

---

# THE UNIFORM CIVIL CODE DEBATE: NAVIGATING THE TENSION BETWEEN EQUALITY, SECULARISM AND DIVERSITY

---

Tejaswi Kumar, Nilesh Gupta & Ningal Yallappa,  
K.E.S. Shri Jayantilal H. Patel Law College, Mumbai

## ABSTRACT

The Uniform Civil Code (UCC) dispute exists as a permanent constitutional, legal and socio-political conflict which is prevalent for more than decades in India. The Uniform Civil Code which Article 44<sup>1</sup> of the Constitution of India established aims to create one single legal framework which will control all civil matters including marriage divorce adoption succession and inheritance matters for all citizens regardless of their religious beliefs.

Through Directive Principles of State Policy, the framers established their vision for achieving legal uniformity while recognizing the need to respect religious and cultural practices which exist throughout Indian society<sup>2</sup>. The UCC proposal has generated extensive legal and political debates which focus on how constitutional equality should interact with religious freedom rights during the last two decades. Supporters of the Uniform Civil Code believe that a single system of civil law will eliminate all forms of discrimination which currently exist in distinct personal law systems thus providing gender justice and equal constitutional rights while strengthening national unity.<sup>3</sup>

Critics of the uniform code contended that its enforcement would violate religious freedom rights and minority cultural rights which belong to various religious and ethnic groups in society<sup>4</sup>. The research investigates the constitutional conflicts which arise between equality and secularism and cultural diversity rights that currently shape discussions about the Uniform Civil Code in India.

The research uses comparative legal analysis to examine personal law frameworks and judicial decisions from **Mohd. Ahmed Khan v. Shah Bano**

---

<sup>1</sup> Jain, M. P. (2016). *Indian Constitutional Law* (8th ed.). LexisNexis.

<sup>2</sup> Austin, G. (1966). *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press.

<sup>3</sup> Agnes, F. (2015). "Uniform Civil Code and Gender Justice." *Economic and Political Weekly*, 50(33), 14–17

<sup>4</sup> Dhavan, R. (2001). "The Uniform Civil Code Debate." *Journal of the Indian Law Institute*, 43(3), 287–310

**Begum**<sup>5</sup> and **Sarla Mudgal v. Union of India**<sup>6</sup> and **Shayara Bano v. Union of India**<sup>7</sup> to assess current personal law systems in India. The study demonstrates that Indian personal laws show significant differences between inheritance laws and marriage and divorce regulations which affect women while a uniform civil code would create problems through its enforcement of cultural uniformity and dominance by the majority group. The paper investigates how legal reforms and personal law harmonization need to follow a step-by-step and consultative method in order to create an equitable system which maintains India's democratic values through equality and diversity rights<sup>8</sup>.

**Keywords:** Uniform Civil Code, personal laws, constitutional equality, secularism, legal pluralism, gender justice, India

## INTRODUCTION

The issue of the Uniform Civil Code has been an important constituent of Indian constitutional and legal discourse since independence. The concept of a Uniform Civil Code is defined as “a single body of civil laws applicable to all citizens on matters of marriage, divorce, adoption, succession, and inheritance without any reference to their religion.” The idea of a Uniform Civil Code is a part of a wider desire for uniformity and equality before the law within a modern democratic nation-state.

In India, it is provided in Article 44 of the Constitution of India, which states: “The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India<sup>9</sup>.” However, the implementation of a Uniform Civil Code has been a major issue of debate within Indian constitutional and legal discourse. The framers of the Constitution were conscious of the social and religious diversity of Indian society. The issue of a Uniform Civil Code is provided for in Article 44 of the Constitution, but it is included in the part of the Constitution dealing with ‘Directive Principles of State Policy,’ as opposed to ‘Fundamental Rights.’ This is a reflection of a delicate balance between a desire for uniformity and a need for gradual reform in a society with many religious communities.

In the past, India has practiced a system of legal pluralism<sup>10</sup>, whereby different religious groups

---

<sup>5</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

<sup>6</sup> Sarla Mudgal v. Union of India, AIR 1995 SC 1531

<sup>7</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1

<sup>8</sup> Law Commission of India. (2018). *Consultation Paper on Family Law Reforms*

<sup>9</sup> Government of India. *Uniform Civil Code – Constitutional Provision*

<sup>10</sup> Menski, W. (2008). “Legal Pluralism and Uniform Civil Code Debate.” *German Law Journal*, 9(4), 211–236

are governed by their own personal laws in matters pertaining to their family or domestic relationships. For example, different legal codes are applicable to Hindus, Muslims, Christians, and Parsis in matters pertaining to their marriages, divorces, or inheritance laws. These personal laws are a product of a mix of their respective religious laws, customary laws, and legislative enactments. This duality of laws under a single constitutional umbrella is a legacy of the country's rich tradition of legal diversity, which has also become a matter of legal debate. It is contended by the proponents of the Uniform Civil Code that the continuation of this duality of laws on the basis of religion is resulting in legal contradictions and a violation of the concept of equality before the law. It is argued that the provisions in the personal laws are discriminatory against women in matters pertaining to their inheritance, divorce, or maintenance laws. Therefore, the need to adopt a Uniform Civil Code is seen as a vital step towards achieving substantive equality between men and women by ensuring that they are governed by a common set of laws.

The judiciary has also made a significant contribution to the discourse on the implementation of a Uniform Civil Code. Over the years, the Supreme Court of India has reiterated the necessity for a uniform civil code in a number of landmark judgments. One of the most important cases on this issue is **Mohd. Ahmed Khan v. Shah Bano Begum**<sup>11</sup>, where the Supreme Court addressed the issue of **maintenance** for a divorced Muslim woman<sup>12</sup>. However, it is interesting to note that in its judgment, it reiterated the need for a uniform civil code by stating: "It is a sad reflection on our society that a uniform civil code has yet to be enacted. The absence of a uniform civil code often results in conflict between personal laws and constitutional principles of justice and morality." The Supreme Court made a similar observation in a number of subsequent cases, including **Sarla Mudgal v. Union of India**.

However, the need for a uniform civil code has also faced significant opposition from various quarters. The opponents of a uniform civil code have argued that it will infringe on the constitutional right to religious freedom guaranteed by **Article 25** of the Constitution of India. In a country as religiously and culturally diverse as India, it is interesting to note that various religious communities have traditionally linked their personal laws with their religious identities. Hence, any attempt to replace their personal laws with a uniform civil code is

---

<sup>11</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

<sup>12</sup> Bhatia, G. (2017). "Triple Talaq and the Constitution." *Indian Law Review*, 1(3), 293–312

perceived as an attempt to undermine their minority rights.

The debate on the Uniform Civil Code, therefore, cannot be seen as only a legal issue but also as a highly political and socio-cultural phenomenon<sup>13</sup>. It can also be seen as a reflection of the larger conflict between the constitutional values of equality and secularism, and the need to preserve cultural diversity. While the proponents of the Uniform Civil Code emphasize the need for the implementation of the concept based on the values of gender justice and the need for uniformity in the legal system, the opponents of the Code emphasize the need to preserve the pluralistic character of Indian society. The debate on the Uniform Civil Code has, in the recent past, gained momentum in the context of public discourse and political debate. The debate on the question of whether the Uniform Civil Code can address the complex and diverse character of the Indian social structure continues to attract significant scholarly and political attention. Against the above backdrop, the present study aims to critically analyze the constitutional, legal, and socio-cultural character of the debate on the Uniform Civil Code with the following research question: *Can a Uniform Civil Code ensure equality for all citizens while simultaneously respecting India's commitment to secularism and cultural diversity?*

This study aims to identify how personal laws have developed throughout history, what constitutional provisions there are regarding religious freedoms, and how the judiciary has influenced developments in personal laws. This study also aims to identify whether Uniform Civil Code can provide a viable solution to the conflicts in India's dual legal system, as well as to make a broader contribution to a debate that is increasingly being engaged upon regarding how equality, secularism, and diversity can be balanced within a single constitutional framework in a democracy.

### **Research Methodology: Qualitative Comparative Analysis of Legal Systems**

The focus here is on the concept of a Uniform Civil Code and how this concept is related to equality, secularism, and diversity within the country. The main focus here is to explore whether a Uniform Civil Code is possible within India and how this would promote equality within society while still allowing religious freedom. **Article 44** of the Constitution asks the state to consider adopting a **Uniform Civil Code** that would apply to all citizens of India. Right now, various religious communities have their own civil laws, such as marriage, divorce,

---

<sup>13</sup> PRS Legislative Research. (2023). *Uniform Civil Code: Issues and Challenges*

maintenance, inheritance, etc<sup>14</sup>. This study is focused on these various civil laws, comparing them to the concept of a Uniform Civil Code.

For conducting this study, a **qualitative comparative study** has been conducted. This type of study allows us to compare various laws within various countries, showing their differences and similarities<sup>15</sup>. Rather than survey, a wide variety of legal books and various court decisions across the country have been used, comparing civil laws related to various religions with the concept of a Uniform Civil Code<sup>16</sup>.

This research will seek to delve into the ways in which personal laws affect family laws in India and how this varies across religious communities. This is because the laws have been in place for a long time and have an impact on most aspects of life. Another aspect is the legal framework that already exists in India. One such example is the **Special Marriage Act of 1954**. This is a legal framework for marriage that seeks to eliminate religious prejudices in the choice of partners. This is important in assessing the uniform civil code in India. Another legal framework is the Constitution of India. This is the supreme law in India and is based on two major aspects. One is equality before the law and the other is freedom of religion. This is important in assessing the uniform civil code in India. This research will explore how this is achieved and what this means for the uniform civil code.

Another aspect is judicial decisions in India. This is important in assessing the uniform civil code in India. One such example is **Mohd. Ahmed Khan vs. Shah Bano Begum** case. The study primarily relies on secondary data, which is essentially data extracted from existing documents. This includes constitutions, laws, legal decisions, academic books, academic articles, government reports, and more. Essentially, by studying these documents, the research can delve into different views and arguments about the Uniform Civil Code. For instance, academic books can provide an understanding of the development of personal laws and what people think for or against the Uniform Civil Code. However, it is not an exact science. For example, if it relies on legal publications, it may fail to provide a view from people belonging to different communities. However, it is a good foundation for studying the legal and constitutional aspects of the Uniform Civil Code with the help of the qualitative comparative

---

<sup>14</sup> Flavia Agnes, *Family Law: Volume I* (OUP 2011)

<sup>15</sup> *An Introduction to Comparative Law* (3rd edn, OUP 1998)

<sup>16</sup> John W Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (4th edn, Sage 2014)

method.

## Development of Personal Laws in India

India's personal laws have not come about in a day or two. They have come about after a long and uneven history that has been shaped by faith, colonialism, and constitutional developments<sup>17</sup>. These are personal laws that govern issues such as marriage, divorce, inheritance, adoption, and maintenance within different faith traditions in India<sup>18</sup>. Unlike criminal law, which is applicable equally to all citizens of India, personal law is applicable differently based on religious identity and is therefore close to culture and rituals.

The framers of India's Constitution were therefore aware that it was necessary to modernize personal law in India and also respect religious diversity in a post-colonial nation-state<sup>19</sup>. In this regard, Article 44 of the Constitution points in the direction of a Uniform Civil Code by requiring the state to unify personal law in India<sup>20</sup>. However, this does not mean that such a Uniform Civil Code came about in a hurry or in a single stroke. Some significant developments have therefore come about that have sharpened issues such as equality, secularism, and personal law in India. **The Hindu Code Bills, the Special Marriage Act, and the Shah Bano case** are some of the most important developments in this regard.

### The Hindu Code Bills

The Hindu Code Bills from the 1950s represent India's first major effort to reform personal laws after the country became independent<sup>21</sup>. The bills aimed to establish contemporary legal frameworks that would treat family members equally under the system of Hindu personal laws which they built. The Hindu personal laws treated women as equals because they followed ancient religious texts which established their rights in family matters.

**Dr. B.R. Ambedkar** developed the Hindu Code Bills because he believed that the legislation would improve Indian development through better rights for men and women in family relationships<sup>22</sup>. The law intended to grant women legal rights which would protect their family

---

<sup>17</sup> Legal Pluralism in India' (2003) *Journal of Legal Pluralism*

<sup>18</sup> Tahir Mahmood, *Personal Law in Crisis* (Tripathi 1986)

<sup>19</sup> J D M Derrett, *Religion, Law and the State in India* (OUP 1968)

<sup>20</sup> Law Commission of India, *Consultation Paper on Reform of Family Law* (2018)

<sup>21</sup> Granville Austin, *Working a Democratic Constitution* (OUP 1999)

<sup>22</sup> 'Ambedkar and Gender Justice' (2013) *Economic and Political Weekly*

rights according to current legal standards.

The Hindu Code Bills established the legal framework which enabled the creation of important legislation such as **the Hindu Marriage Act of 1955** and **the Hindu Succession Act of 1956**<sup>23</sup> and **the Hindu Minority and Guardianship Act of 1956** and **the Hindu Adoption and Maintenance Act of 1956** which brought about major reforms in divorce laws and inheritance systems and women's legal entitlements.

The Hindu Code Bills succeeded at advancing gender equality between men and women<sup>24</sup> in family relationships, but their implementation faced opposition from groups which argued that religious and traditional matters should remain outside state control.

### **The Special Marriage Act**

The Special Marriage Act of 1954<sup>25</sup> shook things up big time for the personal laws that were the norm in India back then. This act sets up a secular way for couples to tie the knot, letting them marry without having to switch religions or stick to their own religious wedding customs<sup>26</sup>. This action shows how civil and religious laws can work hand in hand in a legal system that allows people to marry through non-religious methods while they stick to their religious customs. This act gives people the right to marry without religious ties, all under one set of laws, but they can still stick to their own faith. This act sets up a non-religious legal system that handles divorce, inheritance, and support obligations. This act sets the stage for talks on the Uniform Civil Code, showing that civil laws should cover everyone. The law offers a non-religious marriage route for people who prefer not to stick to religious personal laws, even though most people tend to pick religious ones as their legal backbone.

### **The Shah Bano Case**

One of the major legal showdowns in the realm of personal laws and gender equality happened in the landmark case of **Mohd Ahmed Khan vs Shah Bano Begum**. This case was about a Muslim woman asking her ex-husband for money. In Muslim law, a woman who's divorced gets support from her ex-husband for a short time known as **iddat** but in this situation, Shah

---

<sup>23</sup> Hindu Marriage Act 1955; Hindu Succession Act 1956

<sup>24</sup> Flavia Agnes, 'Gender Justice and Personal Laws' (1999)

<sup>25</sup> Special Marriage Act 1954

<sup>26</sup> Paras Diwan, *Family Law* (Allahabad Law Agency 2018)

Bano asked for help under the criminal Procedure Code, saying she should still get support even after the iddat period ends.

The supreme Court backed Shah Bano, saying a divorced Muslim woman deserves support under the Criminal Procedure Code<sup>27</sup>. This case really brings to light the importance of gender equality and the potential for a single set of civil laws for everyone.

This ruling kicked off a big discussion across the nation<sup>28</sup>. A bunch of people are cheering this move as a big leap for equal rights for women in India. But, the choice also got a lot of flak because the Court meddled in religious personal laws. So, because of this argument, the Government passed **the Muslim Women (Protection of Rights on Divorce) Act in 1986**, and it totally changed how divorced Muslim women get support. This case is a key milestone in the discussion about religious personal laws and constitutional principles like fairness and justice. This case holds significance when discussing the Uniform civil Code in India.

### **Models of Secularism**

Essentially, secularism is the intersection of religion and the state or how the state deals with religion in a state where people have diverse religious beliefs. It seeks to maintain peace among people with differing religious beliefs while at the same time providing freedom and equal treatment under the law for every religion. When we discuss the Uniform Civil Code, secularism is most relevant as it defines how the state deals with religious traditions in the context of equality and justice for all as enshrined in the constitution. There are many ways in which secularism is practiced in different countries depending on their individual histories and compositions. The two major forms of secularism are **Indian secularism** and **Western secularism**.

### **The Indian Model of Secularism: Principled Distance**

The concept of secularism in India is not about keeping religion and the government totally separated. Instead, it allows the government to intervene in religion whenever necessary, without taking sides. This concept is also referred to as '**principled distance**'<sup>29</sup>. This concept was first proposed by Rajeev Bhargava, who argues that the government should maintain a

---

<sup>27</sup> *Mohd Ahmed Khan v Shah Bano Begum* AIR 1985 SC 945

<sup>28</sup> Flavia Agnes, 'From Shah Bano to Danial Latifi' (2001)

<sup>29</sup> Rajeev Bhargava, 'What is Indian Secularism?' (2002) *Economic and Political Weekly*

neutral position regarding religion and should not take sides with any religion.

‘Principled distance’ does not imply that the government remains totally separated from religion. Rather, it allows intervention in religion whenever necessary to bring reforms and promote more equality and justice in society. For instance, it allows changing laws to control discriminatory religious practices. However, it should ensure equal treatment for all religions and should not take sides with any particular religion.

India adopted this concept because of its diversity in religion, language, and culture. India is home to many religions, languages, and cultures. The Constitution of India guarantees **freedom of religion** under **Article 25**, which allows each citizen to practice and propagate their religion. However, it also allows intervention in religious practices to bring reforms and promote social welfare in society.

### **The Western Model of Secularism: Separation of Church and State**

In the Western world, secularism is based on a simple, yet powerful, idea: that churches and states should maintain their distances from one another<sup>30</sup>. In simple words, we can say that they are two separate worlds, each with their own role in society. Let’s take, for instance, the United States, whose constitution declares that no church shall be established by the state. In this country, no religion is favored by the state, and people can believe in whatever religion they want to, or in no religion at all<sup>31</sup>.

Let’s take, for instance, France, which has secularism in the form of ‘**laicity**’. In this country, the state maintains formal distances from religion, with schools and state institutions trying to keep religion at arm’s length. The idea behind this is to create a clear separation between religion and state, with no overlap between the two<sup>32</sup>. In the Western world, secularism ensures that no state is drawn into religious matters and that no religion gets involved in state matters, particularly when it comes to matters of law and order and human rights.

### **Cultural Diversity and Minority Rights**

India is a country known for its great diversity in terms of culture. The country is inhabited by

---

<sup>30</sup> Charles Taylor, ‘Modes of Secularism’ (2000) *Public Culture*

<sup>31</sup> Basu, D. D. (2018). *Introduction to the Constitution of India* (23rd ed.). LexisNexis.

<sup>32</sup> Bhargava, R. (Ed.). (1998). *Secularism and its critics*. Oxford University Press.

a wide array of religions, languages, ethnicities, and traditional groups, and each of these contributes significantly to the social and cultural practices and traditions of the country<sup>33</sup>. Therefore, the Constitution has placed a great emphasis on the protection of the country's culture and the rights of minorities<sup>34</sup>.

Although the debate on the Uniform Civil Code is often based on the issue of equality, the need for the hour is the protection of diversity and traditional ways of living in the country. Therefore, the Constitution provides provisions that are intended to help the minority and tribal communities in the country protect their cultural traditions and social practices<sup>35</sup>.

India is a country known for its great diversity in terms of culture and the traditional ways of living in the country. The **Fifth** and **Sixth Schedules** have placed a great emphasis on the tribal communities in the country, and Articles **25, 26, 29, and 30** have laid down the fundamental rights of the cultural and religious minorities in the country<sup>36</sup>.

### Protection of Tribal Customs

India's **Scheduled Tribes**, also referred to as tribal groups, are a vibrant mosaic of governance and ways of life. They are mostly found in forest and tribal areas and are traditionally located at the periphery of India's broader politics and economic activities<sup>37</sup>. However, in order to ensure their distinct cultural identities, India's Constitution includes provisions for tribal groups in its Fifth and Sixth Schedules.

The **Fifth** Schedule deals specifically with tribal groups in India's Jharkhand, Chhattisgarh, Odisha, Madhya Pradesh, and Maharashtra, also referred to as the '**Scheduled Areas**'. It includes special provisions for tribal groups, protecting them from exploitation and respecting their land rights, customs, and traditions. It also gives the Governor authority to modify or override any laws that could threaten tribal groups. Another significant provision is the establishment of **Tribal Advisory Councils** composed of tribal members who are required to offer advice to the State Government regarding tribal welfare and development issues.

The **Sixth** Schedule provides stronger protective provisions for tribal groups in Assam,

---

<sup>33</sup> Austin, G. (1966). *The Indian Constitution: Cornerstone of a nation*. Oxford University Press

<sup>34</sup> Khosla, M. (2012). *The Indian Constitution*. Oxford University Press

<sup>35</sup> Jain, M. P. (2016). *Indian constitutional law* (8th ed.). LexisNexis.

<sup>36</sup> Seervai, H. M. (1996). *Constitutional law of India* (4th ed.). Universal Law Publishing.

<sup>37</sup> Fadia, B. L. (2017). *Indian government and politics*. Sahitya Bhawan.

Meghalaya, Tripura, and Mizoram in India's northeastern region. It goes beyond administrative provisions for tribal groups and allows for autonomous district councils that are empowered to enact laws regarding land, forests, village administration, and community traditions<sup>38</sup>. This provision strengthens tribal self-governance and self-rules in conformity with tribal traditions and customs. Tribal traditions and customs regarding marriage and inheritance are allowed, thus strengthening tribal social structures that are unique and distinct from other social groups in India. These provisions for tribal groups are part of India's Constitution and are connected to discussions regarding a Uniform Civil Code. Discussions regarding a Uniform Civil Code in India must take into account tribal traditions and customs and should not threaten tribal self-governance.

### Minority Rights

There are constitutional guarantees aimed at protecting the fundamental human rights of minorities, including their cultural and religious differences, and above all, the freedom to practice any religion of their choice.

The first of these articles is **Article 25**, which provides the **freedom of conscience and the right to profess, practice, and propagate any religion** of one's choice. It ensures the freedom of the individual to practice any religion without any interference from the state, but the state has the right to intervene if the practice of the religion is against law, morality, or health.

The second of these articles is **Article 26**, which provides the freedom of managing the affairs of religion. It ensures the freedom of the individual or group of individuals to set up institutions or practice any rite without any interference from the state. These articles provide the groundwork for the freedom of religion, emphasizing the importance of freedom of religion in India, thereby making the state remain neutral on the issue while respecting the practices of all.

In addition, the Constitution protects the cultural and educational rights of minorities. **Article 29** provides the rights of minorities based on cultural differences, recognizing cultural diversity as the lifeline of the nation<sup>39</sup>.

**Article 29** also prohibits the segregation of schools and colleges on religious, racial, caste,

---

<sup>38</sup> PRS Legislative Research. (n.d.). *Scheduled Areas and Tribal Areas*.

<sup>39</sup> Kymlicka, W. (1995). *Multicultural citizenship: A liberal theory of minority rights*. Oxford University Press.

linguistic, and cultural grounds. In other words, it guarantees that members of minority communities are able to pursue their educational goals just like anyone else, without losing out on anything because of who they are.

Linked to this is **Article 30**, which guarantees minority communities the right to establish and manage their own educational institutions. This freedom allows religious and linguistic minority communities to establish schools where they can impart education in keeping with their own values and traditions<sup>40</sup>.

In India, for instance, many such institutions provide general education as well as instruction in the minority community's own language. Articles 29 and 30 thus demonstrate how committed the Constitution is to minority identities in a democratic context<sup>41</sup>.

### **Cultural Diversity and the Debate on the Uniform Civil Code**

The debate on constitutional provisions points to just how difficult it is to come up with a single code for a country as diverse as India. There is a general tendency to associate a uniform civil code with promoting equality and holding a country together. However, there are genuine concerns that a uniform civil code will undermine the cultural freedom of minority communities in India.

Looking at minority fears, for instance, minority communities in India are afraid that in pursuing a uniform civil code, the traditions of the majority will be forced on all. This is a classic case of **majoritarianism**. It is advocated that change should be a gradual process and should be a continuous process of dialogue with the affected communities<sup>42</sup>.

It is also advocated that personal laws in India are in conflict with constitutional provisions on gender equality and other constitutional rights and so change is necessary to promote equality for all.

### **Legal Disparities in Personal Laws**

India's family laws are community-specific and extend to issues such as marriage, divorce,

---

<sup>40</sup> Parekh, B. (2000). *Rethinking multiculturalism: Cultural diversity and political theory* (2nd ed.). Harvard University Press.

<sup>41</sup> H M Seervai, *Constitutional Law of India* (4th ed., Universal Law Publishing 2013)

<sup>42</sup> Law Commission of India. (2018). *Consultation paper on reform of family law*.

inheritance, and maintenance, unlike criminal laws, which are applicable to all<sup>43</sup>. These differences in family laws are at the heart of the controversy regarding the Uniform Civil Code. The Constitution itself asks for the formulation of a civil code in India, as mentioned in Article 44<sup>44</sup>.

However, in contemporary India, different communities are subject to different family laws. Analyzing these laws brings forth differences in them. Marriage laws are first in order. **The Hindu Marriage Act of 1955** regards marriage as both a contract and a sacrament, and both parties are required to practice monogamy and give their consent and must be adults<sup>45</sup>.

Muslim personal laws regard marriage as a civil contract and permit polygamy, although this is seldom practiced<sup>46</sup>. Christian marriage, as per the **Indian Christian Marriage Act of 1872**, also requires monogamy and prescribes certain formalities for registering marriages<sup>47</sup>. Parsi marriage, as per the **Parsi Marriage and Divorce Act of 1936**, also requires monogamy and prescribes formalities for registering marriages.

### **Divorce laws**

India functions on different family laws for different religious groups, including marriage, divorce, inheritance, and maintenance. On the other hand, criminal laws are applicable equally to all citizens. The disparity in family laws is another significant issue that is raised in the context of a Uniform Civil Code. The Constitution in this regard asks for the formulation of a common civil code in Article 44, but at present, different family laws apply to different communities. If we examine these laws in detail, we will find significant differences in them regarding family matters.

First and foremost, let us discuss family laws regarding marriage. **The Hindu Marriage Act of 1955** regards marriage as both a contract and a sacred bond and prescribes **monogamy**, i.e., no polygamy is allowed. In addition, both parties must be of legal age and provide mutual consent for marriage. Muslim family law applies to Muslims and regards marriage as a civil contract. Although in the past, Muslim men used to practice polygamy, this practice is now

---

<sup>43</sup> Tahir Mahmood, *Personal Law in Crisis* (1986)

<sup>44</sup> Basu, D. D. (2018). *Introduction to the Constitution of India* (23rd ed.). LexisNexis.

<sup>45</sup> Sharma, B. K. (2017). *Introduction to the Constitution of India*. Prentice-Hall of India.

<sup>46</sup> Mulla, *Principles of Mohammedan Law* (LexisNexis 2017); Asaf A A Fyzee, *Outlines of Muhammadan Law*

<sup>47</sup> Mahajan, V. D. (2014). *Indian Constitution*. S. Chand Publishing.

quite rare. The **Indian Christian Marriage Act of 1872** prescribes monogamy and outlines formalities for registering marriages. **The Parsi Marriage and Divorce Act of 1936** also prescribes monogamy along with formalities for registering marriages<sup>48</sup>.

### **Inheritance Laws**

In the case of inheritance of property, India has separate rules based on religion. Hindus are governed by **the Hindu Succession Act of 1956**<sup>49</sup>. Muslims have Islamic law, wherein the husband gets more than the wife, as the husband has the responsibility of earning the bread. Christians and Parsis are governed by **the Indian Succession Act of 1925**<sup>50</sup>, wherein the property is distributed equally among the members of the family.

### **Maintenance Rights**

In the case of the rights of women after divorce, India has separate rules based on religion. Hindus are governed by **the Hindu Adoptions and Maintenance Act of 1956**, wherein the husband has the responsibility of maintaining the wife after divorce if the wife cannot maintain herself. Muslims have the right of maintenance during the iddat period, but the Supreme Court has extended **the Code of Criminal Procedure, Section 125**<sup>51</sup>, applicable to all Indian citizens irrespective of religion. Christians are governed individually based on the case.

The differences between the marriage, divorce, inheritance, and maintenance laws based on religion show the way India has framed the law, providing separate rights and duties based on religion. These differences are essential while we move towards the implementation of the Uniform Civil Code.

### **Community Perspectives on the Uniform Civil Code**

The debate on the Uniform Civil Code does not remain restricted to the courts and the constitutional text. It seeps into the way we live, the way our culture influences our lives, and the way our politics is conducted. This is because of the nature of our large and diverse country,

---

<sup>48</sup> Chakraborty, S. (2009). *Personal Laws in India: Pluralism, Justice and Reform*. Economic & Political Weekly, 44(7), 24–31

<sup>49</sup> Bhandari, M. (2010). *Uniform Civil Code: Debate and Perspective*. Indian Journal of Public Administration, 56(4), 683–700

<sup>50</sup> Mahajan, V. D. (2014). *Indian Constitution*. S. Chand Publishing.

<sup>51</sup> National Commission for Women. (2015). *Women and the Uniform Civil Code: Policy Report*. New Delhi: NCW.

where the intertwining of family laws and religion and culture is very deep. This piece attempts to give a balanced view of the various aspects of the Uniform Civil Code, especially the voices of women rights groups, to understand what they think of the Code.

### **I. Perspectives of Women's Rights Organisations**

The women rights groups have been vocal and assertive in demanding a change to the family laws, citing the various provisions that are discriminatory against the fairer sex on issues of divorce, inheritance, maintenance, and many other aspects<sup>52</sup>. According to them, the introduction of a Uniform Civil Code could be a major milestone towards the achievement of gender equality, where every citizen of the country would be on an equal pedestal irrespective of the faith he or she practices<sup>53</sup>.

The supporters of the introduction of the Uniform Civil Code argue that the Constitution of the country provides equal dignity to every citizen. However, the women rights groups, while supporting the introduction of the Uniform Civil Code, also argue that it must be inclusive and sensitive to cultural differences.

### **II. Perspectives of Religious Leaders**

Religious leaders and scholars generally walk in a fine line when the subject of the Uniform Civil Code is raised. For many religious groups, personal laws are inextricably linked with religious ideology and cultural tradition. These laws are not only rules and regulations; they're also symbols of religious belief.

From this perspective, some religious groups believe that if a single civil law is introduced, replacing all the different personal laws, it could potentially undermine religious freedom. They believe that religious groups should have the right to make their own family laws, in accordance with their own religious ideology. In this context, religious groups frequently cite the provisions of the Constitution, i.e., Article 25, which gives individuals the right to freedom to practice and manage their religious affairs, in relation to the Uniform Civil Code<sup>54</sup>.

It's, however, worth mentioning that there is no consensus within religious groups. In fact,

---

<sup>52</sup> *Toward a Feminist Theory of the State* (Harvard University Press 1989)

<sup>53</sup> Indira Jaising, 'Women's Rights and Personal Laws' (2005) *Law Review*

<sup>54</sup> Baxi, U. (2002). *The Indian Supreme Court and politics*. Oxford University Press.

some religious groups oppose the idea of the Uniform Civil Code in its entirety, while some religious groups suggest gradual reforms in personal laws to address issues of gender inequality and social injustice.

### III. Perspectives of Non-Governmental Organisations (NGOs)

Non-governmental organizations employed in the sphere of human rights, legal reform, and social justice have provided considerably and meaningfully to the debate on the Uniform Civil Code. Many NGOs agree with the idea of principle of equality before the law, but these organizations also believes that if changes or improvements are introduced in laws, it should be done carefully and responsibly so that it doesn't brings havoc and disorder in the system<sup>55</sup>.

One of the highly essential concerns brought in foreground by these organization is the relevance of public consultation and deliberation before proposing crucial changes. The potential consequences of uniform civil code must be comprehended by policy makers by interacting with community representatives, legal scholars, and civil society organizations.

An additional matter of concern highlighted by NGOs is the necessity to protect **vulnerable groups** specifically women, children and economically disadvantaged individuals. These organisation also pointed out that legal reforms should pay attention on reinforcing the rights of these groups simultaneously maintaining respect for multiculturalism.

### IV. Perspectives of Minority Communities

minority communities repeatedly face serious problems because of the implementation of the Uniform Civil Code. In the opinion of scholars, one of the most significant criticisms is that a uniform law might lead to dominances of majority cultural practices over minority customs. This concern is commonly described as the fear of majoritarianism.

In a diverse and multicultural nation like India minority groups enjoy the constitutional safeguards that make it possible for them to maintain their cultural and religious identities. Provisions like **article 29** of the constitution protect the rights of linguistic and cultural minorities to maintain their customs and institution. Because of these safeguards, many

---

<sup>55</sup> Chakraborty, S. (2009). Personal laws in India: Pluralism, justice and reform. *Economic & Political Weekly*, 44(7), 24–31.

minority groups feel that personal law is necessary to preserve their identity and autonomy<sup>56</sup>.

At the same time some minority community members understand the need for reforms that promote justice and equality. In their opinion, legal changes should remove discriminatory practices while safeguarding cultural traditions<sup>57</sup>.

## **ARGUMENTS FOR AND AGAINST THE UNIFORM CIVIL CODE**

These viewpoints highlight two main controversies in the debate of the Uniform Civil Code. According to its supporters, uniform law will contribute to national integration, gender justice, and equality. They argue that every citizen irrespective of religion should be governed by the same set of laws.

In contrast to that, critics argue that it is very essential to guarantee religious liberty and multiculturalism. They even assert that enforcing a common legal system might threaten minority communities' cultural independence and threaten Indian society's cultural diversity<sup>58</sup>.

The descriptive perspective demonstrates the complexity of the Uniform Civil Code and also reveals how strongly it is connected to the challenges of equality, identity, and constitutional rights. Therefore, policymakers must concentrate their focus on this contrasting concern before implementing such reforms so as to safeguard both social harmony and legal justice.

### **Balance, Equality, Secularism, and Cultural Diversity**

India's legal framework deals with certain challenges in finding a balance between secularism, equality, and cultural diversity. There are diverse religious communities in the nation, and each community has its own customs and rules pertaining to family issues such as marriage, divorce, inheritance, and adoption<sup>59</sup>. Communities' cultural and religious identities are closely connected to their personal laws.

Despite this they sometimes raise doubts about whether such laws are in accordance with equality and justice as mentioned in the constitution. Therefore, how to ensure the protection

---

<sup>56</sup> Basu, D. D. (2018). *Introduction to the Constitution of India* (23rd ed.). LexisNexis.

<sup>57</sup> Menski, W. F. (2008). *Hindu law: Beyond tradition and modernity*. Oxford University Press.

<sup>58</sup> Parekh, B. (2000). *Rethinking multiculturalism: Cultural diversity and political theory* (2nd ed.). Harvard University Press.

<sup>59</sup> Bhandari, M. (2010). Uniform civil code: Debate and perspective. *Indian Journal of Public Administration*, 56(4), 683–700

of different cultures and at the same time assuring that every citizen has equal rights as provided by the Constitution is the main focus of the discussion regarding personal law reform in India.

### **Should the State Reform Religious Laws?**

The debate continues whether the government should intervene and reform religious laws is one of the major point in the discussion of personal laws. According to reformers it is the responsibility of the state to make sure that every citizen gets equal treatment and that discriminatory practices are abolished from the legal system. The Indian Constitution prevent discrimination on the grounds of religion, gender or caste and ensures equality before the law<sup>60</sup>. The state must enforce appropriate measures to safeguard fundamental rights when personal laws fail to follow these principles.

In the past, when it was of the view that religious personal laws needed to be modified, the Indian government stepped in. The Hindu Code Bills, a collection of laws introduced in the 1950s, serves as a good example. These changes dealt with matters including divorce, marriage, inheritance, and adoption while making reforms to Hindu personal law. Empowering women through legal right in family problems was one of the main targets of these reforms.

For the purpose of ensuring justice and equity within different communities, those who favor state involvement argue that similar modifications are necessary to make in all personal laws. This view suggests that discriminatory acts must not be allowed to happen by the state simply because they are backed by religious beliefs.

Even now there are convincing arguments to challenge over-regulation by the government in religious laws. Opponents argue that the right to practice religion and cultural autonomy are closely connected to personal laws. They claim that communities require independence to regulate their own family and religious traditions free from government intervention. This perspectives suggests that instead of being compelled by the government, improvements are expected to start inside various communities without outside help.

### **Fear of Majoritarianism**

The fear of majoritarianism is a significant problem in the debate on personal law reform. When

---

<sup>60</sup> Basu, D. D. (2018). *Introduction to the Constitution of India* (23rd ed.). LexisNexis.

the majority community has authority over political and legal decisions, it may oppress marginalized community. This is known as majoritarianism<sup>61</sup>.

Multiple religious minority groups are present in India's diverse population. These groups regularly highlight problems that, instead of respecting the diversity of religious practices, legal reforms would demonstrate the cultural practices and beliefs of the larger community. As a result, minority groups are occasionally agitated by recommendations for revising personal laws because they are anxious that their customary and religious identities might be eroded.

For instance, certain underrepresented populations fear that practices taken from the dominant religion will replace their own traditions, during deliberations over implementing a universal framework for family laws to occur. This concern emphasizes how necessary it is to ensure that changes in law are comprehensive and mindful to all communities' interest.

Policymakers must pursue a democratic and collaborative approach to tackle these issues. Engagement with civil society organizations, community leaders, and religious leaders should be considered in any legal modifications. This approach may diminish concerns related to cultural hegemony and promote confidence.

### **Protection of Cultural Identity**

Personal laws reflect the cultural and religious customs of multiple communities in addition to functioning as legal statutes. Many people share strong relationships between their religious practice and cultural identity and marriage-related customs, family life, and inheritance.

In a religious diverse society like India, enabling groups to adhere to their own personal laws is generally considered as a method of safeguarding cultural diversity. The Indian Constitution empower people to carry out and disseminate their religious beliefs and acknowledges the significance of religious freedom. Many people consider personal laws as an extension of these cultural protections.

Nevertheless, the necessity of upholding justice and equality must be proportionate while ensuring the preservation of cultural identity. Contemporary constitutional provisions might be inconsistent with some customs, particularly when they criticize women or other vulnerable

---

<sup>61</sup> Chakraborty, S. (2009). Personal laws in India: Pluralism, justice and reform. *Economic & Political Weekly*, 44(7), 24–31.

groups. Under such circumstances, the government must respond with careful equilibrium between safeguarding individual rights and upholding cultural norms.

progressive reform that is implemented through communication and collaboration with communities serves as an effective solution. The government may facilitate in-house discussion and endorse religious communities' reform movements instead of enforcing abrupt changes in legislation. This strategy fosters progressive transformation within the social framework while upholding cultural diversity.

### **Gender Justice**

Among the most significant issues in the discussion of personal laws is gender justice. Several personal law jurisdictions formerly had clauses that negatively affected women, particularly in terms of matters such as maintenance, divorce and inheritance.

Proponents of gender equality claim that for the purpose of ensuring equal rights and protection for women, personal laws should be amended. They highlight that inequalities and prejudice cannot be justified by cultural norms. Based on this perspective, citizens' fundamental rights and dignity should receive utmost attention by the judiciary, irrespective of gender<sup>62</sup>.

Following the landmark **Mohd. Ahmed Khan v. Shah Bano Begum** Supreme Court case, the matter of gender justice drew substantial attention. In this specific case, the court held that standard criminal law provisions recognized a Muslim woman's entitlement to divorce. The ruling prompted important nationwide discussion with respect to the connection between religious freedom, women's rights, and personal laws.

The case illustrated how personal laws might occasionally be at odds with equality and justice protected under the constitution. It also pointed out the requirement for reforming laws that preserve diversity in religion and safeguard women's rights.

### **CONCLUSION**

The complicated connection between cultural diversity, secularism and equality is reflected in the controversy surrounding personal laws in India. India is a culturally diverse nation where

---

<sup>62</sup> National Commission for Women. (2015). *Women and the Uniform Civil Code: Policy Report*. New Delhi: NCW.

multiple religious and ethnic groups follow their own family-related traditions and customs. Religious beliefs and cultural identities are tightly associated with personal laws that regulate adoption, divorce, marriage, and inheritance. These laws have caused concerns regarding gender justice and equality in the eyes of the law, even though they are crucial for maintaining cultural distinctiveness.

The importance of maintaining a balance between respect for religious freedom and fundamental rights has been a central matter in discussions on personal law reform throughout the years. Every Indian national is guaranteed equality, justice, and dignity by the Indian Constitution. It also ensures the protection of freedom to maintain cultural customs amid involvement in religious activity. Therefore, these two notions must be duly taken into consideration during any attempt to transform personal laws. The objective is to establish a system that delivers justice while upholding India's one-of-a-kind social structure, beyond merely replacing prevailing laws.

The fact that some personal laws carry limitations that could prejudice women is one of the primary concern in this argument. Women may be subjected to discrimination in areas like inheritance rights, divorce settlements and maintenance. In response to these problems numerous academics, activists, and legislators advocated for reforms that maintain religious diversity and promote gender equality. The landmark decision in *Mohd. Ahmed Khan v. Shah Bano Begum* created awareness among the public of the prevailing issue of divorced women's maintenance rights and instigated large-scale debate about how personal laws and constitutional principles influence each other.

However, there are concerns that wide-ranging reforms could make minority communities fearful of losing their cultural identity. One of India's most significant strength that has been acknowledged for decades is its diversity. Personal laws are frequently regarded as a fundamental approach for communities to safeguard their customs and as a symbol of this variety. Reforms should accordingly be applied with deliberate planning to maintain social harmony and avoid the feelings of cultural domination.

Scholars and policymakers have recommended multiple potential solutions to resolve these challenges to proceed further in a democratic and equitable way.

## Gradual Reforms

Introducing creative reforms rather than abrupt and drastic legal changes is one frequently recommended approach. Slow-paced reform allows many communities time to express their opinions and arrive to an agreement<sup>63</sup>. The government can encourage step-by-step reforms to personal laws instead of implementing current regulations immediately.

This technique has been utilized over and over. For example, in the 1950s, a set of laws known as the Hindu Code Bills slowly implemented changes to **Hindu personal law**. These regulations strengthened women's rights in areas like inheritance and divorce and upgraded numerous aspects of family law. Society successfully adjusted to these changes while preserving social harmony by means of progressive reform<sup>64</sup>.

Adopting a similar strategy to other personal law systems could contribute to solving concerns about discrimination while respecting the cultural and religious sensitivities of different communities.

### I. Voluntary Uniform Civil Code

An **autonomous** form of the Uniform Civil Code has also been put forward as a possible alternative. Each person should have liberty to make their own decision whether to embrace a common civil law framework or continue following their customary personal laws, rather than making a single civil law mandatory for every citizen<sup>65</sup>.

Communities that are concerned about losing their cultural identity may be more willing to accept a voluntary system. In the meantime, it would allow those who are in favor of a unified and secular legal system to participate in it. If the voluntary system finds to be sustainable in the long run, a greater number of people may choose to naturally accept it<sup>66</sup>.

Rather than imposing **homogeneity** in the legal framework, this approach supports progressive social acceptance.

---

<sup>63</sup> Bhandari, M. (2010). Uniform civil code: Debate and perspective. *Indian Journal of Public Administration*, 56(4), 683–700.

<sup>64</sup> Derrett, J. D. M. (1977). *Religion, law and the state in India*. Oxford University Press.

<sup>65</sup> Singh, M. P. (2011). *Constitutional reform in India: Democracy, pluralism and secularism*. Routledge.

<sup>66</sup> Chakraborty, S. (2009). Personal laws in India: Pluralism, justice, and reform. *Economic & Political Weekly*, 44(7), 24–31.

## II. Gender-Neutral Laws

Any changes in law must strive to ensure gender justice. To guarantee equal rights and responsibilities for both men and women, numerous scholars believe that family laws must be impartial to gender. Non-discrimination in areas such as divorce, marriage, maintenance, inheritance, and guardianship would be secured by gender-neutral legal provisions.

The purpose of gender-neutral laws is to eliminate inequitable regulations that compromise equality rather than eradicate cultural customs. By prioritizing justice and human dignity, such reforms can strengthen the core principle of equal treatment under the law.

While maintaining respect for cultural differences, promoting the idea of gender neutrality would help facilitate bringing personal laws in line with contemporary human rights standards.

## III. Protection for Tribal Customs

It is essential to consider the distinctive customs of tribal and indigenous people while addressing personal law reforms. Many aboriginal communities stick to centuries-old traditions which are essential for preserving their social structure and cultural identity<sup>67</sup>.

These groups typically have a particular societal framework which is strikingly different from religious laws and customs. legal changes therefore safeguard and respect tribal customs and traditions. The distinctive cultural and historical background of tribal communities should be kept in mind in any move to establish standard laws<sup>68</sup>.

The Constitution's fundamental obligation for safeguarding the rights and cultural practices of local indigenous populations is evident in the preservation of tribal traditions.

---

<sup>67</sup> Xaxa, V. (2008). *Tribal identity and contemporary politics in India*. Economic & Political Weekly, 43(35), 21–27

<sup>68</sup> Shah, G. (2010). *Social movements and the state in India: A study of tribal politics*. Routledge.