
UNIFORM CIVIL CODE IN INDIA A CONSTITUTIONAL AND LEGAL PERSPECTIVE

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INTRODUCTION

Few constitutional questions in India provoke as much debate as the Uniform Civil Code (UCC). At its heart lies a simple but contentious idea: should all citizens, regardless of religion, be governed by one common set of civil laws on marriage, divorce, inheritance, and adoption? Nearly 75 years after the Constitution came into force, this question remains unresolved at the national level, caught between constitutional aspiration, religious freedom, and political sensitivity.

Constitutional Basis: Article 44

The UCC's textual home is Article 44, located in Part IV of the Constitution — the Directive Principles of State Policy (DPSP). It reads:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Crucially, Directive Principles are not justiciable — Article 37 explicitly states they "shall not be enforceable by any court," but are nevertheless "fundamental in the governance of the country." This places UCC in a unique constitutional position: it is a directive the State ought to pursue, but citizens cannot approach a court to compel its enactment.

Why the Constituent Assembly Chose This Path

During the framing of the Constitution, members debated whether UCC should be a Fundamental Right or a Directive Principle. Dr. B.R. Ambedkar, while personally supportive of eventual legal uniformity, acknowledged the deep sensitivities around religious personal laws in a newly independent and religiously diverse nation. The Assembly ultimately placed UCC among the Directive Principles — a goal to be achieved through gradual consensus-building, not immediate legislative imposition.

Personal Laws: The Current Landscape

India presently operates a pluralistic personal law system, where matters of marriage, divorce, succession, and adoption are governed differently depending on religious community:

- Hindus (including Buddhists, Sikhs, and Jains) — governed by codified laws such as the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956
- Muslims — governed largely by uncodified personal law derived from Islamic jurisprudence, alongside statutes like the Muslim Women (Protection of Rights on Divorce) Act, 1986
- Christians — governed by the Indian Christian Marriage Act, 1872, and the Indian Divorce Act, 1869
- Parsis — governed by the Parsi Marriage and Divorce Act, 1936

A UCC would replace this patchwork with a single, religion-neutral civil code.

Key Judicial Milestones

Shah Bano Case (1985)

In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court awarded maintenance to a divorced Muslim woman under the secular provision of Section 125 of the Code of Criminal Procedure, extending beyond the iddat period prescribed by Muslim personal law. The judgment sparked significant political controversy, and Parliament responded with the Muslim Women (Protection of Rights on Divorce) Act, 1986, which curtailed the ruling's effect for Muslim women specifically.

Sarla Mudgal Case (1995)

The Court examined a case involving conversion to Islam undertaken solely to contract a second marriage, effectively circumventing bigamy laws applicable to Hindus. The bench urged the government to work toward implementing Article 44, observing that a common civil code would help prevent such misuse of religious conversion.

John Vallamattom Case (2003)

The Supreme Court struck down a provision of the Indian Succession Act that restricted the testamentary freedom of Christians, and reiterated — again — the desirability of a uniform code, criticizing the continued legislative inaction on Article 44.

Shayara Bano Case (2017)

In this landmark judgment, the Supreme Court declared the practice of instant triple talaq (talaq-e-biddat) unconstitutional. While falling short of a full UCC, it signaled the judiciary's willingness to strike down personal law practices found to be arbitrary or discriminatory, particularly toward women.

The Article 44 vs. Article 25 Tension

The constitutional debate around UCC centers on a tension between two provisions:

- Article 25 guarantees the fundamental right to freedom of conscience and the free profession, practice, and propagation of religion, subject to public order, morality, and health.
- Article 44 directs the State toward legal uniformity across religious communities.

Courts have generally resolved this tension using the "essential religious practices" test — a doctrine holding that Article 25 protects only those practices that are essential and integral to a religion, not every custom associated with it. Under this reasoning, courts have held that the State can reform personal laws (marriage age, inheritance rights, divorce procedures) without violating religious freedom, since such matters are seen as secular activities associated with religion rather than essential religious tenets themselves.

Recent Developments

Goa's Civil Code — Goa remains the only Indian state with a functioning uniform civil code, a legacy of the Portuguese Civil Code of 1867 that was retained after Goa's liberation and integration into India in 1961. It applies uniformly to all Goan residents regardless of religion.

Uttarakhand UCC, 2024 — In a significant development, Uttarakhand became the first Indian state to enact a comprehensive UCC in independent India. The law standardizes rules on marriage registration, divorce, succession, and live-in relationship declarations across religious communities, though it carries specific exemptions for Scheduled Tribes, in line with constitutional protections for tribal customary law under Article 366(25) and the Fifth/Sixth Schedules.

Law Commission Review — The 22nd Law Commission of India examined the UCC question afresh and invited public submissions, reflecting continued government and judicial interest, though a national-level UCC bill has not yet been enacted by Parliament.

Arguments For and Against

Arguments in favor:

- Advances gender justice, since several existing personal laws are seen as unequal in their treatment of women (inheritance shares, divorce grounds, maintenance rights)
- Promotes national integration by reducing religion-based legal distinctions
- Simplifies the legal system by replacing multiple, sometimes conflicting, personal law regimes
- Aligns with a model of secularism based on equal treatment under law, rather than differentiated treatment by religion

Arguments against:

- Raises concern among religious and cultural minorities about majoritarian imposition of a code shaped by the majority community's practices
- Threatens diversity in family law traditions that communities view as integral to their identity
- Poses practical difficulty in codifying widely varying customary practices, including those of Scheduled Tribes, who enjoy specific constitutional protection for their customary law
- Some reform advocates argue for internal reform within each community's personal law (as seen with triple talaq) rather than a single, uniform code imposed externally

CONCLUSION

The Uniform Civil Code sits at an unresolved intersection of constitutional aspiration, religious liberty, and legal reform. Article 44 remains a directive rather than a right — a signpost pointing toward a goal the framers considered desirable but not yet ripe for compulsion. Six decades of judicial commentary, from Shah Bano to Shayara Bano, have consistently nudged the State toward legal uniformity, particularly for the protection of women's rights within personal law. Yet the political and social complexity of implementing a truly national UCC means the movement continues to unfold gradually — through state-level legislation, incremental judicial reform, and an ongoing, unresolved national conversation about what equal citizenship under law should mean in a religiously diverse republic.