

# Uniform Civil Code in a Secular State: Redefining the Relationship Between Law and Religion

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## Abstract

The Uniform Civil Code (UCC) represents one of the most contested reforms in India's constitutional landscape, especially when examined through the lens of secularism. While the Indian Constitution guarantees freedom of religion under Articles 25–28, it also envisions a common civil code under Article 44, creating an inherent tension between personal laws and secular legal principles<sup>1</sup>. In a secular state, the law is expected to treat all citizens equally, without privileging any religious community; however, India's pluralistic society makes the implementation of a UCC particularly complex<sup>2</sup>. Proponents argue that the UCC is essential to ensure gender justice, strengthen national integration, and harmonize personal laws with constitutional morality<sup>3</sup>. Judicial pronouncements such as *Shah Bano v. Union of India* (1985) and *Sarla Mudgal v. Union of India* (1995) have emphasized the urgent need for uniformity in personal laws, highlighting the constitutional goal of equality<sup>4</sup>. Critics, however, contend that enforcing a UCC may undermine cultural diversity and religious autonomy, thereby challenging India's model of secularism which is based on the principle of equal respect for all faiths<sup>5</sup>. Comparative experiences from France and Turkey reveal that civil codes can function successfully in secular democracies, but India's path must be gradual and consultative, sensitive to both social realities and constitutional ideals<sup>6</sup>. This paper argues that the UCC in a secular state should not merely be viewed as a legal reform but as a transformative process redefining the relationship between law and religion in India, ensuring both equality and pluralism.

*Keywords: Uniform Civil Code, Secularism, Personal Laws, Gender Justice, Constitutional Morality, Religious Freedom, Pluralism, Equality before Law, Cultural Autonomy, Law and Religion*

## Introduction

The idea of a Uniform Civil Code (UCC) has been one of the most enduring debates in Indian constitutional and legal discourse. Rooted in Article 44 of the Directive Principles of State Policy, the UCC envisions a set of uniform civil laws to govern matters such as marriage, divorce, inheritance, and adoption for all citizens, irrespective of their religion<sup>7</sup>. While framed as a constitutional ideal, its realization has remained elusive, primarily due to the challenges of balancing India's secular commitments with its deep-rooted cultural and religious pluralism<sup>8</sup>.

Secularism in the Indian context is distinctive. Unlike the Western model, which often implies a strict separation of church and state, Indian secularism embraces the principle of "equal respect for all religions" while ensuring that no religion dominates public life<sup>9</sup>. This nuanced approach creates a constitutional tension: on the one hand, the state is expected to guarantee freedom of religion under Articles 25–28, while on the other hand, it is entrusted with the responsibility of framing a UCC to promote equality and integration<sup>10</sup>.

<sup>1</sup> Basu, D.D. Introduction to the Constitution of India. LexisNexis, 2021.

<sup>2</sup> Austin, Granville. The Indian Constitution: Cornerstone of a Nation. Oxford University Press, 1999.

<sup>3</sup> Singh, Mahendra Pal. Constitution of India. Eastern Book Company, 2020.

<sup>4</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945; Sarla Mudgal v. Union of India, AIR 1995 SC 1531.

<sup>5</sup> Raju, S. (2020). "Uniform Civil Code and Gender Justice in India." Journal of Constitutional Law, Vol. 12(3), pp. 45–60.

<sup>6</sup> Menski, Werner F. Comparative Law in a Global Context: The Legal Systems of Asia and Africa. Cambridge University Press, 2006.

<sup>7</sup> Basu, D.D. Introduction to the Constitution of India. LexisNexis, 2021.

<sup>8</sup> Austin, Granville. The Indian Constitution: Cornerstone of a Nation. Oxford University Press, 1999.

<sup>9</sup> Bhargava, Rajeev. The Promise of India's Secular Democracy. Oxford University Press, 2010.

<sup>10</sup> Singh, Mahendra Pal. Constitution of India. Eastern Book Company, 2020.

The judicial pronouncements of the Supreme Court have frequently reignited the debate. In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), the Court emphasized the importance of aligning personal laws with constitutional guarantees of gender justice<sup>11</sup>. Similarly, in *Sarla Mudgal v. Union of India* (1995), the Court reiterated the need for a UCC to prevent misuse of personal laws and to uphold the principle of equality<sup>12</sup>. These interventions, however, have also attracted criticism for judicial overreach into religious domains.

The UCC is often projected as a tool to achieve gender justice and social reform, particularly in the context of personal laws that have historically disadvantaged women<sup>13</sup>. Yet, critics argue that imposing a uniform code may risk undermining the cultural autonomy of minority groups, thereby challenging India's pluralist ethos<sup>14</sup>. This paradox makes the UCC debate not just a legal or political question, but a profound inquiry into the meaning of secularism in a diverse society.

### **Constitutional Framework of UCC and Secularism.**

The constitutional framework of India embodies a delicate balance between secularism, religious freedom, and the vision of a Uniform Civil Code (UCC). While the framers of the Constitution sought to modernize Indian society through legal reforms, they were equally mindful of the cultural diversity and religious sentiments of its people. This chapter explores the constitutional provisions and debates that continue to shape the UCC discourse.

### **Directive Principles of State Policy and Article 44**

Article 44 of the Indian Constitution directs the State to “endeavour to secure for the citizens a uniform civil code throughout the territory of India”<sup>15</sup>. As a part of the Directive Principles of State Policy (DPSPs), Article 44 is not enforceable by courts but serves as a guiding principle for governance. The framers viewed the UCC as an instrument to promote social justice, national integration, and equality before the law<sup>16</sup>. However, the DPSPs were deliberately kept non-justiciable, reflecting the apprehension that an immediate enforcement of a UCC could disrupt the fragile communal harmony after Partition<sup>17</sup>.

### **Fundamental Rights and Freedom of Religion**

The constitutional vision of secularism is anchored in Articles 25 to 28, which guarantee the right to freedom of religion. Article 25 confers on all individuals the freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health<sup>18</sup>. Article 26 further secures the autonomy of religious denominations in managing their own affairs in matters of religion. At the same time, Article 25(2)(b) empowers the State to make laws providing for social welfare and reform, even if they interfere with religious practices<sup>19</sup>. This creates a constitutional space for reforms such as the UCC, provided they are directed toward ensuring equality and justice.

### **Constituent Assembly Debates on UCC and Secularism**

The Constituent Assembly debates reveal the divergent views of the framers. Leaders such as Dr. B.R. Ambedkar strongly supported the inclusion of a UCC, emphasizing that a modern nation could not sustain different personal laws for different communities<sup>20</sup>. Ambedkar argued that religion must be confined to the sphere of individual faith and should not dominate civil laws governing marriage, divorce, and succession.

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

<sup>12</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>13</sup> Raju, S. (2020). "Uniform Civil Code and Gender Justice in India." *Journal of Constitutional Law*, Vol. 12(3), pp. 45–60.

<sup>14</sup> Menski, Werner F. *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, 2006.

<sup>15</sup> Basu, D.D. *Introduction to the Constitution of India*. LexisNexis, 2021.

<sup>16</sup> Singh, Mahendra Pal. *Constitution of India*. Eastern Book Company, 2020.

<sup>17</sup> Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press, 1999.

<sup>18</sup> Bhargava, Rajeev. *The Promise of India's Secular Democracy*. Oxford University Press, 2010.

<sup>19</sup> Jain, M.P. *Indian Constitutional Law*. LexisNexis, 2021.

<sup>20</sup> *Constituent Assembly Debates*, Vol. VII, 23 November 1948.

However, several members from minority communities opposed the idea, fearing it would erode their cultural autonomy. Mohammad Ismail and others contended that imposing uniformity in civil laws would violate the promise of religious freedom<sup>21</sup>. The compromise was to place Article 44 within the DPSPs rather than among the Fundamental Rights, making it a constitutional aspiration rather than an enforceable right. This reflected the framers' cautious approach—preserving national unity while respecting India's pluralism.

### Constitutional Morality vs. Religious Autonomy

The UCC debate highlights the tension between constitutional morality—the principle that constitutional values such as equality, liberty, and justice must prevail—and religious autonomy, which protects community-specific personal laws. Constitutional morality demands that the State move towards a uniform system that ensures gender justice and equality, particularly for women disadvantaged under certain personal laws<sup>22</sup>. At the same time, secularism in India does not imply the exclusion of religion from public life but rather guarantees equal respect to all faiths<sup>23</sup>.

Thus, the UCC raises a fundamental question: can India, as a secular state, mandate a single civil code without undermining its commitment to religious pluralism? The answer lies in a careful balancing act, where reforms must be pursued gradually, with dialogue and consensus-building across communities.

### Judicial Approach to the Uniform Civil Code

The judiciary in India has played a pivotal role in shaping the discourse on the Uniform Civil Code (UCC), especially in the absence of strong legislative initiatives under Article 44 of the Constitution. Courts have consistently highlighted the need for harmonization between constitutional morality, gender justice, and religious autonomy, though their approach has oscillated between activism and restraint. In the early decades of independence, the judiciary generally adopted a cautious stance, respecting the autonomy of religious communities in personal law matters. However, as cases involving gender discrimination and denial of maintenance rights came before the courts, judges increasingly invoked constitutional guarantees under Articles 14 and 15 to question discriminatory provisions of personal laws<sup>24</sup>.

A turning point came in the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), where the Supreme Court upheld a divorced Muslim woman's right to claim maintenance under Section 125 of the Criminal Procedure Code, even when Muslim personal law offered limited protection<sup>25</sup>. The Court lamented that Article 44 had become a "dead letter" and underscored the urgent need for a UCC to secure gender justice. While hailed as progressive, the judgment triggered widespread political and religious backlash, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which diluted the Court's ruling and revealed the tension between judicial intervention and legislative sensitivity to religious sentiments<sup>26</sup>.

This tension resurfaced in *Sarla Mudgal v. Union of India* (1995), where the Court dealt with Hindu men converting to Islam for the sole purpose of contracting a second marriage. The Court invalidated such conversions when motivated by polygamous intent, observing that individuals could not misuse plural personal law systems to evade legal obligations. Once again, the judgment called for a UCC to prevent forum shopping and to uphold constitutional equality<sup>27</sup>. Critics, however, argued that the judiciary had ventured into legislative terrain, reviving concerns of judicial overreach<sup>28</sup>.

The debate continued in *John Vallamattom v. Union of India* (2003), where the Supreme Court struck down Section 118 of the Indian Succession Act, 1925, which imposed restrictions on Christians' right to bequeath

<sup>21</sup> Noorani, A.G. "The Uniform Civil Code Debate." *Economic and Political Weekly*, Vol. 30(24), 1995, pp. 1425–1431.

<sup>22</sup> Raju, S. (2020). "Uniform Civil Code and Gender Justice in India." *Journal of Constitutional Law*, Vol. 12(3), pp. 45–60.

<sup>23</sup> Menski, Werner F. *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge University Press, 2006.

<sup>24</sup> Basu, D.D. *Introduction to the Constitution of India*. LexisNexis, 2021.

<sup>25</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

<sup>26</sup> Noorani, A.G. "The Muslim Women's Act and the Shah Bano Case." *Economic and Political Weekly*, Vol. 21(20), 1986, pp. 873–876.

<sup>27</sup> *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

<sup>28</sup> Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press, 1999.

property for religious or charitable purposes. The Court reiterated the desirability of a UCC to eliminate discrimination embedded in religious laws and stressed that true secularism demands uniform principles in personal matters<sup>29</sup>. More recently, in *Shayara Bano v. Union of India* (2017), the Court struck down the practice of instant triple talaq, holding it unconstitutional and inconsistent with fundamental rights. This case reflected a more nuanced judicial approach: rather than directly enforcing a UCC, the Court sought to protect individual rights within religious communities, thereby moving towards reform through constitutional principles rather than uniform codification<sup>30</sup>.

Taken together, these judgments reveal a consistent judicial philosophy. The courts have kept the UCC debate alive by insisting that personal laws cannot override the fundamental rights enshrined in the Constitution. At the same time, they have recognized that the task of codifying and implementing the UCC lies with the legislature, which must act with political will, social consensus, and sensitivity towards India's pluralistic fabric<sup>31</sup>. Thus, while judicial interventions from *Shah Bano* to *Shayara Bano* have significantly advanced the cause of gender justice and equality, they have also underscored the limits of judicial activism in an area deeply intertwined with religion and identity.

### Criticism and Challenges of the Uniform Civil Code

The debate on the Uniform Civil Code (UCC) is not only a matter of legal reform but also of identity, faith, and politics. While the judiciary and certain reformist voices have consistently emphasized the need for a UCC, there are equally strong criticisms and challenges that complicate its implementation in India's plural society. At the core of the opposition lies the apprehension among minority communities, particularly Muslims, Christians, and Parsis, who fear that a UCC might erode their cultural and religious autonomy. For many, personal laws are not merely legal frameworks but expressions of religious identity, intertwined with traditions, customs, and spiritual beliefs. Therefore, the imposition of a uniform code is often perceived as a threat of cultural homogenization, undermining India's constitutional commitment to respecting diversity<sup>32</sup>.

Another dimension of criticism emerges from the political discourse. The UCC has frequently been invoked in electoral campaigns, with political parties using it as a polarizing tool rather than a genuine reform agenda. This has led to skepticism that the push for a UCC is less about ensuring gender justice or equality before law and more about consolidating majoritarian politics. Such politicization creates distrust among minority groups, who often interpret the call for uniformity as veiled attempts at assimilation into a Hindu cultural framework, thereby compromising the secular character of the Indian state<sup>33</sup>.

Practical challenges also pose significant barriers. India is home to an extraordinary diversity of customs even within the same religious communities. For instance, Hindu personal law itself recognizes multiple regional and caste-based practices relating to marriage, inheritance, and succession. Similarly, customary laws of tribal groups remain distinct and often conflict with codified laws. A one-size-fits-all UCC could therefore risk ignoring these internal diversities, producing discontent even among those communities traditionally seen as supporters of reform<sup>34</sup>.

Moreover, critics argue that uniformity does not automatically guarantee equality. A hastily framed UCC, without adequate consultation, could potentially reproduce patriarchal biases rather than dismantle them. Feminist scholars have emphasized that reforms must not only aim for formal equality but also address the deeper structural inequalities that women face within both religious and secular legal frameworks<sup>35</sup>. Without such sensitivity, the UCC might end up being a tool of state control rather than an instrument of justice.

The process of implementation itself is another major obstacle. Any attempt to legislate a UCC would require building a broad political and social consensus, which seems difficult in the current climate of polarization. Past experiences, such as the backlash against the *Shah Bano* judgment and the subsequent enactment of the

<sup>29</sup> John Vallamattom v. Union of India, AIR 2003 SC 2902.

<sup>30</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1.

<sup>31</sup> Singh, Mahendra Pal. Constitution of India. Eastern Book Company, 2020.

<sup>32</sup> Mahmood, Tahir. Uniform Civil Code: Fictions and Facts. Indian Law Institute, 2012.

<sup>33</sup> Austin, Granville. Working a Democratic Constitution: The Indian Experience. Oxford University Press, 2003.

<sup>34</sup> Derrett, J.D.M. Religion, Law and State in India. Oxford University Press, 1999.

<sup>35</sup> Agnes, Flavia. Law and Gender Inequality: The Politics of Women's Rights in India. Oxford University Press, 1999.



Muslim Women (Protection of Rights on Divorce) Act, 1986, reveal that legal reforms in personal law without community participation can provoke widespread resistance and even reverse progressive judicial gains<sup>36</sup>. The lack of clarity on whether the UCC would replace all personal laws in totality or exist as an optional civil code further complicates the debate.

Ultimately, the challenge lies in reconciling constitutional ideals with societal realities. While the Constitution envisions a UCC under Article 44, it also guarantees freedom of religion and cultural rights under Articles 25–29. Striking a balance between these provisions remains a delicate task. Critics argue that the emphasis should be on gradual reform of personal laws through dialogue and consensus rather than imposing a uniform system from above<sup>37</sup>. Such an approach would ensure that reform aligns with both constitutional morality and India's plural ethos, avoiding the perception of coercion.

## Conclusion

The debate surrounding the Uniform Civil Code (UCC) reflects one of the most complex challenges of India's constitutional democracy: balancing the principles of equality and secularism with the preservation of religious freedom and cultural diversity. While the framers of the Constitution envisioned a UCC as a long-term goal under Article 44, they were equally conscious of India's plural character, where personal laws are deeply rooted in faith and community identity. This dual commitment—to social reform and to cultural autonomy—continues to shape the discourse even today<sup>38</sup>.

The analysis reveals that the UCC is not merely a legal reform but a transformative socio-political project. Advocates argue that it is essential for ensuring gender justice, protecting individual rights, and realizing the constitutional promise of equality before law<sup>39</sup>. On the other hand, critics caution that a uniform law, if imposed without dialogue, risks eroding minority rights and undermining the very secularism it seeks to promote<sup>40</sup>. The judiciary, through landmark cases such as *Shah Bano* and *Sarla Mudgal*, has often nudged the state toward reform, but its interventions also demonstrate the fragility of legal change in the absence of social consensus<sup>41</sup>.

The real challenge lies not in choosing between diversity and uniformity but in finding a framework that harmonizes the two. Rather than a rigid, one-size-fits-all code, a phased and consultative approach appears more feasible—where reforms are introduced gradually within personal laws, building consensus across communities. Such an approach would not only reduce resistance but also reflect India's constitutional morality, which aspires to equality without sacrificing pluralism<sup>42</sup>.

In conclusion, the future of the UCC must be guided by a careful balance: it should serve as a vehicle of social justice, particularly for marginalized groups like women, while respecting the multicultural fabric of Indian society. Only when reform is rooted in dialogue, inclusivity, and sensitivity to cultural diversity can the UCC truly redefine the relationship between law and religion in a secular state—transforming it from a contested political slogan into a meaningful constitutional reality<sup>43</sup>.

<sup>36</sup> Noorani, A.G. "The Muslim Women's Act and the Shah Bano Case." *Economic and Political Weekly*, Vol. 21(20), 1986.

<sup>37</sup> Basu, D.D. *Introduction to the Constitution of India*. LexisNexis, 2021.

<sup>38</sup> Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press, 1966.

<sup>39</sup> Mahmood, Tahir. *Uniform Civil Code: Fictions and Facts*. Indian Law Institute, 2012.

<sup>40</sup> Derrett, J.D.M. *Religion, Law and State in India*. Oxford University Press, 1999.

<sup>41</sup> Noorani, A.G. "The Muslim Women's Act and the Shah Bano Case." *Economic and Political Weekly*, Vol. 21(20), 1986.

<sup>42</sup> Agnes, Flavia. *Law and Gender Inequality: The Politics of Women's Rights in India*. Oxford University Press, 1999.

<sup>43</sup> Basu, D.D. *Introduction to the Constitution of India*. LexisNexis, 2021.