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# **SECULARISM, PLURALISM, AND GENDER EQUALITY: EXPLORING THE UNIFORM CIVIL CODE DEBATE IN INDIA**

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## **ABSTRACT**

Article 44 of the Constitution of India reads as "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India", thereby mandating the state to strive for a UCC, primarily concerning personal laws related to marriage, divorce, inheritance, and adoption. Despite India's existing uniform criminal code and statutes, the absence of a UCC perpetuates gender discrimination inherent in personal laws, particularly regarding inheritance rights for women. This paper explores the implications of the UCC discourse within the framework of constitutional provisions, such as Articles 14 and 15, which guarantee equality and non-discrimination. While these provisions seemingly promise equal standing for women and men, the legitimacy of religious personal laws in relation to the Constitution remains ambiguous. The research underscores the need for a UCC to address entrenched disparities across religious laws and ensure gender justice and equality. By providing a single, secular legal framework, the UCC aims to eliminate gender-based biases and promote equal status for all citizens, aligning with the constitutional mandate outlined in Article 44. Through a critical examination of legal, social, and cultural dimensions, this paper navigates the complexities of the UCC discourse, shedding light on its implications for secularism, pluralism, and gender equality in India.

**Keywords:** Uniform Civil Code (UCC), secularism, pluralism, gender equality, Article 44, personal laws, gender discrimination

## **RESEARCH OBJECTIVES:**

1. To analyze the historical evolution and contemporary relevance of the discourse surrounding the adoption of a Uniform Civil Code (UCC) in India, focusing on the interplay of legal, social, cultural, and political factors.
2. To examine the perspectives and rhetoric of key stakeholders, including the Indian women's

movement and the Indian Supreme Court, regarding the UCC debate, with a particular emphasis on their evolving positions and the implications for gender equality, secularism, and national integration.

3. To explore the implications of a UCC for secularism, pluralism, and gender equality in India, considering the potential challenges, benefits, and outcomes associated with transitioning from a system of religious personal laws to a unified civil code.

### **RESEARCH QUESTIONS:**

1. How do the historical roots of India's pluralistic personal law system influence the contemporary discourse surrounding the adoption of a Uniform Civil Code (UCC)?
2. What are the key legal, social, and cultural challenges hindering the implementation of a UCC in India, particularly in relation to issues of secularism, pluralism, and gender equality?
3. How do the perspectives and actions of stakeholders such as the Indian women's movement and the Indian Supreme Court shape the discourse and potential outcomes of the UCC debate, and what implications do they have for achieving secularism, pluralism, and gender equality in India?

### **RESEARCH METHODOLOGY:**

The study employs a doctrinal approach to explore the complexities surrounding the adoption of a Uniform Civil Code (UCC) in India. This methodology involves a comprehensive analysis of legal texts, including constitutional provisions, statutes, case law, and scholarly literature related to the UCC debate. By examining the historical context, legal challenges, and socio-political dynamics, the study aims to elucidate the various dimensions of the debate surrounding UCC. Through a systematic review of legal frameworks, historical precedents, and contemporary socio-political realities, the research seeks to provide insights into the feasibility, challenges, and potential outcomes of implementing a UCC in India, while also providing recommendations. This approach allows for a rigorous examination of the legal and constitutional aspects of the UCC debate, considering its implications for secularism, pluralism, and gender equality in the Indian context.

### **INTRODUCTION**

The discourse surrounding the adoption of a Uniform Civil Code (UCC) in India represents a complex interplay of legal, social, cultural, and political factors. At its core, the debate revolves around the question of whether India, as a diverse and pluralistic society, should transition from

its current system of religious personal laws to a unified civil code that ensures equal treatment for all citizens, irrespective of their religious affiliations. This debate touches upon issues of national integration, modernity, secularism, and gender equality, sparking intense discussions among various stakeholders. India's pluralistic personal law system, which provides different legal frameworks for members of different religious communities, has been under scrutiny from an equality standpoint. Proponents of a UCC argue that it could offer a solution by replacing the fragmented personal laws with a uniform set of civil laws, thus ensuring consistency and equality under the law for all citizens.

However, amidst a global trend acknowledging legal pluralism and the significance of cultural and religious diversity, questions arise regarding the relevance and feasibility of Article 44 of the Indian Constitution<sup>1</sup>. This article advocates for a UCC but lacks enforceability, relying instead on the state's endeavor to implement it. This inherent ambiguity surrounding the constitutional mandate for a UCC adds layers of complexity to the debate.

The resurgence of the UCC discourse has been catalyzed by various actors, including the Indian women's movement and the Indian Supreme Court, each offering distinct perspectives and rhetoric. The women's movement, initially supportive of a UCC, has shifted towards advocating for reforms within religious communities, viewing top-down legislative approaches as impractical. In contrast, the Supreme Court has maintained a rhetorical commitment to the UCC, citing arguments of modernity and national integration, albeit with minimal action towards implementation.

This research aims to explore the multifaceted dimensions of the UCC debate in India by analyzing the discourse surrounding Article 44 within the Indian women's movement and the Indian Supreme Court. By examining the historical context, legal challenges, and socio-political dynamics, this study seeks to shed light on the complexities of implementing a UCC in a diverse and dynamic society like India. The research will delve into the implications of a UCC for secularism, diversity, and gender equality in India, considering the perspectives of various stakeholders and exploring potential avenues for reconciling competing interests. By critically analyzing legal frameworks, historical precedents, and contemporary socio-political realities, this study aims to provide insights into the feasibility, challenges, and potential outcomes of adopting a UCC in India's evolving socio-legal landscape.

## **TRACING THE HISTORY**

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<sup>1</sup> Manooja, D.C. (2000) 'UNIFORM CIVIL CODE: A SUGGESTION', Journal of the Indian Law Institute, 42(2/4), pp. 448–457.

The issue of personal laws has long been at the forefront of the women's movement in India, sparking nuanced discussions within feminist circles that often extend beyond the mainstream public discourse. While public debates tend to focus disproportionately on Muslim personal law, feminist discussions take a more comprehensive approach, examining the gender dimensions of all religious community laws. They emphasize that regardless of religious affiliation, these laws contain provisions that undermine the right to equality. Although exceptions exist, such as women's groups aligned with Hindu nationalist parties, the overarching trend within feminist discourse seeks to challenge the notion that only Muslim law is outdated and anti-women.

Attempting to compile an exhaustive list of discriminatory aspects within different personal laws exceeds the scope of this discussion. Such an endeavor would require delving beyond statutory provisions and customary practices, considering judicial interpretations and on-the-ground realities. Scholars like Parashar (2005)<sup>2</sup>, Jenkins (2009), and Agnes (2011), alongside women's rights organizations like Saheli and the Working Group on Women's Rights, have extensively analyzed the problematic aspects of personal laws.

Under Hindu law, numerous inequalities persist. For instance, a woman cannot adopt a child in her own name, and her guardianship rights over children above five years old are limited. Despite amendments, unequal provisions remain, particularly in property inheritance, which tends to favor male heirs. Similarly, Muslim personal law allows polygamy for husbands but imposes restrictions on wives, making divorce more challenging for them. Islamic inheritance laws also allocate a lesser share to women compared to men. Christian mothers face similar challenges, as they have no inheritance rights under the Indian Succession Act of 1925. Additionally, until reforms in 1991, Parsi law discriminated between female and male descendants.

Interestingly, while feminist scholars and women's rights activists once advocated for a secular Uniform Civil Code (UCC) in the 1970s and 1980s, this stance has evolved.<sup>3</sup> The feasibility of implementing a UCC is now largely abandoned, reflecting shifting perspectives within feminist discourse. The evolution of civil laws in India is intricately connected to the historical development of personal laws. Lord Warren Hastings initiated the categorization of identities under rigid religious lines in the 1772-73 Regulation Act, stipulating governance by respective Hindu and Muslim laws. This categorization was further solidified in 1835 when the British Government emphasized the need for uniformity in codifying Indian laws on crime, evidence, and contracts, explicitly excluding Hindu and Muslim 'personal laws' from this codification. This exclusion aimed to categorize the diverse population along religious lines and facilitate greater

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<sup>2</sup> Parashar, Archana. (1992). *Women and Family Law Reform in India*. New Delhi, India: Sage Publications.

<sup>3</sup> Menon, N. (2014) 'A Uniform Civil Code in India: The State of the Debate in 2014', *Feminist Studies*, 40(2), pp. 480–486.

imperial control over Indian territories.

The concept of 'personal law' emerged during the eighteenth century in the Presidencies of Calcutta, Bombay, and Madras, as existing arbitrations transitioned into state-controlled adjudications. This practice persisted even after the shift from the British East India Company to the British Crown.

Post-independence, during the drafting of the Indian Constitution, the Constituent Assembly debated Article 35 on November 23, 1948, directing the state to implement a Uniform Civil Code (UCC) across India. This initiative was based on the belief that 'personal laws' reflected divine law from religious texts and perpetuated anti-women practices under the guise of customary laws. While many members of the Constituent Assembly opposed the UCC, particularly Muslim members who viewed it as conflicting with religious and cultural ethos, proponents argued for its necessity. Raj Kumari Amrit Kaur, co-founder of the All India Women's Conference, advocated for a common code to ensure marriage equality for women. Similarly, Dr. B. R. Ambedkar emphasized the state's role in social reform and defended the need for a uniform code. Due to disagreements, Article 35 was incorporated into the Directive Principles of State Policy (DPSP) in part IV of the Constitution, reflecting its non-justiciability under Article 44 and Article 37. However, steps were taken towards law reforms, notably with the Hindu Code Bill in 1956, which aimed at uniformity in civil laws through acts such as the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act.

## **ROLE OF INDIAN JUDICIARY**

For over six decades, the quest for a Uniform Civil Code (UCC) in India has remained a work in progress. The concept of uniformity in civil law has garnered support from the judiciary, various women's rights organizations, and political parties. The Supreme Court first mentioned the UCC in the landmark case of Mohd Ahmed Khan vs. Shah Bano Begum and Ors (1985)<sup>4</sup>, where it underscored the importance of a "common civil code" in the interest of national integrity. The Shah Bano Begum (1985) exemplifies the Supreme Court's firm stance on the necessity of a UCC. In this case, the Court addressed the discrepancy between Muslim personal law and Indian criminal law regarding the obligation of a Muslim husband to provide maintenance to his divorced wife. The Court ruled in favor of Shah Bano Begum, emphasizing equality and breaking down religious barriers to ensure maintenance for all Muslim divorced women under the Criminal

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<sup>4</sup> Mohd. Ahmed Khan v. Shah Bano Begum and Ors, AIR 1985 SC 945.

Procedure Code, 1973.

However, the subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act 1986 sought to nullify the Shah Bano case judgment. This Act limited a divorced Muslim woman's entitlement to maintenance only during her iddat period, prompting further legal challenges. In the landmark case of *Danial Latifi v. Union of India* (2001)<sup>5</sup>, the Supreme Court affirmed that a Muslim husband remains liable to provide maintenance to his divorced wife even after the iddat period, thereby upholding gender justice.

In subsequent decades, the Supreme Court has consistently revisited the issue of the UCC. In the case of *Jordan Diengdeh v S.S. Chopra* (1985)<sup>6</sup>, which dealt with irreconcilable marriages, the Court reiterated the need for a UCC. Similarly, in *Sarla Mudgal v. Union of India* (1995)<sup>7</sup>, the Supreme Court ruled that a second marriage contracted by a Hindu man after converting to Islam is void under Section 494 of the Indian Penal Code. This decision underscored the importance of uniformity in marriage laws across religious communities. Further affirmations of the desirability of a UCC came in the case of *John Vallamattom and Anr. v. Union of India* (2003)<sup>8</sup>, where the Supreme Court emphasized the need for uniformity in succession laws. More recently, in *Shayara Bano v. Union of India* (2017)<sup>9</sup>, the Supreme Court declared Instant Triple Talaq as unconstitutional, reigniting debates surrounding the UCC.

These judicial interventions have primarily been driven by the imperative of gender justice. However, the political landscape surrounding the UCC often veers into the realm of vote-bank politics, overshadowing the quest for gender equality.

Despite these judicial pronouncements, the road to implementing a UCC faces significant challenges. Petitions challenging various aspects of personal laws have been repeatedly rejected by the Supreme Court, citing matters of policy. However, it is increasingly clear that the need for a UCC is paramount to ensure gender justice and equality before the law in India.

## FLIP SIDES OF THE SAME COIN

The discourse surrounding the Uniform Civil Code (UCC) in India is characterized by a complex interplay of factors, ranging from the principles of secularism and religious freedom to concerns about gender equality and cultural identity. Proponents of the UCC argue that the existence of disparate personal laws, rooted in religious texts, perpetuates patriarchal norms and hinders the advancement of women's rights. They contend that a UCC would serve to eliminate such gender

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<sup>5</sup> *Danial Latifi & Anr v. Union of India*, (2001) 7 SCC.

<sup>6</sup> *Ms Jordan Diengdeh v. S.S. Chopra*, 1985 AIR 935.

<sup>7</sup> *Sarla Mudgal v. Union of India* (1995) 3 SCC 635.

<sup>8</sup> *John Vallamattom And Anr v. Union Of India*, JT 2003 (6) SC 37.

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

discrimination, thereby promoting equality, justice, and dignity for women across all communities.<sup>10</sup>

Central to the argument in favour of a UCC is the notion of gender equality enshrined in the Indian Constitution. Articles 14 and 15 underscore the state's obligation to ensure equal protection and non-discrimination for all citizens, regardless of religion, caste, or gender. However, the coexistence of religious personal laws alongside constitutional provisions for equality has led to ambiguity and inconsistency in the application of these principles. Critics argue that the absence of a UCC undermines the constitutional mandate for equality, particularly concerning inheritance rights, where disparities persist across religious communities. For instance, in Muslim Sunni and Shia laws, women are often entitled to only half the inheritance share of men, while Christian women inherit only one-third of the property under the Indian Succession Act. Despite legislative reforms aimed at addressing gender disparities, such as amendments to the Hindu Succession Act, significant gaps remain, leaving women vulnerable to discriminatory practices in matters of inheritance and property rights.

Advocates for the UCC also highlight the need to uphold India's international commitments to gender equality, as reflected in treaties such as the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. These obligations necessitate the enforcement of laws that promote gender equality and eliminate discriminatory practices rooted in religious customs and traditions.<sup>11</sup>

However, opposition to the UCC has also emerged, particularly from those who argue for the preservation of cultural diversity and individual freedoms. Critics contend that demands for uniformity overlook the rich tapestry of India's cultural heritage and risk eroding distinct cultural identities. They point to examples of successful legal pluralism, such as the Goa model, which treats all religions equally while upholding specific rights and promoting gender equality. Furthermore, concerns have been raised about the potential impact of legislative reforms on gender equality outcomes. Studies indicate that despite legal reforms, societal biases against women persist, leading to adverse outcomes such as higher mortality rates for female children and an increase in sex-selective abortions. Critics argue that legislative measures alone may not be sufficient to address deep-rooted patriarchal attitudes and social norms that perpetuate gender inequality.

In response to these criticisms, proponents of the UCC assert that religion-based customs are social constructs that have evolved over time and may not necessarily reflect inherent cultural

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<sup>10</sup> Desouza, P.R. (2015) 'Politics of the Uniform Civil Code in India', *Economic and Political Weekly*, 50(48), pp. 50–57.

<sup>11</sup> Rattan, J. (2004) 'UNIFORM CIVIL CODE IN INDIA: A BINDING OBLIGATION UNDER INTERNATIONAL AND DOMESTIC LAW', *Journal of the Indian Law Institute*, 46(4), pp. 577–587.

identities. They argue that the enforcement of a UCC would not infringe on religious freedom but rather ensure equal rights and justice for all citizens, irrespective of their religious affiliation.

Ultimately, the debate over the UCC in India reflects broader tensions between the principles of secularism, cultural diversity, and gender equality. While advocates emphasize the imperative of upholding constitutional principles of equality and justice, opponents raise legitimate concerns about the preservation of cultural identities and individual freedoms. Moving forward, finding a balance between these competing interests will be essential in shaping India's legal landscape and advancing the cause of gender equality and social justice.

### **CHALLENGES IN IMPLEMENTATION**

The discussion surrounding the implementation of a Uniform Civil Code (UCC) in India is complex and multifaceted, reflecting the intricate socio-cultural landscape and the diverse perspectives held by stakeholders. While proponents advocate for the UCC as a means to promote unity, simplify legal frameworks, and safeguard the rights of marginalized groups, opponents raise concerns about religious freedoms, cultural sensitivities, and the potential for social discord. India's vast size and diverse population present unique challenges that cannot be easily addressed with a one-size-fits-all approach borrowed from Western models. The framers of the Indian Constitution recognized this complexity but were unable to achieve consensus on the adoption of a UCC due to entrenched religious divisions and the need to respect cultural diversity. As a result, India's legal system continues to grapple with inconsistencies and disparities within and between religious communities.

While some argue that the UCC would streamline laws related to marriage, inheritance, succession, and adoption, others caution against the imposition of uniformity on deeply entrenched religious customs and practices.<sup>12</sup> They contend that personal laws are deeply rooted in religious values and should be respected as expressions of cultural identity and freedom of religion. Additionally, concerns about the potential for social unrest and conflict between religious groups underscore the challenges of implementing a UCC in a pluralistic society like India.

Moreover, the judiciary's role in interpreting and enforcing the UCC is limited by constitutional constraints, as the UCC remains a directive principle of state policy rather than an enforceable legal mandate. While the judiciary has expressed support for the idea of a UCC as a means of promoting national integration, the complexities of reconciling religious freedoms with the

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<sup>12</sup> Singh, A.P. (2017) 'UTILITY OF UNIFORM CIVIL CODE', Journal of the Indian Law Institute, 59(2), pp. 178–187.

principles of equality and justice pose significant challenges.

Recent legislative reforms in Hindu and Christian laws, as well as evolving discourse within religious communities, have led to increased consistency and dialogue on family law issues. However, the politicization of the UCC debate and concerns about the government's motivations highlight the need for careful consideration and stakeholder engagement in any proposed reforms. Furthermore, the sensitive nature of religious identity and cultural practices necessitates a cautious and consultative approach to policy-making. Any attempts to impose a UCC must be accompanied by robust stakeholder consultation and a commitment to upholding constitutional principles of equality, freedom of religion, and cultural diversity.

The implementation of a UCC in India presents significant legal, constitutional, and socio-cultural challenges. Achieving consensus on such a complex and contentious issue requires a nuanced understanding of India's diverse religious and cultural landscape, as well as a commitment to upholding the principles of equality, justice, and pluralism. While the road ahead may be fraught with obstacles, it is imperative for policymakers to engage in thoughtful and inclusive dialogue to address the complex issues at stake and work towards a legal framework that respects the rights and identities of all citizens.

## RECOMMENDATIONS

Efforts to address gender justice within the framework of personal laws have garnered attention from various organizations, each offering recommendations for reforms tailored to specific religious and cultural contexts. The Law Commission of India, in its consultation paper on 'Reforms of Family Law', emphasized the importance of protecting religious freedoms while proposing legal amendments aimed at promoting gender equality within existing personal laws. These recommendations include making marriage registration compulsory, establishing a uniform age for marriage consent, declaring second marriages through religious conversion void, and ensuring equal rights to property for both partners upon marriage and divorce. Additionally, the Commission highlighted the need for religion-specific reforms, such as amending laws that perpetuate gender inequality in Hindu, Muslim, and Parsi personal laws.<sup>13</sup>

Similarly, the Nikahnama Group in Bombay advocated for reforms within Muslim Personal Law, particularly focusing on outlawing the practice of 'Triple Talaq' and ensuring adequate maintenance and inheritance rights for divorced women. Meanwhile, the Joint Women's Programme (JWP), a non-profit organization, drafted a proposal for reforms to Christian Personal

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<sup>13</sup> Uma, S. (2023) 'Law Commission of India and Uniform Civil Code: Looking Back, Looking Forward', Economic and Political Weekly, 58(40).

Law (1994), addressing issues such as the lack of uniformity in marriage registration, unequal grounds for divorce between men and women, and the absence of maintenance rights for divorced women. These initiatives highlight the diverse efforts aimed at reforming personal laws to promote gender justice and equality.

However, despite these efforts, the implementation of a Universal Civil Code (UCC) remains a contentious issue, with concerns about potentially undermining religious freedoms and cultural identities. In light of this, it is suggested that a gradual approach to legal reforms be adopted, focusing on refining existing personal laws while preserving religious diversity. Establishing a family law board within the Union law Ministry could facilitate this process, allowing for the examination and refinement of current family legislation. Additionally, a temporary dual framework for family law could be implemented, drawing upon the most exemplary principles of contemporary family law while respecting the distinct personal laws of religious communities. Under this proposed framework, unacceptable elements within personal laws would be removed, and communities would be given the opportunity to support or reject specific practices through a vote. Practices with significant community support would be mandated, while those lacking support could be reformed or modernized as needed. Over time, this dual system would lead to the gradual obsolescence of separate personal laws, aligning with the vision outlined in Article 44 of the Constitution.

Addressing gender justice within personal laws requires a nuanced approach that balances the preservation of religious freedoms with the promotion of gender equality. By implementing incremental legal reforms and respecting the diverse religious and cultural identities of Indian society, it is possible to work towards the realization of a Universal Civil Code that reflects the principles of equality and justice for all citizens.

## **CONCLUSION**

In conclusion, the discourse surrounding the Uniform Civil Code (UCC) in India encapsulates complex issues of secularism, pluralism, and gender equality. The implementation of a UCC is viewed as a crucial step towards secularizing and integrating India's diverse society, particularly in matters of personal law. By guaranteeing gender equality and equal status for all individuals, regardless of their religious or community affiliations, a UCC seeks to address the misogynistic elements inherent in religion-based personal laws.

The adoption of a UCC is advocated as a means to promote gender equality and modernize Indian society by discarding archaic customs and practices that perpetuate discrimination against women. It is envisioned as a framework that draws upon the best features of personal laws from

various religions and other countries, informed by broad consultations with stakeholders. By standardizing civil laws, a UCC aims to foster national integration by eliminating conflicting ideologies and disparate loyalties to divergent legal systems.

In navigating the discourse surrounding the UCC, it is imperative to recognize the need for careful consideration of religious freedoms, cultural sensitivities, and the rights of minorities. While the pursuit of gender equality is a central tenet of the UCC, it must be balanced with respect for diverse religious beliefs and practices. Moreover, any implementation of a UCC should prioritize inclusivity, transparency, and equity, ensuring that the voices of all stakeholders, particularly women, are heard and represented.

Ultimately, the journey towards implementing a UCC in India requires a nuanced understanding of the country's socio-political landscape and a commitment to upholding the principles of secularism, pluralism, and gender equality. By navigating these complexities with sensitivity and pragmatism, India can strive towards a legal framework that reflects the values of a modern, inclusive, and egalitarian society.

