

# The Uniform Civil Code in India: Reconciling Constitutional Mandate, Religious Freedom, and Gender Justice in a Pluralistic Society

Mahendrakar Sumanth Kumar Rao

*LL.M (Constitution and Legal Order) S V University Tirupati Co Author Name: Dr K Jameela Assistant Professor Hindustan University*

## INTRODUCTION

The debate over the Uniform Civil Code (UCC) has been among the longest running and most contentious in India's legal and political history since independence. It is provided for as a Directive Principle of State Policy in Article 44 of the Constitution, where state governments are directed to implement it. The implementation of UCC has long been an aspiration, but it has struggled to move from aspiration to reality, contending with the frictions of state power, personal rights and collective identities. The passage of the Uttarakhand Uniform Civil Code in January 2025 has already reignited the national debate in a renewed way, moving the discussion from realm of theory to implementation. The argument made in this article is that while the UCC promotes constitutional values of substantive equality and gender justice and is, in itself, an aspirational goal, the implementation of UCC as envisioned will not be possible in the deeply pluralistic society of India, except through an approach that:

1. Respects the legitimacy of real concerns about religious freedoms;
2. Engages in a consensus-building process;
3. Makes it clear that the goal of removing inequalities is more important than the goal of uniformity.

The investigation undertaken in the article will commence with an exploration of constitutional references to the UCC, followed by an examination of tensions with religious freedoms as a fundamental right; an analysis of the UCC as a potential vehicle for gender justice; a review of significant judicial decisions; a critical analysis of the Uttarakhand model;

and an articulation of a path forward for a socially just and gender equity-focused UCC.

### Understanding the Constitutional Mandate: Article 44 and its Historical Context

Article 44 of the Indian Constitution, appearing in Part IV (Directive Principles of State Policy), states: "The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India." Although this looks simple on the surface, it bears considerable historical and ideological heft, rooted in the debates of the Constituent Assembly.

The designers of the Constitution conceived a UCC as an important instrument of national integration and as an important vehicle for social change. Among a number of the Assembly's well-known figures, including Dr. B.R. Ambedkar and K.M. Munshi, Ambedkar, as the chief architect of the Indian Constitution, asserted that a secular state should not allow religion to dictate civil matters, particularly those that fostered inequalities against women. He asserted that personal laws, a previously available stronghold of gendered discrimination, were against the spirit of advanced civilization, a civilization that was equalist, and should be replaced with an equalist modern code. Munshi also highlighted the fundamental, consequential and ideological problems created by not follow-up with a UCC. Munshi's view of the tribal and cultural conformance to a UCC pointed to the damage caused by the absence of a UCC, that the absence of a UCC keeps the nation fragmented, and hinders full equality.

From the outset this progressive agenda ran into considerable opposition across the debate space. Those opposing UCC sought to re-enforcing India's

rich and diverse religious and cultural communities. Some raised concerns about possible infringement upon the fundamental right to freedom of religion (tempered by securing the rule of law and reasonable restrictions) addressed in fundamental rights elsewhere in the Constitution, for minority communities that had strong connections to their religious identity, with personal laws that had historical connections to their group identity and faith civilization. The Assembly reached a fairly pragmatic compromise by locating the UCC in Directive Principles (an aspirational goal for the State, rather than an enforceable right), highlighting the cautious nature of concern over a sensitive issue and whether society was ready for major change.

The post-independence legislative history saw this goal partially realised for one community. The passing of the Hindu Code Bills in the 1950s (the Hindu Marriage Act, the Hindu Succession Act, Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act) resulted in major reforms to Hindu personal law, including monogamy, divorce, and improved inheritance rights for women. This demonstrated an acceptance of legislative reform of personal laws, albeit on a piecemeal basis, and only for one community; it also showed the State's willingness to work towards legal uniformity and social welfare.

#### The Competing Fundamental Rights: Religious Freedom vs. Equality

There will always be tension at the level of constitutional claim in pursuit of a UCC and the application of the basic rights enshrined in Part III of the Constitution, especially Articles 25 and 26 (Freedom of Religion) and Articles 14, 15 and 21 (Right to Equality and Life). How these competing rights and claims are navigated will be a central part of the UCC conversation.

#### Articles 25 and 26: The Embodiment of Freedom of Religion

- Article 25(1) ensures all persons have “freedom of conscience and the right freely to profess, practice and propagate religion” subject to public order, morality, health and other fundamental rights.

- Article 26 recognizes a religious denomination’s right “to manage its own affairs in matters of religion.”

The real question arises in defining the concept of “matters of religion” that are being claimed as procedurally safeguardable under the Constitution. The Supreme Court, in cases like *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954), worked out the test of “essential religious practices.” The idea is that only practices that are “integral and essential” to a religion can claim constitutional protection. Given that personal laws are seen by many communities as integral to their religious identity, it is a legitimate concern that the UCC would be an unlawful interference with their personal religious freedom. This will be especially the fear of minority groups who will justifiably worry that a UCC will impose the norms of the majority, and erode their own cultural and religious distinctiveness.

#### Articles 14, 15, and 21: The Imperative of Equality and Dignity

- Article 14 provides for equality before the law and equal protection of the laws. It can be argued that having more than one personal law system, which continues to create disadvantage for individuals on the basis of religion, and gender, constitute violations of the principles of non-arbitrariness and equality before the law, and equality protection.

- Article 15(1) prohibits discrimination based on religion, race, caste, sex, or place of birth. Personal laws in India, as they stand, show significant gender inequality. For example, elements of Muslim personal laws regarding polygamous marriage, unilateral divorce, and lack of equal inheritance rights for women have faced significant critique for being discriminatory towards women and violating gender equality. Similarly, while Hindu law has changed, there were previous disparities.

- Article 15(3) expressly permits the state to make special provisions in favor of women and children; this provides a constitutional basis from which reforming laws that seek to promote gender justice is permissible.

The recent judgment from the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*

(2017) that affirmed the Right to Privacy constituted as part of Article 21 (Protection of Life and Personal Liberty) further grounds the call for a UCC from the perspective of individual autonomy and dignity. The Court plainly stated that discriminatory acts, including those approved by personal and private laws, infringed upon an individual's dignity and their ability to make personal choices.

The case of *Shayara Bano v. Union of India* (2017), in which the Supreme Court, with a majority, wrongfully and capriciously declared the practice of triple talaq (talaq-e-biddat) to be unconstitutional on the grounds that it is arbitrary and infringes on women's fundamental rights, is a strong indication of the willingness of the judiciary to nullify religious practices that are discriminatory in nature. This case also articulated how personal laws are not exempt from the constitutional framework, especially if they can be held to be infringing on fundamental rights.

The dilemma is ultimately finding a balance between collective religious freedom and individual rights to equality and dignity. The dilemma is how to draft a code that respects India's pluralism and at the same time delivering on the promise of equality to all citizens under the Constitution, particularly to those who have been disadvantaged by those personal laws.

#### Judicial Interventions and Pronouncements on UCC

While the legislature has the primary responsibility to legislate a UCC, the Indian judiciary has of itself expressed the desirability of a UCC in several cases, and in some cases, expressed disappointment and dismay that it is still being discussed or not adopted. These judicial pronouncements have contributed to the public discourse and signaled the urgent need for reforms:

The emergence of persistent judicial advocates for a UCC originates in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985). In this case, the Supreme Court, in awarding maintenance to a divorced Muslim woman under Section 125 of the Criminal Procedure Code, remarked that a UCC would assist in the "cause of national integration by obliterating differing allegiance to laws of conflicting ideologies." The judgment ignited sizeable political backlash and the Muslim Women (Protection of Rights on Divorce)

Act, 1986 that many viewed as designed to undermine both the Shah Bano ruling and the cause for UCC.

Despite the legislative disappointment, the Supreme Court reaffirmed its position subsequently:

- *Sarla Mudgal v. Union of India* (1995): The Court again emphasized the need for a UCC, particularly in light of Hindu men converting to Islam only to practice bigamy and thereby avoid the monogamous obligations of the Hindu Marriage Act. In the words of Justice R.M. Sahai, "when more than 80% of the citizens have being brought under the codified personal law so there is no more justification to keep in abeyance, the implementation of a 'common Civil Code'."

- *Pannalal Bansilal Pitti v. State of Andhra Pradesh* (1996): Even with an obvious recognition that there are hurdles to drafting a UCC in view of India's diversity, the Court reiterated that it is "highly desirable" to do so.

- *John Vallamattom v. Union of India* (2003): The Supreme Court urged the government to, "endeavour to secure a Uniform Civil Code" while striking down a discriminatory provision in the Indian Succession Act, 1925 that was applicable only to Christians.

In conclusion, the above cases exemplify a steady judicial orientation towards legal uniformity and gender justice. Even though the courts have often reframed the limited scope of their judgments to make a broader "legislative" case, it demonstrates their alarm with a continuing practice of discrimination disguised as religious personal laws. Judicial activism - even when limited to interpretation or asking the legislature to do something - captures the institutionalized constitutional commitment as envisaged in Article 44. Essentially, the judiciary has acted as a reminder and as a moral guide, asking the State to fulfill its constitutional responsibility.

#### Key Provisions of the Uttarakhand UCC:

With the recent passage of the Uttarakhand Uniform Civil Code Act, 2024, we have an important milestone in the UCC debate in India, as Uttarakhand becomes the first state in independent India to adopt a UCC. This represents a significant case study and provides a

useful preview of possible scope and challenges for a UCC on a broader national scale.

The Act seeks to impose common personal laws across Uttarakhand, covering matters related to marriage, divorce, inheritance, and live-in relationships, for all residents in Uttarakhand, regardless of their particular religion.

- **Marriage and Divorce:** In terms of marriage, the Act ensures that all communities use the same procedure for solemnizing and registering marriages; no community can allow polygamy, polyandry or child marriage; the Act prescribes common grounds for divorce, guaranteeing both men and women equal grounds to dissolve marital ties; the practices of iddat and halala, which are a feature of Muslim personal law, are effectively barred by the uniform provisions.
- **Inheritance and Succession:** The Act guarantees equal inheritance rights for sons and daughters and spouses, in ancestral and self-acquired property. This is an important change for personal laws that previously allowed for a different share based on gender.
- **Live-in Relationships:** The introduction of compulsory registration of live-in relationships is a contentious yet first for India. Moreover, it recognised a live-in relationship's legal relationship status, and there is even a provision for entitlement to maintenance for a deserted partner, it also extends provisions for minor children of a live-in relationship.
- **Adoption:** The Act provides an uniform law for regulation of adoption for all communities.

Analysis of its Impact and Criticisms:

The Uttarakhand UCC has been hailed as a substantive step towards achieving gender equality, and equality before the law. The UCC directly responds to several formular values of discrimination historically allowed to fester under a myriad of personal laws, and accomplished the organisation of what might be termed a chaotic legal mess.

That being said it also has garnered considerable criticism, raising some important questions:

- **Non-consideration of Scheduled Tribes:** The biggest criticism has been the expressly stated non-consideration of Scheduled Tribes under the

Act. Critics have raised important issues regarding the validity of a claim to uniformity and equality when Tribal people are clearly excluded from its ambit. The rationale provided by the state (to “protect” tribal customs) has layered the conflict between a demand for uniformity against a demand for diversity.

- **Mandatory Registration of Live-in Relationships:** Many respondents argue that the Act represents a form of “moral policing” that violates personal privacy and choice, especially via Article 21. Respondents expressed other concerns regarding the requirement to register, the registrar's inquiry power, and the criminal penalty for those who do not register – all may be justified arguments for protecting someone’s claim as a ‘vulnerable’ partner.
- **"Homogeneity" vs "Uniformity":** The Act is "uniform," and there is plenty of argument that it is not really uniform. The Act primarily borrows codified Hindu laws, with "amendments" so that there is some provincial designation, but it ignores good practice, and does not in fact develop any secular idea of family that has taken any of the qualities from other personal laws of different traditions.
- **Federalism issues:** Because personal law is included in the Concurrent list, while it may be allowed under permissible State processes, other states may have their own versions of a UCC. Thus, by the states too passing their own UCCs, there would be "greater confusion than what was previously evidenced when faced with an array of diverse personal laws."

The Uttarakhand UCC, therefore, serves as a substantial benchmark, underscoring legislative will and a way forward for implementation. However, the specific provisions and critiques to the provisions show the underlying complexities and sensitivities that a national UCC will have to resolve if it is to be inclusive and equitable.

The Way Forward: Toward a Socially Just and Inclusive Uniform Civil Code

The prolonged debates and the Uttarakhand experiment suggest that the political process to enact a Uniform Civil Code in India is ultimately more of a socio-political challenge than a legal challenge, which

has significant implications in the current socio-political context.

The way forward cannot simply be a reductionist assertion of "one-size-fits-all" but through the process of securing equality of outcome and justice through consensus-building in a pluralistic society.

Firstly, it is critical to critique "uniformity" as just a sameness. "Uniformity" must not just mean the imposition of a single code that ignores India's extensive cultural and religious diversities; it must reflect universal principles of equality, non-discrimination and human dignity for all persons, while it may allow for particular diversities of ceremony or procedure provided that they do not contradict "equality" as the fundamental principle. The aim must be a "uniform code of progressive personal laws" that eradicates discriminatory practices, and particularly the discrimination of women and marginalized genderisms, across all existing frameworks.

The second consideration is consensus-building and broad deliberation. This cannot be a solo or imposed process. The approach of the Law Commission is instructive here; in the consultation paper of 2018 it stated that a UCC was "neither necessary nor desirable at this stage" and recommended piecemeal reforms instead. Therefore, any further national initiative should have:

- **Meaningful Public Engagement:** Extensive consultations with all religious communities, tribal communities, women's organizations, LGBTQ+ rights activists, and civil society, so that diverse voices exist and their concerns are acknowledged.
- **Expert Deliberation:** an inclusive expert committee made up of legal scholars, sociologists, anthropologists, and community representatives, to develop a code that reflects constitutional values and one that does not infringe on any of the social fabric that makes up India.
- **A focus on inequality:** The emphasis should be on removing discriminatory practices of personal laws, as opposed to only instituting a common framework or structure. This could be done by incorporating best practices from existing laws into a codified standard that people can choose to follow, or by introducing secular optional laws.

Third, gender justice must absolutely be at the forefront. The UCC should be utilized as an important mechanism for women's liberation and the protection of marginalized people. There must be provision made for any acknowledged patriarchal practice, or any discrimination based on sex, gender and/or sexual orientation (i.e., the recognition of live-in relationships to heterosexual partners only in Uttarakhand UCC), to be eliminated. We also want to keep in mind the spirit of *Navtej Singh Johar v. Union of India* (2018), as it pertains to the dignity of LGBTQ+ persons and their equality in deliberations about modern civil codes.

Finally, a gradualist and reformist approach may be preferable to an ablative transformative approach, and could involve:

- **Piecemeal Reforms:** reforming existing personal laws, by removing discriminatory provisions. We have seen the successful introduction and passage of the Hindu Code Bills and the Triple Talaq Act.
- **Optional Civil Code:** we can improve, strengthen, and promote the Special Marriage Act, 1954 as a secular law providing citizens with an opportunity to marry and have family matters regulated under a secular law in order to voluntarily opt-out of personal laws.
- **Consensus-driven codification:** identify areas where there are commonalities and consensus within all communities (e.g., mature minor, age of marriage, mandatory registration of marriage, prohibition of bigamy) and universally codifying these areas first.

By relying on the experiences of comparable global examples, many secular democracies do or have a system of personal laws or optional civil codes without losing the value of variance and uniformity. The implementation of anything in India must be uniquely Indian and cater to the complicated realities of Indian society.

## CONCLUSION

The Uniform Civil Code as envisaged by the Constitution remains in the ideal realm or as an aspiration towards national integration and equality and justice for all citizens. The challenges to implementing the UCC in a country with extreme diversity like India principally rest with the reconciliation of the constitutional imperative with the

fundamental rights to freedom of religion and the importance of gender justice. That being said, the Uttarakhand UCC illustrates both a way forward for progressive reform and potential shortcomings of an approach that neglects privacy concerns or makes exceptions for certain communities. A national UCC must go beyond partisan posturing and establish a process of democratic deliberation; the priorities should be to remove discrimination and recognize and support individual dignity and autonomy for all communities. This provides India with an opportunity to create a civil code that is uniform in intent, just in execution, and reflects its pluralistic society, thereby changing this constitutional goal into an everyday reality for each citizen.