
UCC: LEGAL FREEDOM VS CULTURAL IDENTIFICATION

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I. INTRODUCTION

Discussion of the UCC in India is one of the longest-standing constitutional dilemmas concerning the conflict between the ideal of legal homogeneity and cultural heterogeneity. In Article 44 of the Indian Constitution¹, which belongs to the Directive Principles of State Policy, it is laid down that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."² However, more than seventy years since independence, the implementation of this principle remains incomplete, except for some legislative moves in certain states. The discussion about the UCC balances on the two constitutional ideals of equality and non-discrimination, expressed in Articles 14 and 15, respectively, and religious and cultural freedom, established by Articles 25 to 30.

The aim of this paper is to inspect the issue of the Uniform Civil Code from the perspectives of constitutionalism, jurisprudence, and sociology. This paper will argue that the dichotomy of 'legal freedom versus cultural identity' does not capture the complex interplay between reforms in personal laws and constitutional morality. The article is divided into five sections. After an introductory section, Section II chronicles the history of personal laws and the intentions of the constitutional framers concerning the UCC. Section III evaluates the judicial approach to the issue, analysing the balance struck by courts between directive principles and fundamental rights. Section IV critiques current views, whether in support of or against the UCC, challenging notions of gender justice, national unity, and cultural autonomy. Finally, Section V seeks to construct a synthesis that may harmonise uniformity and accommodation by studying the comparative constitutional experience.

¹ INDIA CONST. art. 44

² Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 126-145 (Oxford University Press 2003)

II. HISTORICAL EVOLUTION AND CONSTITUTIONAL VISION

A. Personal Laws in Colonial India

Personal laws pertaining to issues of marriage, divorce, inheritance, and adoption owe their genesis to the process of legal pluralism prevalent during the period of colonial rule. In response to the events of 1857, the British colonial government adopted a policy of non-intervention in religious affairs and codified different personal laws for distinct religious groups. Personal laws concerning Hindus underwent gradual codification through case law and legislation, whereas Muslim personal law was left unaffected, and the Shariat Act of 1937 provided a formal recognition to its operation among Muslims in personal matters.³

The colonial policy gave rise to what has been called “legal pluralism by design,” wherein the state regulated multiple normative regimes at one time, and religion determined the applicable legal system.⁴ The result was the consolidation of community boundaries through law, where personal law came to signify communal identity.

B. Constituent Assembly Debates

However, what emerges from discussions held in the Constituent Assembly pertaining to the UCC is that there were deep reservations expressed by some participants as to the correlation between legal uniformity and religious liberty. First, the decision to include the UCC under the Directive Principles of State Policy and not as a Fundamental Right was indicative of the struggle between the two parties – the former being a necessity to national unity and the latter an attack on minority religions.⁵

It was Dr. B.R. Ambedkar himself who defended the inclusion of Article 44 by stating that this was simply a matter of choice on behalf of a government and did not mean that it had any obligation to enact a UCC against the will of the communities.⁶ According to Ambedkar, there was already considerable legal uniformity in existing personal laws and therefore, the rejection of the same was largely psychological in nature.

³ Muslim Personal Law (Shariat) Application Act, 1937.

⁴ Marc Galanter, *Law and Society in Modern India* 15-32 (Oxford University Press 1989).

⁵ B. Shiva Rao, *The Framing of India's Constitution: Select Documents* Vol. 2, 178-195 (Universal Law Publ'g 1967).

⁶ Constituent Assembly Debates, Vol. VII, 23 November 1948, 540-546 (Statement of Dr. B.R. Ambedkar).

In contrast, those who represented the Muslim community, such as Naziruddin Ahmad and Mahboob Ali Baig Sahib Bahadur, raised fears regarding the function of the Hindu code of law to the minorities, as the implementation of the Uniform Civil Code would mean imposition through uniformity.⁷

C. Post-Independence Legislative Developments

Asymmetric intervention is another characteristic of the evolution of personal law reforms in independent India. The Hindu Code Bills passed in 1955 and 1956 reformed Hindu personal law to a great extent, incorporating provisions such as divorce, ending polygamy, and changes to succession in favor of women. Though these reforms faced strong opposition from Hindu conservatives, they were nevertheless passed in Parliament thanks to the dominant party in power at that time, the Indian National Congress.

By contrast, except for the Muslim Women (Protection of Rights on Divorce) Act, 1986, there have been few personal law reforms in the Muslim community, which followed the infamous Shah Bano judgment, though this act has been condemned as discriminatory toward women.⁸ Another example for a secular law is the Special Marriage Act of 1954⁹, which provided an alternate form of marriage and divorce; however, very few couples availed of this legislation due to its non-religious nature.

III. JUDICIAL NAVIGATION OF CONSTITUTIONAL TENSIONS

A. Early Jurisprudence and Judicial Restraint

In the circle of personal laws, judicial restraint has been one of the characteristics of the early jurisprudence advanced by the Supreme court. In the case of *State of Bombay v. Narasu Appa Mali*,¹⁰ it was held that personal laws did not constitute “laws in force” and, hence, any violation of fundamental rights under personal laws was outside the reach of the Constitution. This judgment, though it may have never been explicitly overruled by the Supreme Court, has come in for severe criticism because of its role in providing immunity to discriminatory

⁷ Constituent Assembly Debates, Vol. VII, 23 November 1948, 547-551 (Statement of Naziruddin Ahmad).

⁸ Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25, Acts of Parliament, 1986 (India)

⁹ The Special Marriage Act, 1954, s. 4

¹⁰ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84

personal laws against constitutional challenges.¹¹

The Narasu Appa principle was indicative of judicial reluctance towards interfering with matters involving religious sentiments and sense of belonging of communities.

B. The Shah Bano Judgment and its Consequences

The Shah Bano case of 1985 was another landmark judgement of the apex court with regard to the question of the UCC. While deciding an application for maintenance, the Supreme Court made certain observations regarding the UCC that "it will promote national integration by ensuring unity in law for all citizens and removing disparate loyalties to laws having conflicting ideologies".¹² The observation of justice Y.V. Chandrachud regarding "the benefit of national integration to be derived by adoption of a common civil code" sparked off a political controversy.

This act effectively set aside the decision and reaffirmed the supremacy of personal laws in cases pertaining to Muslim divorce. This incident highlighted the limitations of judicial action when confronted by political pressure and community opposition. At the same time, the incident placed the Court in a predicament since it came under fire from two different quarters—those that regarded the Court's decision as an infringement upon the legislative field, and those that considered the subsequent legislation a submission to communal demands.

C. Current Judicial Assertiveness

The recent judgments made by the judiciary have been more assertive regarding the UCC. In the case of *Shayara Bano v. Union of India*,¹³ the Supreme Court declared that the triple talaq is unconstitutional since the majority of the judges argued that such a practice did not form a part of Islam and was not protected under Article 25.

In another case of *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*,¹⁴ the SC held that the common civil code of Goa could serve as an example for the whole nation to implement the

¹¹ Faizan Mustafa & Jagteshwar Singh Sokhey, *Re-Examining Narasu Appa Mali: A Study of Personal Laws and Constitutional Morality*, 5(2) NUJS L. REV. 217 (2012).

¹² *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556

¹³ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

¹⁴ *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 16 SCC 479.

UCC. As stated by Justice Deepak Gupta, "it is a matter of regret that Article 44 of the Constitution has not been given effect to."¹⁵

The decision of *Sarla Mudgal vs Union of India*¹⁶ case continues to be important because of the direct reference of Article 44. The court asked the Government of India to take some measures to establish a UCC.¹⁷ Although the directive was not binding upon the government, it indicated the displeasure of the courts regarding the inactivity of legislature.

IV. CONTEMPORARY ARGUMENTS: A CRITICAL ASSESSMENT

A. The Case for Uniformity

1. Gender justice and constitutional morality

The strongest argument in favor of the UCC is the claim of gender justice. Laws relating to personal laws in different religions involve discrimination against women in relation to marriages, divorces, maintenance, guardianship, and inheritance. This argument holds that it would be unjustified to use the freedom of religion as an excuse for discriminatory provisions and that there should be equality of treatment despite religious differences.

This argument has support in the very text of the Constitution. Articles 14 and 15 provide for equality in the eyes of law, and there can be no discrimination based on religion and sex, respectively. Article 21, too, has been read widely as guaranteeing the right to lead a dignified life.¹⁸ It follows that for the protection of constitutional rights to be effective in the domain of personal law, conformity with the principles of the Constitution must be ensured.

2. National integration and common citizenship

The second argument focuses on national integration and the emergence of an identity of common citizenship. The logic of the argument is that having different personal laws along religious lines promotes division and makes it difficult to have the concept of equal citizenship within a secular state. The adoption of a UCC would promote national unity by establishing a unified legal system beyond religion.

¹⁵ *Id.* at 489.

¹⁶ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

¹⁷ *Id.* at 489.

¹⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

This idea resonates with the comments in Shah Bano and other judicial decisions regarding the importance of law for national integration and reflects the lessons learned from other countries' experience with nation-building through law, particularly France and Turkey.¹⁹

3. Simplification and accessibility

Arguments in favor of UCC in practice include simplification of legal structure and making the laws more accessible to the public. The current legal scenario with the existence of several personal laws is confusing, with possible conflicts of law. In case of inter-faith marriages and conversions, there may be problems.

4. The Question of Gender- Uniformity: Queer Exclusion

The debate about the Uniform Civil Code or the UCC has been going on for a long time. People have been talking about whether we should have one set of laws for everyone or if we should keep the laws that we have now. There is another important question that we need to think about. We need to ask if the UCC is fair to everyone no matter what their gender is. The UCC is supposed to be a set of laws that applies to everyone. If it does not include people who are LGBTQ+ then it is not really fair. A law that only talks about husbands and wives and does not mention same-sex couples is not a law. This is because it leaves out a group of people who are citizens of this country.

The Uttarakhand Uniform Civil Code, which was passed in 2024 is an example of this. This law says that marriage is between a man and a woman and it does not mention same-sex couples all.²⁰ The Gujarat Uniform Civil Code Bill, which was introduced in 2026 is similar. It also only talks about husbands and wives. Does not mention same-sex couples. This is a problem because it means that same-sex couples and people who are non-binary or transgender are not recognized by the law. They cannot get married they cannot adopt children. They cannot inherit property. This is not fair. It is not what the Constitution says. The Constitution says that everyone is equal and that everyone should be treated with dignity and respect.²¹

The Supreme Court has also said that people who are LGBTQ+ have the right to be recognized

¹⁹ Ahmet T. Kuru, *Secularism and State Policies toward Religion: The United States, France, and Turkey* (Cambridge University Press 2009).

²⁰ The Uttarakhand Uniform Civil Code, 2024 (Uttarakhand Act No. 3 of 2024), assented to by the Governor on 11 March 2024.

²¹ Gujarat Uniform Civil Code Bill, 2026, cls. 3(f), 4 and 17.

and respected. In the case of *NALSA v. Union of India* the Court said that transgender people have the right to choose their gender²². In the case of *Navtej Singh Johar v. Union of India* the Court said that same-sex couples have the right to be together and that they should not be discriminated against²³. So if the UCC does not include people who're LGBTQ+ then it is not a fair law. It is a law that discriminates against a group of people and that is not what the Constitution says. We need to make sure that the UCC is fair to everyone no matter what their gender is.

One way to do this is to use language that's inclusive. Of saying "husband and wife" we could say "spouses" or "partners". This would make it clear that the law applies to everyone no matter what their gender is. We could also make sure that same-sex couples and heterosexual couples get equal rights in terms of marriage, adoption and inheritance. Other countries have done this. It has worked well. For example South Africa has a law that allows same-sex couples to get married. Canada has a law that allows same-sex couples to adopt children.

So we need to make sure that the UCC is fair to everyone. We need to make sure that it includes people who're LGBTQ+ and that it gives them the same rights as everyone else. If we do not do this then the UCC will not be a law. It will be a law that discriminates against a group of people and that is not what the Constitution says.

The UCC is supposed to give people freedom. If it does not include everyone then it is not really freedom. It is a way of discriminating against people who are different. We need to make sure that the UCC is fair to everyone no matter what their gender is. We need to make sure that it gives everyone the rights and that it treats everyone with dignity and respect. The Uniform Civil Code or the UCC is a law that is supposed to apply to everyone.. If it does not include people who are LGBTQ+ then it is not really a fair law. We need to make sure that the UCC is fair to everyone and that it gives everyone the rights. We need to make sure that it is a law that treats everyone with dignity and respect no matter what their gender is.

In the end the UCC should be a law that's fair to everyone. It should be a law that gives everyone the rights and that treats everyone with dignity and respect. If it is not then it is not really a law. It is a way of discriminating against people who are different. We need to make sure that the UCC is a law that includes everyone and that it gives everyone the freedom to live their lives

²² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

²³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

with dignity and respect.

The UCC should be a law that's fair to everyone no matter what their gender is. It should be a law that gives everyone the rights and that treats everyone with dignity and respect. We need to make sure that the UCC is a law that includes everyone and that it gives everyone the freedom to live their lives with dignity and respect. The Uniform Civil Code or the UCC should be a law that's fair to everyone and that gives everyone the same rights. We need to make sure that it is a law that treats everyone with dignity and respect no matter what their gender is.

The UCC is a law that is supposed to give people freedom. If it does not include everyone then it is not really freedom. It is a way of discriminating against people who are different. We need to make sure that the UCC is a law that's fair to everyone and that it gives everyone the same rights. We need to make sure that it is a law that treats everyone with dignity and respect no matter what their gender is.

B. The Case Against Uniformity

1. Religious freedom and minority protection

The central criticism of the UCC rests on the constitutional protection to practice religion under Article 25 and the rights of minorities protected under Articles 29 and 30. It is contended that personal law is an essential aspect of religious belief, and the imposition of uniformity will infringe upon the freedom to profess, practice, and propagate one's religion.²⁴

Such an argument has particular resonance among the minority groups, viewing the UCC as a strategy of majoritarianism for the purpose of assimilation. In such a case, the implementation of a common law would only be an imposition of Hindu law on the minority groups by calling it "uniform".²⁵

The argument regarding the rights of the minorities is further reinforced by the history of communal tensions in the country and the Indian Constitution's provisions for minority rights in order to protect distinct communities from any form of homogenisation by the majority.

²⁴ Tahir Mahmood, *Personal Laws in Crisis* 45-67 (Metropolitan Book Company 1986).

²⁵ Zoya Hasan, *Gender, Religion and Democratic Politics in India*, 31(14) THIRD WORLD Q. 939 (2010).

2. Pluralism and diversity as constitutional values

Another line of reasoning argues that a constitutional identity which is essentially plural in nature and therefore legal diversity in the area of personal affairs is an aspect of that same constitutionality and not at odds with it.²⁶ In other words, the Constitution does not envision uniformity, but a system where difference in legal systems would be possible, provided everyone would be citizens of one state.

The term "constitutional pluralism" was used by legal scholars in order to argue that having multiple legal orders within a single constitution was an intended consequence of India's unique constitutional structure.²⁷ The problem, thus, was not to get rid of legal diversity, but to find a solution which would guarantee individuals' rights and communal autonomy.

3. Process issues and democratic legitimacy

The process under which a Uniform Civil Code might be brought about is a serious issue. It is claimed that any effort to bring about uniformity should be done in accordance with democratic principles of consensus-building.²⁸ In the absence of sufficient consultation for uniformity, there may be a loss of democratic legitimacy, and communal tensions may further escalate.

This is especially so considering the backdrop of the Shah Bano controversy and its political consequences thereafter. The lesson learned from this experience was that legal reform in matters of personal law had to be approached carefully with widespread consensus.

V. TOWARDS A RECONCILIATORY FRAMEWORK

A. Beyond the Binary: Disaggregating the UCC

An effective way to deal with the UCC debate needs a different perspective that transcends the simplistic dichotomy of uniformity vs. diversity. The idea that there can only be total uniformity or absolute diversity is too simplistic.

The first possible option is to break up the various aspects of law that currently fall within personal laws and then assess their suitability for either uniformity or diversity independently.

²⁶ Rajeev Bhargava, *The Promise of India's Secular Democracy* 165-189 (Oxford University Press 2010).

²⁷ Pratap Bhanu Mehta, *India's Unlikely Democracy: The Rise of Judicial Sovereignty*, 18(2) J. DEMOCRACY 70 (2007)

²⁸ Upendra Baxi, *The Crisis of the Indian Legal System* 78-95 (Vikas Publishing House 1982).

While the issues of marriage may require uniformity, issues such as succession and guardianship might have some justification for diversity. In other words, while a uniformity is essential in cases where there is an urgent need, such as ending child marriages, diversity remains valid when religion is involved.

B. Internal Reform and the “Optional Uniformity” Model

A different perspective suggests that internal reforms to personal laws are preferable to externally imposed uniformity. In this regard, it is necessary to point out that personal laws have not remained static but have undergone change by way of legislative, judicial, and community efforts over the years.²⁹ Thus, attention needs to be directed at fostering such internal reforms, rather than superseding them with the imposition of uniformity.

The idea of the “optional uniformity” model must also be explored. This involves the passage of a uniform civil code which would become an optional provision instead of being obligatory in nature.³⁰ This means that individuals would be free to avail themselves of the provision if they wished, while others would continue to follow their own personal law if they so desired.

C. Substance of Equality as the Principle

Whichever strategy is chosen, the principle that governs it should not be uniformity but equality. The important point here is not whether or not the laws are uniformly formulated, but whether or not they are equally effective.³¹ A set of uniform laws based on patriarchal norms will do no better than personal laws, while personal laws reformed to bring gender equality may achieve the constitutional goal better than uniform laws.

The focus here changes from the uniformity of the law to its substance. The principle behind Article 44 of the Constitution is not uniformity itself but justice and equality, which were deemed necessary only because of uniformity. If justice and equality can be achieved in other ways, then the principle behind Article 44 may be fulfilled despite the lack of uniform laws.

²⁹ J.D.M. Derrett, *Religion, Law and the State in India* 234-267 (Faber and Faber 1968).

³⁰ Parashar Archana, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* 156-178 (Sage Publications 1992).

³¹ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002).

D. Comparative Lessons

Comparative experiences from constitutional practice also contain useful lessons. For instance, the model of Turkey – a form of aggressive secularism where religious personal laws were simply abolished, achieving uniformity at the expense of erasing any religious identity. While the Canadian experience with multiculturalism offers room for cultural diversity but has struggled to balance group rights and individual equality.³²

There might be some parallels found in the South African experience with customary law as well. While the South African Constitution has incorporated customary law into its legal system, it is subjected to the provisions of the Bill of Rights.³³ Such a model allows legal pluralism but also defines constitutional values as the common denominator by which all legal norms can be judged. It means that courts have been engaged in developing customary law, rather than abolishing it altogether.

Such an approach seems applicable to the Indian case – recognition of legal plurality but subjecting all such laws to constitutional scrutiny, necessitating reforms for conformance to constitutional equality and anti-discrimination standards.

VI. CONCLUSION

The issue of a UCC cannot be satisfactorily debated based only on appeals to nationalist integration or minority protection. While both perspectives capture significant constitutional values, neither is able to provide an accurate depiction of what constitutional morality requires.

The discussion offered in the above article reveals that the false dichotomy between legal freedom and cultural identity is misplaced. Legal freedom, which includes the right to equality, dignity, and non-discrimination, does not conflict with one's cultural identity. It needs to be examined whether or not practices violating these rights are entitled to constitutional recognition. They are obviously not.

In addition, the demand for uniformity must not become an avenue for majority assimilation and culture annihilation. The principle of secularity in the Indian Constitution should not be viewed as hostile secularity which attempts to eliminate religious presence from public

³² Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* 107-130 (Oxford University Press 1995).

³³ S. AFR. CONST., 1996, § 211

discourse but should rather represent principled distance toward each religion. A UCC lacking such quality will not satisfy the requirements of constitutional morality no matter how unified it will be.

UCC should be a law that's fair to everyone no matter what their gender is. It should be a law that gives everyone the rights and that treats everyone with dignity and respect. We need to make sure that the UCC is a law that includes everyone and that it gives everyone the freedom to live their lives with dignity and respect. The Uniform Civil Code should be a law that's fair, to everyone and that gives everyone the same rights. We need to make sure that it is a law that treats everyone with dignity and respect no matter what their gender is.

What is needed is to break down the numerous problems being grouped together under the UCC umbrella into discrete components, focusing first on those instances that display the most blatant form of discrimination; then, forging a consensus via discussion; and finally ensuring that all personal laws conform to the spirit of the constitution without compromising their diversity.

It must be noted here that the approach recommended may not satisfy those looking for an instant solution to the problem posed by the UCC controversy, but it would certainly provide a better solution than what is otherwise available.

In essence, the issue of the UCC is one that is linked not only to legality but also to the type of country that India aspires to be.