Talaq system, which is widely practised among Muslims, is illegal. Although it was a step in the right direction for Muslim women, discriminatory practices still exist in Islam and are sanctioned by Muslim personal law. Although Section 494 of the Indian Penal Code makes polygamy a crime, Shariat law does not apply to people who practice polygamy. Islam permits a Muslim man to have four wives simultaneously, which is unquestionably discriminatory against all women and against Articles 14 and 21. Islam does not have a specific age for marriage; rather, it states that a person reaches maturity or puberty at which point they are considered to be of marriageable age. The lack of a legal marriage age essentially permits child marriage. Nikah Halala is an extremely oppressive ritual that severely violates a woman's fundamental rights. When a woman wants to remarry her spouse after they have divorced, she must first marry another man, consummate the marriage, and then get a divorce before she may return to her husband. Muta marriage is another outdated and irrational Shia Muslim custom that permits men to join into "temporary marriage." In this case, the Muta contract predetermines the length of the marriage and the amount of dower. The child belongs to the man if the woman becomes pregnant within the muta period, but his refusal is enough to make the child not his. Nearly every aspect of muta marriage discriminates against women and violates their rights as stated in Articles 14, 19, and 21. It is unfair because Muslim law does not acknowledge the mother as the child's natural guardian, even in cases where the father has passed away.⁵⁰

Christian Law

The Indian Christian Marriage Act of 1872 and the Indian Divorce Act of 1869, which regulate marriage solemnization and divorce remedies, respectively, govern Christians in

India. A Christian marriage is a contract, even though it has religious significance. Under the Christian Marriage Act of 1872, a Minister of Religion often performs the marriage ceremony. The Marriage Registrar may also solemnize the marriage. Section 10 of the Indian Divorce Act

⁴⁹ Anukriti Rastogi & Diya Shekhawat, A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

⁵⁰ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

permits a divorce decree to dissolve a marriage since it is a contract. Christian marriage is therefore regarded as a civil transaction under the current laws.⁵¹

When Christians in India want to end their marriage, they must ask the Roman Catholic Church and the court for a nullity decree. It is inconvenient and discriminatory for members of the Christian community to have two separate adjudicatory bodies for the same issue. This violates Articles 14 and 15 of the Indian Constitution by discriminating against members of the Christian community. Also, unlike the Hindu, Parsi, and Special Marriage Acts, which allow for a one-year break, Christian couples who seek divorce on the basis of mutual consent must wait through a two-year separation period. Articles 14, 15, and 21 of the Constitution are violated by this discrepancy.⁵²

Parsi Law

The religious rite of 'Ashirvad' is necessary for the legality of Parsi marriages, which are also seen as contracts. The word Ashirvad literally translates to benediction, which is necessary for its validity. Ashirvad is a prayer or warning to the spouses to keep their end of the bargain. The marriage ceremony is performed by a Parsi priest in front of two witnesses.⁵³

The creation of Parsi Matrimonial Courts, which grant the High Court appellate jurisdiction, is permitted by Parsi personal law. It weakens the objective of formal courts and places additional strain on members of the Parsi community. Personal laws that are arbitrary and discriminatory not only hinder the country's prosperity, but also violate individuals' fundamental constitutional rights.⁵⁴

The Supreme Court ruled in *Joseph Shine v. Union of India*⁵⁵ that "a law that treats women differently based on gender stereotypes is an affront to women's dignity"⁵⁶ and removed the penalty for adultery. The statement applies to any legislation or practice that impacts women in

⁵¹ Anukriti Rastogi & Diya Shekhawat, A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

⁵² Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

⁵³ Anukriti Rastogi & Diya Shekhawat, A Critical Study on Uniform Civil Code: To Unify the Marriage and Divorce Laws in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

⁵⁴ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

⁵⁵ *Joseph Shine v. Union of India*, 2018 SC 1676

⁵⁶ <https://www.impriindia.com/insights/policy-update/legal-age-of-marriage-policy-update-2021/>

the nation, even if it is a personal law provision, not just a discriminatory criminal law provision (Section 497 of the Indian Penal Code). All citizens are treated equally by the law according to the uniformity of criminal law, which applies to them all fairly. Civil law issues require the same fairness and justice. A Uniform Civil Code would guarantee respect for constitutional law, making it an essential component of family law to ensure that no legal provision conflicts with individuals' fundamental rights and that no one is subjected to discrimination.⁵⁷

3.6 India's requirement for a uniform civil code

A UCC would have the primary effect of fostering social justice and equality by guaranteeing that all citizens, irrespective of their religious beliefs, are bound by the same laws. Inequality and discrimination, especially against women and underprivileged people, might result from India's current system of personal laws, which are based on an individual's belief system. These problems could be resolved by creating a UCC, which would guarantee that everyone is governed by the same laws. A UCC may also encourage a sense of shared citizenship and national unity. A single set of laws that everybody in the country must abide by could promote a feeling of national identity and belonging in a nation as diverse as India. This could be especially crucial during periods of social unrest or conflict, when a feeling of national togetherness may preserve societal stability. Furthermore, the adoption of a UCC may impact India's legal system's effectiveness and efficiency. The UCC could aid in modernising the legal system and facilitating citizens' access to justice by minimising the number of distinct sets of laws and getting rid of discrepancies. The country's socio-legal environment will be greatly influenced by adopting a UCC in India. Although there are obstacles and problems in putting a UCC into practice, there are also a lot of strong arguments in favour of its adoption. A UCC could benefit the Indian society in many ways by fostering equality, national unity, and an evolving legal system.⁵⁸

3.7 Challenges facing UCC in India

India is an ethnically diverse nation with many different religious and cultural groups, each of which is subject to its own set of laws. To implement a UCC, it would be necessary to take into

⁵⁷ Yagya Bharadwaj, Examining the Feasibility of a Uniform Civil Code in India, 3 INT'L J.L. MGMT. & HUMAN. 1804 (2020).

⁵⁸ Nitin M. Maurya, Uniform Civil Code: A Fundamental Necessity, 5 INT'L J.L. MGMT. & HUMAN. 1482 (2022).

consideration the interests and concerns of different religious and cultural groups while also bringing these distinct legal traditions into harmony. The central government and the state governments share legislative authority in India's federal system of governance. Since personal laws are included in the Constitution's Concurrent List, both the federal government and state governments are able to make laws relating to these topics. Cooperation and negotiation between the federal government and the states would be necessary for any attempt to implement a UCC. Large minority communities with unique religious and cultural identities can be found in several Indian states. Attempts to enforce one civil law that overrides or weakens the customs of minority communities could face opposition from state governments. Political disputes between the states and the centre could result from such resistance. India is dedicated to defending religious and cultural minorities' rights, particularly their autonomy and freedom of religion. A UCC must be put into place to guarantee that minority communities are neither excluded nor marginalised and that the legal system respects and accommodates their cultural and religious customs. In India, religious beliefs, practices, and traditions are deeply interconnected with personal laws. A UCC would have to handle delicate social and religious concerns and make sure that the rights and interests of every community are upheld in any attempt to amend or replace existing laws. A UCC can only be implemented with the support and cooperation of many stakeholders, including political parties, religious authorities, community organisations, and civil society organisations. It could be difficult to reach an agreement on such a controversial topic, especially in a diverse country like India. The process of putting a UCC into effect would require the creation of new laws, revising current ones, and resolving problems across various legal frameworks. This would be a long and difficult process that calls for thorough legal knowledge and examination.⁵⁹

4. Finding

The study shows that having different personal laws for marriage and divorce in India results in unequal consequences. What may look like respect for religious freedom also carries forward practices that discriminate against women, especially in matters relating to marriage and divorce. Court cases like *Shah Bano* (1985) and *Shayara Bano* (2017) show that the judiciary has repeatedly pushed for more equal treatment, while legislatures have sometimes stepped

⁵⁹ Dr. Pardeep Inder Kaur, *Towards a Uniform Civil Code in India: Challenges, Prospects, and Stakeholder Perspectives*, 9 International Journal of Novel Research and Development (2024).

back to avoid upsetting community beliefs.

One important finding is that "uniform" does not always mean identical. As long as it maintains equality among communities, a common framework can be adopted. Goa's civil code and the Special Marriage Act of 1954 are two minor but helpful examples that prove that laws on paper do not necessarily affect social practice.

The real challenge is not drafting a new law but convincing people that it will not erase their identity. Any move toward a universal civil code will likely be viewed as forced rather than voluntary unless the reform process seems fair. Instead of implementing a significant change, the research suggests that trust must be established between different religious communities and reform should be introduced gradually.

5. Suggestions/Conclusion

The Uniform Civil Code (UCC) is not just a legal concept but a socially and politically controversial and sensitive issue in India. Personal laws across different religions have long created obstacles, often resulting in gender bias and inequality. Cases like Shah Bano, Sarla Mudgal, and Shayara Bano show how uneven personal laws can disadvantage women, emphasising the need for a uniform legal framework. Implementing a UCC is a complex task. Resistance from religious communities, political hesitation, and the complexity of codifying diverse customs make the process challenging. A progressive strategy with an increased focus on communication and negotiation would probably be more realistic than enforcing laws simultaneously. Despite these hurdles, a UCC may help reduce gender-based discrimination, simplify the legal system, and foster a sense of common citizenship. It may also strengthen national unity by establishing equality under the law. Although a UCC is challenging to implement, promoting social justice, fairness, and unity in India's multicultural community is necessary.⁶⁰

⁶⁰ Nitin M. Maurya, Uniform Civil Code: A Fundamental Necessity, 5 INT'L J.L. MGMT. & HUMAN. 1482 (2022).

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