

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

UNIFORM CIVIL CODE IN INDIA: A CONSTITUTIONAL ANALYSIS OF EQUALITY, SECULARISM AND PERSONAL LAWS

AUTHORED BY - GAURI BHAGAT

Abstract:

The Uniform Civil Code is one of the most debated issues in India. It means having one set of rules for everyone irrespective of their religion, when it comes to marriage, divorce, inheritance, and more. The Constitution of India says in Article 44 that the government should try to make one code for all citizens. There's been a lot of debate about it because some people think it's against freedom of religion.

This paper looks at the history of laws in India what the Constitution says about UCC and what politicians and judges have said about it. It also looks at some court cases like the Mohd. Ahmed Khan v Shah Bano Begum, 1985, Sarla Mudgal v Union of India, 1995, and Shayara Bano v Union of India, 2017. These cases were about making sure men and women are treated fairly and that personal laws are reformed.

Some people think UCC is an idea because it would make sure everyone is treated equally and that the country is more united. Others think it would interfere with people's right to practice their own religion and culture. This paper looks at both sides of the argument.

The research uses information from the Constitution, court cases reports, from the Law Commission and books and articles. It concludes that while UCC is a goal it needs to be implemented slowly and carefully so that it doesn't upset the balance of the country's different social groups. The Uniform Civil Code needs to promote equality and justice. Also respect India's diverse society.

Introduction:

India is a country with a lot of diversity. We have different religions, cultures, customs and traditions. This diversity is seen in the personal laws that govern various religious communities. These laws deal with things like marriage, divorce, inheritance, adoption, etc. Hindus, Muslims, Christians and Parsis all have their personal laws, which are often based on their religious scriptures and customs. While these laws help preserve identity and cultural autonomy, they can also create legal inequalities among citizens.¹

The idea of a Uniform Civil Code is to have a set of laws that apply to all citizens no matter what their religion is. The goal of UCC is to make sure everyone is equal before the law and to get rid of discrimination that comes from personal laws. It aims to regulate the aspects of personal relationships while still respecting values like justice, equality and secularism.²

The Uniform Civil Code is mentioned in the Constitution of India under Article 44, which is the part of the Directive Principles of State Policy. Article 44 states that “the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”³ It means the State should try to make sure all citizens have a civil code throughout the country. Even though this article is not enforceable by courts, it is still very important for the governance of the country and act as guiding principles for legislative reforms.

There is a debate about UCC, which involves balancing two important principles: equality and freedom of religion. On one hand Article 14 of the Constitution says that everyone should be equal before the law whereas Article 25 says that people have the freedom to practice and propagate their religion.⁴ Supporters of UCC think that a common civil code is necessary to make sure everyone has rights, especially women who may face discrimination under certain personal laws. Opponents, however, think that personal laws are closely tied to identity, and that imposing a uniform code could interfere with religious freedom and cultural diversity.

The issue of UCC has become more important because of what the courts have said and the discussions that politicians have had. The Supreme Court has made some judgments, like the

¹ M.P. Jain, *Indian Constitutional Law*

² V.N. Shukla, *Constitution of India*

³ Constitution of India, Art. 44

⁴ Constitution of India, Arts. 14 & 25

Mohd. Ahmed Khan v Shah Bano Begum, 1985⁵ and the Sarla Mudgal v Union of India, 1995⁶, which highlighted the need for reforms in personal laws and the importance of Article 44. These judgments brought attention back to the debate about balancing morality with religious autonomy.

Implementing UCC is a complex issue because India is a society with many different cultures and religious traditions. While having laws could promote equality and national integration, forcing it on people could create resistance and fear among minority communities. So the issue needs to be handled in an inclusive way.

This research paper looks at the concept of the Uniform Civil Code in India, its constitutional framework, judicial developments, parliamentary debates, ideological perspectives, and practical challenges. The study tries to figure out if UCC can really balance the goals of equality, justice, secularism and religious freedom, in India's social structure. The Uniform Civil Code is an issue that affects many people in India and it is important to consider the Uniform Civil Code and its implications carefully.

Historical Background:

The Uniform Civil Code in India has a history that started a long time ago. India has always had different laws for different communities. These laws were based on the customs and traditions of each community. They covered things like marriage what happens to property when someone dies and family relationships, etc.⁷

A time ago people in India followed laws that were based on their religious beliefs. Hindus followed laws that were written in books called Dharma Shastras and Smritis. Muslims on the other hand followed laws that were based on the Quran and Hadith. Local customs also played a role in deciding how civil matters were handled.⁸ So there was no common law that applied to everyone in the same way.

When the British ruled India they introduced a system of laws. They did not want to interfere with the personal laws of different communities. They thought that if they did, it would cause

⁵ Mohd Ahmed Khan v Shah Bano Begum, 1985

⁶ Sarla Mudgal v Union of India, 1995

⁷ M.P. Jain, *Indian Constitutional Law*

⁸ Paras Diwan, *Modern Hindu Law*

trouble and people would resist. So they only made laws that applied to everyone in the way when it came to crime and business. Laws about marriage, divorce and property were still different for each community.⁹

The British did make some laws that applied to everyone like the Indian Penal Code and the Code of Civil Procedure. Laws about marriage and family were still based on religion. This meant that India had different laws and it was not simple. This policy strengthened the system of legal pluralism in India.¹⁰

Some people in India wanted to change this system. They thought it was unfair and wanted laws that would apply to everyone in the way. People like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar wanted to help women and get rid of customs.¹¹ They inspired debates concerning legal uniformity and social justice and whether India should have one law for everyone.

After India became independent the people who wrote the Constitution talked a lot about the Uniform Civil Code. Some people thought it was an idea because it would help the country come together and be fair to everyone. Others did not agree because they thought it would interfere with peoples freedom to practice their religion.¹²

In the end they decided to include the idea of a Uniform Civil Code under Article 44¹³ as a Directive Principle of State Policy, not as a law that had to be followed right away due to the country's immense cultural and religious diversity. Therefore, they adopted a gradual approach towards legal reform.

Post-independence reforms mainly focused on Hindu personal laws through enactments such as:

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956
- Hindu Adoptions and Maintenance Act, 1956

⁹ V.N. Shukla, *Constitution of India*

¹⁰ Tahir Mahmood, *Muslim Law in India and Abroad*

¹¹ Bipan Chandra, *History of Modern India*

¹² Constituent Assembly Debates, Vol. VII.

¹³ Constitution of India, Art. 44

- Hindu Minority and Guardianship Act, 1956

These changes were not made for all communities and that caused more debates about whether the laws were fair. The courts also said that India should have one law for everyone. They made some decisions in cases like the Mohd. Ahmed Khan v Shah Bano Begum, 1985 and the Sarla Mudgal v Union of India, 1995. These decisions showed that there was a problem with the system and that something needed to be done to make the laws more fair.

So the history of the Uniform Civil Code in India is complex. It is hard to make changes because you have to balance the need for laws with the need to respect people's freedom to practice their religion and their cultural traditions. The Uniform Civil Code is still an issue in India today. The Uniform Civil Code in India is a topic that people have been discussing for a time. The Uniform Civil Code in India is still a work in progress, has been debated by people, in India and is also a part of Indian law.

Objectives and Scope:

The Uniform Civil Code aims to establish a common legal framework governing personal matters such as marriage, divorce, inheritance, adoption, and maintenance for all citizens irrespective of religion.¹⁴ The primary objective of UCC is to ensure equality before the law and eliminate inconsistencies arising from religion-based personal laws.

The main goal of Uniform Civil Code is to make sure everyone is equal in the eyes of the law irrespective of their gender. Now different religions have different rules and this creates problems. Certain personal laws have historically been criticized for discriminatory provisions relating to inheritance, maintenance, and divorce.¹⁵ One big reason for Uniform Civil Code is to help women. Some personal laws have been unfair to women especially when it comes to inheritance, maintenance and divorce. A single set of rules will help make sure women get rights and protection no matter what community they belong to.

Another important reason is to make laws simple and the same for everyone. When there are different personal laws it can be confusing and create conflicting rules in family matters.¹⁶

¹⁴ M.P. Jain, *Indian Constitutional Law*

¹⁵ Flavia Agnes, *Law and Gender Inequality*

¹⁶ V.N. Shukla, *Constitution of India*

Uniform Civil Code wants to make civil laws consistent and strengthen the idea that everyone's equal. Uniform Civil Code will cover these areas:

- Marriage and Divorce
- Succession and Inheritance
- Adoption and Guardianship
- Maintenance and Alimony

There is a debate about Uniform Civil Code. Some people think it's necessary for reform and national integration. Others think personal laws are linked to cultural and religious identity.

The courts have said times that discriminatory personal laws need to be reformed. In cases like the Mohd. Ahmed Khan v Shah Bano Begum, 1985 and Sarla Mudgal v Union of India, 1995 the Supreme Court said it's essential to ensure equality and justice in personal law matters. So Uniform Civil Code is an effort to balance equality, secularism and religious freedom, in India.

Constitutional Position:

The Uniform Civil Code is an important issue in India because it concerns the fundamental rights of each citizen. The Constitution of India says that the state should provide equal treatment and justice to every citizen. At the same time, it assures every citizen the right to profess and practice one's religion and culture.¹⁷

The problem is with the balance that has to be achieved between these two principles in relation to the Uniform Civil Code. A clause in the Indian Constitution recommends that the state should endeavor to bring about a uniform civil code for the citizens of the country.¹⁸ This section is a part of the Directive Principles of State Policy, that is, it cannot be enforced by any court but should always be present for the state when legislating.¹⁹

The Uniform Civil Code is also concerned with equality before law. Every person should be treated equally by the state according to the Constitution.²⁰ Today, laws applicable on a personal basis are different for every religion. Because of the differences in these personal laws, there is discrimination. Especially with regards to the women, this issue concerns the rights of

¹⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

¹⁸ Constitution of India, Art. 44.

¹⁹ V.N. Shukla, *Constitution of India*

²⁰ Constitution of India, Art. 14

women. The main argument given by proponents of the Uniform Civil Code is that it would bring uniformity in the treatment of all persons and remove discrimination among people based on religion.²¹

The only concern of the people opposing the Uniform Civil Code is the invasion of their fundamental right of professing their religion.²² In India every person has the right to believe and profess the religion of their choice, but this right is not absolute. It is also possible that laws might be made regarding the non-essential practices of a particular religion.

The importance of secularism can be felt in this debate. Secularism in India means that the state will not be in favor of or discriminate against any particular religion.²³ The challenge is to maintain the secular nature of the state and eliminate the discriminative practices on an equal footing.

The courts have been an active participant in the Uniform Civil Code debate and have already said that the rights and principles should be balanced and balanced reform should not be postponed to infinity on the excuse of changing of personal laws.²⁴

The Uniform Civil Code is a complex issue and solving it does not appear to be so easy. It is clearly mentioned that the Uniform Civil Code should not be implemented on the very first opportunity but a step-by-step reform of the current personal laws should be initiated keeping in mind that the reforms are democratic, consultative and inclusive as well as maintain a balance with the rights and principles in the Constitution.

The critics of the Uniform Civil Code express apprehension of the destruction of cultural identity and the dominance of the majority religion over minorities. This has been the argument since long and the reforms must be enacted considering the rights of all citizens of the country. The Uniform Civil Code is neither just a legal issue nor just a cultural/social issue, it concerns both. It concerns both the rights and principles in the Constitution of India along with equal treatment of the individuals as well. This issue is a sensitive one and should be handled with utmost care after thorough discussion among people of all groups. The efficiency of the

²¹ Flavia Agnes, *Law and Gender Inequality*

²² Constitution of India, Art. 25

²³ H.M. Seervai, *Constitutional Law of India*

²⁴ *Sarla Mudgal v Union of India*, 1995

Uniform Civil Code laws will ultimately depend upon how well the law is able to justify the different rights and principles provided in the Indian Constitution.

Issues and Challenges in Implementing:

The Uniform Civil Code is a deal in India. It is supposed to make sure everyone is treated equally and has the rights. It is very hard to make this happen in a country with so many different cultures and religions.²⁵

One of the problems is that some people think it will interfere with their freedom to practice their religion. The people who support the Uniform Civil Code say that having laws for different religions is not fair especially for women. For example the Uniform Civil Code supporters say that women are not treated equally when it comes to things like inheriting property or getting a divorce.²⁶ On the hand the people who do not support the Uniform Civil Code think that it will take away their right to follow their own customs and traditions. Consequently, the implementation of UCC is often viewed as a potential interference with rights protected under Article 25 of the Constitution of India.²⁷

The Uniform Civil Code is also a deal for womens rights. Some of the laws that're already in place are not fair to women. For instance some laws make it hard for women to get a share of property or to get child support after a divorce.²⁸ There have been some court cases, like the Shayara Bano v Union of India, 2017 that have said that these laws are not fair and need to be changed.²⁹ Some people think that we can make these changes without having to create a whole new Uniform Civil Code.

Another problem is that some people from minority groups are worried that the Uniform Civil Code will be based on the customs and traditions of the majority group.³⁰ This makes them very nervous and unsure about this.

Politics is also a part of the debate about the Uniform Civil Code. Different political parties have opinions about it and it can be very hard to have a calm and rational discussion about it.

²⁵ M.P. Jain, *Indian Constitutional Law*

²⁶ Flavia Agnes, *Law and Gender Inequality*

²⁷ Constitution of India, Art. 25.

²⁸ Tahir Mahmood, *Muslim Law in India and Abroad*

²⁹ *Shayara Bano v Union of India*, 2017

³⁰ Law Commission of India, *Consultation Paper on Reform of Family Law* (2018)

It is also very hard to create a Uniform Civil Code that everyone will agree with. India is a diverse country with many different religions, cultures and customs. It is not easy to create a law that will work for everyone.

The fact that people do not all agree on the Uniform Civil Code makes it very hard to implement. Changes to laws that affect families and religions can be very emotional and sensitive. If we try to make these changes too quickly it could lead to a lot of resistance and unrest.³¹

Some people think that a country that is supposed to be secular like India should have the laws for everyone. Others think that Indias secularism is about accepting and respecting all the different cultures and religions not about making everyone follow the same rules.

The courts have also played a role in the debate about the Uniform Civil Code. They have pointed out laws that're not fair and have encouraged the government to make changes. Ultimately it is up to the government to decide what to do.³²

With all these challenges the debate about the Uniform Civil Code is still going on. More and more people are talking about the importance of treating everyone fairly. The Uniform Civil Code is an issue and it will require a lot of careful thought and discussion to figure out what to do.³³

So the Uniform Civil Code needs to be implemented in a way that's careful and respectful of all the different cultures and religions in India. We need to make sure that everyone is treated equally and fairly. We also need to make sure that we do not ignore the differences, between people. The Uniform Civil Code is a deal and it will require a lot of hard work and dedication to make it happen.

Legislative and Parliamentary Developments:

The matter of the Uniform Civil Code has been debated in legislative bodies and parliaments since the making of the Indian Constitution. Article 44 states the constitutional intention for

³¹ Paras Diwan, *Modern Hindu Law*

³² *Sarla Mudgal v Union of India*, 1995

³³ Law Commission of India, *Consultation Paper on Reform of Family Law*

establishing the UCC; however, Parliament has adopted a progressive policy for reforming personal laws due to the socio-political sensitivity of the subject.³⁴

One of the first significant reforms post-independence was the passing of the Hindu Code Bills in the 1950s which dealt with modernising the Hindu personal laws of marriage, succession, adoption, and guardianship. Legislations such as the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Adoptions and Maintenance Act, 1956; and the Hindu Minority and Guardianship Act, 1956, were crucial steps towards gender equality and the recognition of familial relationships under Hindu law.

Other personal law system were not reformed at the same pace, and debates on uniformity and equality would continue to be raised during parliamentary proceedings and debates in public domain.³⁵

The reform of Muslim personal laws caught the eye following the case of Shah Bano; after much controversy between people and the Parliament, they introduced the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act, in the opinion of many, weakened the concepts of equality within a relationship, already recognised by the judiciary.

The discussions on UCC in the parliament seem to mirror the wider debates on secularism, minority rights and constitutional amendments. UCC supporters believe that having one civil law will enhance the constitutional values and provide equal treatment to citizens³⁶, whereas opponents argue against it by relating personal laws to cultural identity and minority rights that should not be compromised.

The Law Commission of India has also had a significant role in legislating regarding the UCC. The 21st Law Commission stated in its Consultation Paper on Reform of Family Law (2018), "a Uniform Civil Code was neither necessary nor desirable at this stage".³⁷ Thus instead of calling for a full UCC, the commission supported reforms to the personal laws to eliminate discriminatory practices and also suggested ways to maintain diversity.

³⁴ Constitution of India, Art. 44

³⁵ M.P. Jain, *Indian Constitutional Law*

³⁶ V.N. Shukla, *Constitution of India*

³⁷ Law Commission of India, *Consultation Paper on Reform of Family Law* (2018)

The recent reforms passed in relation to the family laws have stirred new debates on the Uniform Civil Code. Reforms regarding maintenance rights, gender equality and triple talaq has gained more emphasis on constitutional morality and equality among people in the country with reference to their personal laws.³⁸

The Goa Civil Code has also been brought to the forefront in various parliaments as a model of having a somewhat Uniform Civil Code in India.³⁹ Though there are certain exceptions the code of Goa also shows that having a civil law applicable across the country is possible without sacrificing diversity.

Parliament has not legislated the country-wide Uniform Civil Code, till date due to various political, social and constitutional arguments. The lack of consensus among all communities in the country is a major obstacle in passing such an important law.⁴⁰

In conclusion, legislations related to the Uniform Civil Code reflect the slow and gradual movement in reforming personal laws. Parliamentary discussions still bring forward issues regarding the importance of maintaining constitutional equality vis-à-vis the cultural and religious integrity of various minority communities of the nation.

Judicial Approach:

The judiciary in India has been an influential player in the Uniform Civil Code debate. The Supreme Court in its several landmark pronouncements, analyzed questions relating to personal laws by reiterating constitutional values such as equality, gender justice, secularism, and dignity.⁴¹ Despite the fact that the implementation of UCC is the function of legislature, the judicial pronouncements in many cases drew attention to the need for the reform of unjust personal laws.

Mohd. Ahmed Khan V. Shah Bano Begum

- **Court:** Supreme Court of India
- **Facts of the Case:** Shah Bano, a 62-year-old Muslim woman, was divorced by her husband through triple talaq after several years of marriage. She filed a petition under

³⁸ Shayara Bano v Union of India

³⁹ Tahir Mahmood, *Muslim Law in India and Abroad*

⁴⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

⁴¹ M.P. Jain, *Indian Constitutional Law*

Section 125 of the Code of Criminal Procedure seeking maintenance because she was unable to maintain herself.⁴² Her husband argued that under Muslim personal law his liability was limited only to the iddat period after divorce.

- **Issues Raised:** 1. Whether a Muslim husband is liable to provide maintenance under Section 125 CrPC after the iddat period.
2. Whether Section 125 CrPC applies irrespective of religion.
3. Whether personal law can override statutory provisions relating to maintenance.
- **Judicial Procedure:** The Magistrate ordered the husband to pay maintenance to Shah Bano. It was then challenged in the High Court, and the High Court affirmed the maintenance order. The matter then reached the Supreme Court.⁴³
- **Judgement:** The Supreme Court decided that Sec 125 CrPC is a secular provision applicable to all irrespective of their religion. The Court stated that a divorced muslim woman unable to support herself is entitled to maintenance beyond the iddat period.⁴⁴ It stated that personal laws cannot overrule the constitutional provisions of justice and equality.
The court further noticed the absence of a Uniform Civil Code has caused legal disparity and mentioned Article 44 of the Constitution.
- **Significance:** The verdict went on to be one of the significant landmark decisions of India with regard to gender justice and reform of personal laws. The decision underlined the necessity to balance religious beliefs with the principles enshrined in the constitution. The judgment further fuelled the debate in the nation over implementation of UCC and reform of discriminatory personal laws.⁴⁵

Sarla Mudgal V. Union of India

- **Court:** Supreme Court of India
- **Facts of the Case:** This was a case relating to a conversion of a number of Hindu males into Islamic faith in order to take the benefit of two marriages without divorcing their first wife under Hindu law. Petitioners contended for the invalidity of such marriages and mal-practice on the part of the converts to evade the monogamous provisions of Hindu law.⁴⁶

⁴² Code of Criminal Procedure, 1973, s 125

⁴³ *Mohd Ahmed Khan v Shah Bano Begum*, 1985

⁴⁴ Ibid

⁴⁵ Flavia Agnes, *Law and Gender Inequality*

⁴⁶ *Sarla Mudgal v Union of India*, 1995

- **Issues Raised:** 1. Whether conversion to Islam automatically dissolves a Hindu marriage. 2. Whether a second marriage after conversion amounts to bigamy. 3. Whether differences in personal laws lead to misuse of legal provisions.
- **Judicial Procedure:** The Court was petitioned because the questions involved the construction of the constitution and personal law concerning marriage and religious conversion.
- **Judgement:** The Supreme Court observed that conversion into Islam does not have the effect of dissolving a Hindu marriage performed according to Hindu rites. Taking a second marriage without terminating the first one would result in bigamy punishable under the Indian Penal Code.⁴⁷

The Court stressed the imperative nature of Uniform Civil Code to curb the possible misuse which could take place in the application of varying personal laws, adding that unity would ensure integration of the nation.
- **Significance:** The ruling emphasized judicial endorsement of UCC, and underscored the ill effects arising from having disparate personal laws. The case illustrates how disparate personal law systems may be abused to shirk responsibility. The judgment continues to serve as an important precedent in personal laws of marriage and in constitutional amendment.⁴⁸

Shayara Bano v Union of India, 2017

- **Court:** Supreme Court of India
- **Facts of the Case:** Shayara Bano questioned the constitutionality of instant triple talaq (talaq-e-biddat), where a Muslim husband could divorce his wife by uttering the word talaq thrice and seeking an immediate end to the marriage.⁴⁹
- **Issues Raised:** 1. Whether instant triple talaq violates constitutional principles of equality and dignity.
2. Whether talaq-e-biddat is protected as an essential religious practice.
3. Whether personal law practices can be tested on constitutional grounds.
- **Judicial Procedure:** The matter was heard by a Constitution Bench of the Supreme Court due to its constitutional significance and nationwide impact.
- **Judgement:** Instant triple talaq was held unconstitutional and arbitrary by a majority

⁴⁷ Indian Penal Code, 1860, s 494

⁴⁸ V.N. Shukla, *Constitution of India*

⁴⁹ *Shayara Bano v Union of India*, 2017

vote of the Supreme Court.⁵⁰ The practice was declared to be contrary to the constitution's guarantee of equality and not entitled to be saved under the religion principle.

- **Significance:** The decision was seen as a step towards gender justice and constitutional morality and reemphasized the power of the judiciary to test the discriminatory personal law practices based on Fundamental Rights. The case brought about widespread debate about the larger reforms in personal law and the way ahead for UCC.⁵¹

Judiciary has repeatedly held that personal law is subject to constitutional standards such as equality, dignity and justice. Judicial judgments dealing with maintenance, marriage, divorce and women have shown growing emphasis on constitutional morality and moving away from religious customs and tradition.⁵²

On the other hand, the courts have also taken a stance that implementation of UCC is only within the legislative sphere. Judicial dicta urging for reformation cannot replace democratic and legislative process needed for change at the national level.

The judicial thinking over UCC is therefore an effort to harmonise the constitutional aspect of equality with religious freedom and an appeal for gradual change of personal laws with constitutional principles.

Ideological Perspectives:

Apart from the constitutional and legal dimension of the issue of the UCC, it has now become a pertinent issue of ideology and politics in India, due to its interpretations varying across political parties, intellectuals and socio-religious organizations with different notions of secularism, equality, rights of minority groups and constitutional change.⁵³

For advocates of the UCC, a common civil code is essential for equality before the law and for reinforcing national integration. According to this line of reasoning, separate personal laws create unequal legal standards for different citizens and weaken the notion of single citizenship. For them, uniform legal standards in family matters will contribute to uphold the notion of

⁵⁰ Ibid

⁵¹ Law Commission of India, *Consultation Paper on Reform of Family Law*

⁵² H.M. Seervai, *Constitutional Law of India*

⁵³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

constitutional morality by eliminating the discrimination found within personal laws of various communities.⁵⁴

Gender justice is often highlighted by a number of UCC supporters as they argue that women of different communities are subjected to differential treatment by religious personal laws concerning divorce, maintenance, inheritance, custody and Guardianship.⁵⁵ Under this perspective, changing personal laws is necessary in order to uphold the equal rights of women, regardless of their religion.

According to another group of advocates, in a secular democratic state, all citizens should be treated equally. There should be equal civil laws for everyone regardless of religion and separate religion-based laws are a violation of this idea. According to them, the Uniform Civil Code is a step towards upholding equal citizenship by implementing equality of all before the law.⁵⁶

Opponents of the UCC view personal laws as a significant aspect of cultural identity and religious autonomy of different religious communities.⁵⁷ There is often the concern of marginalization of minority cultures and the imposition of majority culture under the garb of the Uniform Civil Code as it might not adequately represent the customs of all the religious communities in India.

Some scholars argue that Indian secularism does not necessarily imply strict separation of religion and state but it provides recognition and inclusion to diversity.⁵⁸ Thus, according to them, existence of different personal laws is in consonance with the pluralistic constitutional order of India.

The critics further hold the view that hurried enforcement of the UCC might increase distrust between various religious communities in the country.⁵⁹ It is important to approach family and religious law in a sensitive manner, as these aspects of life are deeply associated with identity, culture and traditions.

⁵⁴ M.P. Jain, *Indian Constitutional Law*

⁵⁵ Flavia Agnes, *Law and Gender Inequality*

⁵⁶ V.N. Shukla, *Constitution of India*

⁵⁷ Tahir Mahmood, *Muslim Law in India and Abroad*

⁵⁸ H.M. Seervai, *Constitutional Law of India*

⁵⁹ Law Commission of India, *Consultation Paper on Reform of Family Law*

Another criticism is the obvious politicization of the entire debate over UCC which can be witnessed as there has been a close link of the discourse on Uniform Civil Code with electoral politics and political polarization, preventing any significant discussion over the actual reform and law itself.⁶⁰

However, despite the political and ideological divisions, there is increasing consensus that personal laws, in their present form, perpetuate discriminative norms.⁶¹ However, the difference is not over objective of legal reform but over methodology, as many favour reform of the personal law from within, whereas others advocate a total replacement by a common civil code.

The entire argument over the UCC is thus a dilemma for India on the larger constitutional goal of equality, secularism, freedom of religion and cultural diversity; hence a reform process, whether with a common civil code or reformed personal laws would need to incorporate both constitutional fairness as well as social harmony.

Comparative Analysis:

A comparative study of legal systems in different countries throws light upon how various countries deal with the sphere of personal laws, the balance that is struck between equality and diversity of cultures. Comparing the practices in the various foreign legal systems and even with Indian models such as Goa highlights the possibilities as well as challenges inherent in implementation of the uniform civil code in India.⁶²

Of the models that are most frequently referred to is the Goa civil code. This system offers a relatively uniform personal law, originally inherited from the Portuguese civil code and applicable to all communities in marriage, succession, and family relations.⁶³ Both marriage registration as well as property owned by married couples is generally registered and shared equally among both partners; inheritance rights are similar for the spouses.⁶⁴ This is an instance of a uniform civil law successfully applied in a pluralistic culture.

⁶⁰ Upendra Baxi, *The Indian Supreme Court and Politics*

⁶¹ Constitution of India, Arts. 14 & 25

⁶² M.P. Jain, *Indian Constitutional Law*

⁶³ Tahir Mahmood, *Muslim Law in India and Abroad*

⁶⁴ V.N. Shukla, *Constitution of India*

However, the Goa model is not without exceptions. Specific customs and traditional practices of communities continue to remain valid in some matters. Thus while it is an example of relative uniformity, it cannot simply be emulated in the vast Indian context given the enormous differences in population size, ethnic, linguistic and religious diversity, as well as a different historical trajectory.⁶⁵

Other countries such as France, the United States and the United Kingdom offer examples of uniform civil laws which are applied to all persons irrespective of religion. Personal matters such as marriage, divorce, succession, guardianship, adoption etc. Are primarily dealt with by secular laws rather than religious personal laws.⁶⁶ They reflect the centrality of individual rights and equality before law, and keep religion away from matters of civil law.

One must, however, temper comparison with Western systems by acknowledging the fundamentally different historical context and social structure of such countries which have tended to move towards homogenizing legal systems unlike the naturally pluralist Indian society which has historically followed its diverse personal laws within an over-arching structure of common law.⁶⁷ This is where importation of foreign systems proves an issue, especially where the very legal order is the result of distinct colonial histories which has impacted the Indian state differently than its Western counterparts.

Certain countries where Muslims are the majority and have introduced significant reforms in their personal laws while maintaining their identity, namely Turkey and Tunisia, are other examples. Turkey has enacted comprehensive family laws which has resulted in reforms in personal law governing marriage, divorce, rights of women, etc.⁶⁸ Similarly, Tunisia enacted similar family laws which has also brought reforms to personal law in these aspects.

Finally, a study of comparative systems reveals the importance of the acceptability of reforms in civil society. In countries where uniform civil laws have been introduced, they were either the result of prolonged gradual legal development, consultation and public opinion or achieved a consensus.⁶⁹ Thus, mere enactment is not enough and needs to be backed by societal

⁶⁵ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

⁶⁶ H.M. Seervai, *Constitutional Law of India*

⁶⁷ Law Commission of India, *Consultation Paper on Reform of Family Law*

⁶⁸ Flavia Agnes, *Law and Gender Inequality*

⁶⁹ Law Commission of India, *Consultation Paper on Reform of Family Law*

legitimacy.

Critical Analysis:

This debate surrounding Uniform Civil Code (UCC) is considered to be one of the most complicated constitutional debate of India since it presents a conflict between constitutional values of equality, secularism, religious freedom, and cultural diversity.⁷⁰ Although it is arguable that uniformity of civil laws are constitutionally sound for ensuring equality and justice in individual level but practical difficulties and problems involved in enacting such common civil law raise question over the constitutionality aspect.

The most important point favoring the UCC is to ensure gender justice. There are few personal laws which have historically incorporated few provisions of discrimination against women, and that includes provisions related to inheritance, maintenance, divorce and guardianship.⁷¹ Judicial pronouncements of cases like Shah Bano and Shayara Bano explicitly stated that there can be no compromise with the constitutional values like equality and dignity for reasons such as protected rights to personal laws.

If we consider the situation from this angle, the personal laws need to be reformed to ensure equal treatment of individual irrespective of the community to which he or she belongs. However, to achieve that constitutional morality has to prevail over discriminatory personal laws by empowering individuals through universal equal rights in private affairs.⁷²

Nevertheless, examination of UCC solely from a perspective of equality is not sufficient. We have to remember that India is a secular and pluralistic country with people from different religions and having different cultural practices and values regarding their private lives, which are often tied to their religious identities. These different people consider personal laws as a symbol of religious identity and autonomy, and therefore consider the uniform civil code as a threat of dominance of major religion.⁷³

Apart from it, this matter has also been questioned in the context of interpretation of secularism. Indian notion of secularism is completely different from the West; it stands for equal respect

⁷⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation*

⁷¹ Flavia Agnes, *Law and Gender Inequality*

⁷² Constitution of India, Art. 14

⁷³ Tahir Mahmood, *Muslim Law in India and Abroad*

and equal treatment towards all religion while emphasizing on supremacy of the constitution and the legal order under it.⁷⁴ From this viewpoint, upholding limited diversity in law is also a step to achieve Indian brand of secularism.

Besides, another major challenge of enactment of UCC arises in the form of drafting of an acceptable code. It involves so many differences than just a religious difference; they include differences in regional culture, tribal life, and also differences from community to community in terms of custom practices. Harmonizing these varied differences at the same time would create great social resentment.

The political dimension also poses a challenge in framing a UCC. Discussions concerning the amendment or alteration in personal laws are frequently marred by various ideological and electoral motivations, thus making this constitutional discussion rather politicized and thus hindering the possibility of any rational and constructive constitutional deliberation and can adversely affect the public perception over this issue.⁷⁵

One major reason for judicial intervention is that Supreme Court has consistently been promoting the cause of equality in personal matters through its verdicts. Nevertheless, ultimately enacting uniform civil law is the task of legislature. Although, judgments may interpret constitutionality of personal laws, but it cannot ensure its validity unless it is accepted by and for people of India.

In view of the above mentioned facts, it is worth noting that instead of immediate implementation of one uniform code, gradual reforms would be more beneficial. Many people including legal thinkers and the Law Commission has strongly argued that gradual reforms of certain aspects in personal law would achieve constitutional values like equality etc, in a better way than the immediate enactment of uniform code which could face many difficulties. Progressive amendments or reforms would help in overcoming the social resistance to a certain extent by making people acclimatize slowly.⁷⁶

This is clearly witnessed through comparative experience of various countries that effective

⁷⁴ H.M. Seervai, *Constitutional Law of India*

⁷⁵ Upendra Baxi, *The Indian Supreme Court and Politics*

⁷⁶ Law Commission of India, *Consultation Paper on Reform of Family Law*

legal reforms can be attained only through consultation, sensitization, and by creating consensus over issues; merely legislating a code to bring about uniformity cannot be successful without the consent of people.

My viewpoint would be that the objective of having uniform civil code should be equality and not mere uniformity. So far, it has only brought forth the conflict in terms of religion and other values; nevertheless it must be understood that equality cannot stand on the shoulders of injustice or any social or religious discriminatory practice. Constitutionality necessitates and compels the reform of personal law, but the way to reform must be such that it upholds democratic aspirations of the society.

Ultimately the implementation of the UCC would depend upon striking a balance between the protection of individual rights, specifically gender justice and human dignity, and respecting the plurality of social composition of India; thus it appears a more pragmatic and constitutionally sound move to focus on gradually evolving such a code through a consultative, progressive and participative approach.

Conclusion:

The Uniform Civil Code is one of the most contentious constitutional and socio-legal issues in the Indian legal landscape. UCC envisions common legal provisions applicable to all personal issues like marriage, divorce, succession, inheritance, adoption and maintenance irrespective of the religious affiliations of the citizens. The idea behind the UCC is intertwined with concepts of equality, secularism, dignity, justice.

This study focused on issues such as evolution of personal laws in India, constitutional perspective relating to UCC, legislative evolution and judicial approach to UCC, ideological perspective of UCC, comparative study on law of UCC. It can be concluded that the concept of Uniform Civil Code is not just an issue of legal uniformity but also one that needs to be taken into account within the socio-cultural context of India being a diverse society.

The existence of discriminatory personal laws, particularly for women in issues like succession, maintenance and divorce is a pertinent issue revealed during the study of personal laws. Judicial pronouncements like the *Mohd. Ahmed Khan v Shah Bano Begum*, 1985 and the *Shayara Bano v Union of India*, 2017 highlighted the relevance of constitutional morality and gender justice

within the ambit of personal laws. This shows the increasing inclination of judiciary towards harmonizing personal laws with the fundamental rights.

At the same time, genuine concerns about religious freedom and individual identity cannot be overlooked. Personal laws are strongly linked to societal practices and customs; thus immediate imposition of a comprehensive uniform code without consultation may generate suspicion and resistance amongst communities.

The Constitutional framework itself recognizes the need for equilibrium. While the state is directed under Article 44 of the Constitution to take measures to implement a Uniform Civil Code, Articles 14 and 25 recognize equality and freedom of religion respectively. Thus, a process of balancing between one principle and the other, not an absolute dominant of one over the other, requires in interpretation of the constitution.

Further it can be ascertained that rather than imposing the immediate Uniform Civil Code, a phased reform is more constitutionally feasible and realistic. By removing the discriminations in the present personal laws in consultation with people, perhaps, the aim and object behind the idea of Uniform Civil Code can be achieved. A comparative experience from Goa, as also from foreign countries shows that successful reforms of laws depend on the consent and democratic acceptance of the law-goers.

Finally, the Uniform Civil Code should be understood as a means to achieving constitutional justice and not solely as an issue of legal uniformity. The objective of the Uniform Civil Code should ultimately be focused upon protection of individual equality, dignity and rights within a plural constitutional identity of India. Any future reform under the UCC may be taken up by way of gradual, consensual and inclusive processes that harmonise constitutional morality with diversity and social cohesion.

Literature Review:

Literature is widely available in relation to UCC that reflects diverse views of a constitutional, social and political nature in regard to personal laws reform in India. Various academic contributions, judicial pronouncements and Law Commission Reports have analyzed the complex relation between equality, secularism, gender justice and freedom of religion within UCC.

M.P. Jain in Indian Constitutional Law analyzes the constitutional provisions governing Article 44 of Indian Constitution. He also discusses the conflict between Directive principles of state policy and Fundamental rights; he says for the implementation of UCC the concept of constitutional equality is a matter of balance in regard to protection of religious freedom.

V.N. Shukla in his Constitution of India analyses the meaning of secularism and constitutional morality; he states how secularism, and the doctrine of constitutional morality, apply to reform of personal laws. It was stated that in order to solve problem on UCC issues Articles 14, 25 and 44 have to be harmoniously interpreted.

Flavia Agnes in her book Law and gender inequality analyses the issues pertaining to effect of personal laws on the women rights. She says that existing discriminatory practices of personal laws have implication on gender justice and constitutional equality. Her work centers on issues relating to maintenance, inheritance and divorce as far as women belonging to different religions are concerned.

Tahir Mahmood in Muslim law in India and abroad analyzes the evolution of personal law among Muslims in India and the on going debate about reforms of family laws. He states issues associated with UCC from religious point of view.

The Law commission of India in its Consultation Paper on reform of family law (2018) stated that while a Uniform Civil Code is neither necessary nor desirable at present, discriminatory practices in personal laws needed to be removed incrementally with due regard for the cultural diversity.

Also judgments such as Mohd. Ahmed Khan v Shah Bano Begum, 1985, Sarla Mudgal v Union of India, 1995 and Shayara Bano v Union of India, 2017 clearly highlighted the constitutional morality, gender justice and reform of discriminatory personal laws by way of uniform law. However the tension between equality and religion in UCC is yet to be resolved.

Hence, it can be stated that in existing literature on UCC there are several diverse views on legal and constitutional issue in regard to the issue. Though most of scholars are of the opinion that there should be reform of discriminatory personal laws yet there are difference of views on how they should be introduced in India.

Bibliography:

Books:

1. Agnes, Flavia, *Law and Gender Inequality*
2. Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*
3. Baxi, Upendra, *The Indian Supreme Court and Politics*
4. Diwan, Paras, *Modern Hindu Law*
5. Jain, M.P., *Indian Constitutional Law*
6. Mahmood, Tahir, *Muslim Law in India and Abroad*
7. Seervai, H.M., *Constitutional Law of India*
8. Shukla, V.N., *Constitution of India*

Statutes and Legislations:

1. Constitution of India
2. Code of Criminal Procedure, 1973.
3. Hindu Marriage Act, 1955.
4. Hindu Succession Act, 1956.
5. Hindu Adoptions and Maintenance Act, 1956.
6. Hindu Minority and Guardianship Act, 1956.
7. Muslim Women (Protection of Rights on Divorce) Act, 1986.

Case Laws:

1. Mohd. Ahmed Khan v Shah Bano Begum, 1985.
2. Sarla Mudgal v Union of India, 1995.
3. Shayara Bano v Union of India, 2017.
4. John Vallamattom case, 2003.

Reports and Articles:

1. Law Commission of India, *Consultation Paper on Reform of Family Law* (2018).
2. Constituent Assembly Debates, Vol. VII.
3. Articles and journals relating to Uniform Civil Code, secularism, personal laws, and gender justice in India.

Websites:

1. Indian Kanoon
2. Law Commission of India
3. Ministry of Law and Justice, Government of India
4. Supreme Court of India