



A STUDY OF CONSTITUTIONAL TENSIONS: UNIFORM CIVIL CODE, FAMILY LAW, AND JUDICIAL INTERPRETATIONS IN INDIA

Padire Keerthi Teja Reddy

PhD Research Scholar, Department of Law, Vikrant University, Gwalior, Madhya Pradesh, India

Abstract

This paper looks at the nature of this unresolved constitutional conflict between the Uniform Civil Code (UCC) in India and the Fundamental Rights to religious freedom and cultural autonomy under Articles 25-29 and the corresponding Directive Principle of the State in Article 44. Personal laws related to marriage, divorce, succession, adoption and maintenance still exist in a disorganized state, based on religion, and were left as a subject of gradual change rather than outright constitutionally mandated. Modelled on several pivotal cases such as those of *Shah Bano*, *Sarla Mudgal*, *Danial Latifi*, *Shayara Bano* and *John Vallamattom*, the study brings out the judiciary's role as a de facto reform agent, which it has repeatedly assumed in its interpretation of Article 44, compelling the legislature to take action while ensuring that no majoritarian infringement upon minority rights is allowed. In this paper, doctrinal analysis combined with comparative state-level data (the Goa Civil Code, the 2024 Uttarakhand UCC) is used to argue that uniformity has been deliberately included in the constitutional design of India as an aspirational goal and is not a strict requirement. The paper suggests that any progress toward a national UCC will need to balance gender justice, religious pluralism, and federalism, and that judicial rulings, even catalytic ones, must be accompanied by legislative consensus or agreement.

Keywords: Uniform Civil Code, Personal Law, Article 44, Judicial Activism, Religious Freedom, Gender Justice, Indian Constitution, Family Law Reform

1. Introduction

The idea of a Uniform Civil Code (UCC) occupies a peculiarly contested space in Indian constitutional discourse. Article 44 of the Constitution of India, located within Part IV (Directive Principles of State Policy), declares that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India" (Constitution of India, 1950, art. 44). Unlike fundamental rights enshrined in Part III, directive principles are explicitly non-justiciable under Article 37, meaning no citizen can approach a court to compel the state to enact a UCC. Yet this ostensibly aspirational provision has generated seven decades of litigation, political mobilization, and judicial commentary, making it one of the most invoked—and least implemented—clauses in the Constitution.

The tension is structural. India's personal law system, inherited substantially from colonial-era administrative practice, permits Hindus, Muslims, Christians, Parsis, and other religious communities to be governed by distinct statutory and customary regimes in matters of marriage, divorce, succession, guardianship, and maintenance (Menski, 2001). The constitutional protection of the plurality has been ensured by articles 25-28 of the Constitution that provide for freedom of religion and the autonomy of religious denominations to run their own affairs; and article 29, which guarantees cultural rights of minorities. This contradiction was very much understood by the Constitution's makers, foremost of whom was B.R. Ambedkar. Ambedkar argued for keeping Article 44 as a future objective because it was politically and socially unfeasible to be enforced immediately; he pointed out that a UCC could be optional in application after the Act's enactment and only the citizens would be given a choice to be governed by it (Constituent Assembly Debates, Vol. VII, 1948).

In this paper, the author examines the practical implications of this intentional constitutional tension and the part played by the judiciary in balancing individual and gender equality with religious and cultural autonomy in groups. It is divided into five sections. Section 2 provides an overview of the historical and constitutional basis of the personal law system. Section 3 provides a doctrinal review of key Supreme Court cases that have influenced the UCC debate. In Section 4, comparative data of existing uniform and quasi-uniform civil codes in India (such as Goa and Uttarakhand) are provided. The tensions between gender justice, religious freedom, and federalism are explored throughout this section and are summarized in the final section, which ends with a discussion of the future.



2. Historical and Constitutional Background

2.2 The United States and its Legal Systems

The British colonial administration formalized personal laws for each religious group to prevent interference in areas it considered “religious” and to show control over criminal and commercial law (Galanter, 1989). This produced statutes such as the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, and, for Muslims, a body of law derived substantially from uncodified Shariat principles alongside the Muslim Personal Law (Shariat) Application Act, 1937, and the Dissolution of Muslim Marriages Act, 1939.

2.2 The Constituent Assembly Compromise

The debate over a common civil code was one of the most contentious in the Constituent Assembly. Members such as Mohammad Ismail Sahib and Naziruddin Ahmad opposed a uniform code as an infringement on Article 25's guarantee of religious freedom, while K.M. Munshi and Alladi Krishnaswami Ayyar argued that a secular state could not permit civil law to remain hostage to religious identity (Constituent Assembly Debates, Vol. VII, 1948). The resulting compromise placed the UCC in the non-justiciable directive principles, deferring the question to future legislatures rather than resolving it at the founding moment.

2.3 Article 44 in the Constitutional Architecture

Table 1 below summarizes the constitutional provisions most relevant to the UCC debate and their doctrinal function.

Table 1. Key Constitutional Provisions Relevant to the UCC Debate

Article	Provision	Nature	Relevance to UCC
Art. 14	Equality before law	Fundamental Right (justiciable)	Basis for challenging discriminatory personal laws
Art. 15(1)	Prohibition of discrimination on grounds of religion, sex	Fundamental Right	Invoked against gender-discriminatory personal law provisions
Art. 21	Right to life and personal liberty	Fundamental Right	Expanded to include dignity in matrimonial matters
Art. 25	Freedom of religion, subject to public order, morality, health	Fundamental Right	Basis for defending personal law autonomy
Art. 26	Right of religious denominations to manage their own affairs	Fundamental Right	Invoked by religious bodies against state interference
Art. 29	Protection of interests of minorities	Fundamental Right	Cited by minority communities against uniformity
Art. 37	Directive Principles not enforceable by courts	Constitutional design	Renders Art. 44 non-justiciable
Art. 44	State shall endeavour to secure a UCC	Directive Principle	Core provision of the debate

Source: Constitution of India (1950).

This structural placement is decisive: Article 44 cannot be judicially enforced, yet courts have repeatedly used it as an interpretive aid. This normative aspiration colors the reasoning of judgments even where it cannot find a cause of action.



3. Judicial Interpretations: A Doctrinal Analysis

3.1 Mohd. Ahmed Khan v. Shah Bano Begum (1985)

The Shah Bano case is the pivotal case in the judicial history of the UCC. Shah Bano was a divorced Muslim woman, aged 62, who filed a claim for maintenance under Section 125 of the Code of Criminal Procedure, 1973, which was a secular provision that applied to everyone, irrespective of their religion. The Supreme Court, presided over by the Chief Justice, Y.V. Chandrachud, ruled that Section 125 CrPC was applicable irrespective of personal law and that in case of Muslim women, they had the right to receive maintenance beyond the iddat period even if they were unable to support themselves (Mohd. The case of Ahmed Khan v. Shah Bano Begum, 1985. Importantly, the Court used Article 44, which reads: "A common Civil Code will further the national integration cause by eliminating conflicting loyalties to the laws with different ideologies. Significantly, the Court explicitly referred to Article 44, which reads: "A common Civil Code will further the cause of national integration by removing disparate loyalties to laws having conflicting ideologies. Ahmed Khan v. Shah Bano Begum, 1985, para 32).

This judgment brought out strong political opposition from some Muslims who saw it as an infringement on Islamic law. Instead, the government of Rajiv Gandhi implemented the Muslim Women (Protection of Rights on Divorce) Act, 1986, which significantly reduced the impact of the judgment, as divorced Muslim women were excluded from Section 125 CrPC and only provided for a narrower maintenance clause based on the iddat period (Muslim Women (Protection of Rights on Divorce) Act, 1986). In this episode, one of the recurring themes is the judicial decisions that often lead to legislative backlash over religion.

3.2 Sarla Mudgal v. Union of India (1995)

A decade later, the Supreme Court in Sarla Mudgal discussed the practice of Hindu males converting to Islam, thereby breaking the prohibition of bigamy under Muslim personal law, but avoiding the Hindu Marriage Act's ban on bigamy. In Sarla Mudgal v. Union of India (1995), Justice Kuldip Singh declared such conversions invalid for circumventing the marriage law, and reiterated Article 44 and compelled the government to file an affidavit stating what steps it had taken to prevent such marriages. The Court emphatically said that the successive governments were "lip-serving" this constitutional obligation" (Sarla Mudgal v. Union of India, 1995, para 34).

3.3 John Vallamattom v. Union of India (2003)

This case analysed Section 118 of the Indian Succession Act, 1925, which made provisions for imposing restrictions on Christians bequeathing property for religious and charitable purposes. Chief Justice V.N. Khare struck down the provision as violative of Article 14, and reiterated—citing both Shah Bano and Sarla Mudgal—that Article 44 remained "a dead letter" despite repeated judicial exhortation (John Vallamattom v. Union of India, 2003).

3.4 Danial Latifi v. Union of India (2001)

Here the Supreme Court was asked to test the constitutionality of the 1986 Act passed in response to Shah Bano. Rather than striking it down, the Court adopted a harmonizing interpretation, holding that the Act must be read to require a divorced Muslim woman's former husband to make "reasonable and fair provision" extending beyond the iddat period, effectively restoring much of the substance of the Shah Bano ruling through statutory interpretation rather than confrontation (Danial Latifi v. Union of India, 2001). Such a stance on the part of the court demonstrates a judicial approach to ensuring "substantive" gender justice without slamming head-on into religiously contentious laws.

3.5 Shayara Bano v. Union of India (2017)

The triple talaq case was the most important UCC-related judgment in the last 20 years. In Shayara Bano v Union of India (2017, a 3:2 majority of a five-judge bench declared the practice of instantaneous and irrevocable talaq-e-biddat as



unconstitutional as it was ‘arbitrary’ in the sense of Article 14, but was justified as an essential religious practice under Article 25. The judgment paved the way for the Muslim Women (Protection of Rights on Marriage) Act, 2019, that made the practice illegal. Notably, most did not call upon Article 44, but instead focused upon Article 14's arbitrariness doctrine, which shows the judiciary's prudence in invoking the UCC directly, but with the intent of producing a uniformizing legal result.

3.6 Summary of Judicial Trends

Table 2. Landmark Judgments and Their Relationship to the UCC Debate

Case	Year	Core Issue	Outcome	Reference to Art. 44
Mohd. Ahmed Khan v. Shah Bano Begum	1985	Maintenance for divorced Muslim woman	Upheld secular maintenance law	Explicit, strong
Sarla Mudgal v. Union of India	1995	Bigamy via religious conversion	Second marriage held void	Explicit, directive
John Vallamattom v. Union of India	2003	Christian succession law restriction	Provision struck down (Art. 14)	Explicit, critical
Danial Latifi v. Union of India	2001	Constitutionality of 1986 Muslim Women Act	Harmonized interpretation	Implicit
Shayara Bano v. Union of India	2017	Triple talaq	Practice held unconstitutional	Avoided; used Art. 14

Source: Compiled by author from case law cited above.

As can be seen in Table 2, there has been a gradual shift of the rhetoric from 'Article 44' towards 'Article 14'. This change might be partly due to a judicial response to the spectre of political retribution that would follow by direct reference to the UCC, and partly because equality and arbitrariness doctrines produce a similar reformist effect at a lower risk to institutions.

4. Comparative State-Level Data: Uniform Codes already in existence.

4.1 The Goa Civil Code

Despite the unification with India after 1961, Goa kept the Portuguese Civil Code of 1867 (which was common for all people, regardless of religion) in place (Sequeira, 2019; Goa, Daman and Diu (Administration) Act, 1962). The fact that it was used to show that religiously neutral civil law exists in India and can coexist without eroding religious identity is often cited by UCC supporters.

4.2 The Uttarakhand Uniform Civil Code, 2024

Uttarakhand is the first State to have a comprehensive UCC, passed under ordinary legislation, in February 2024 and came into effect from January 27, 2024 (Uttarakhand Uniform Civil Code Act, 2024). It will standardize the minimum age of marriage, make it mandatory to register marriages and live-in relationships, ensure equal inheritance rights for sons and daughters, and remove practices like polygamy and unilateral divorce for all communities except Scheduled Tribes, which are exempt under Article 342 protections (Government of Uttarakhand, 2024).



Table 3. Comparative Snapshot of Uniform/Quasi-Uniform Civil Codes in India

Jurisdiction	Legal Basis	Scope	Key Features	Exemptions
Goa	Portuguese Civil Code, 1867 (retained)	All residents	Compulsory registration; community property regime	None
Uttarakhand	Uttarakhand UCC Act, 2024	All residents	Equal inheritance; live-in registration; polygamy ban	Scheduled Tribes
Rest of India	Religion-specific personal laws (Hindu, Muslim, Christian, Parsi Acts)	Community-specific	Varies by religion	N/A

Source: Compiled by author from Goa, Daman and Diu (Administration) Act (1962) and Uttarakhand Uniform Civil Code Act (2024).

In the concurrent list (List III, Entry 5), there is a provision for the states to legislate on marriage, divorce and succession, thus making uniformity constitutionally acceptable at the state level, as can be seen in these sub-national experiments. This opens the door to an incremental, federalist route to uniformity, instead of just one national act.

5. Discussion: The Persistent Tensions

5.1 Group Autonomy versus Gender Justice

The greatest conflict is therefore between individual equality in gender and collective equality in religion. For feminist legal scholars, not just Muslim law, but personal laws in all religions have patriarchal structures, and a UCC could be based on a majoritarian (usually Hindu) framework, disguised as gender neutrality, unless it is drafted in a truly inclusive manner (Agnes, 2016). The Law Commission of India's 2018 Consultation Paper on Family Law Reform specifically warned against a hurried UCC and found that 'a uniform civil code is neither necessary nor desirable at this stage', and called for codification and reform of each personal law system to eliminate gender discrimination, while maintaining diversity (para 1.6).

5.2. The Uttarakhand precedent and federalism argument.

The Uttarakhand model opens a different constitutional conundrum: do piecemeal state-level uniformity and uniformity of the personal law meet the national vision enshrined in Article 44, or do they further complicate the personal law, with a patchwork of state-specific regimes? This may give rise to forum-shopping and inconsistencies across state lines, critics say, whereas supporters see it as a fair test of federalism in keeping with India's constitution (Sharma, 2024).

5.3 Judicial Restraint and Judicial Activism

Inherent in the judiciary's role is the problem presented by Article 37, which leaves the judiciary without authority to enforce Article 44 directly, while at the same time Article 14's equality guarantee is fully justiciable and is often substantively similar to UCC goals. Accordingly, courts have adopted an indirect approach to ensuring uniform results through the application of equality and arbitrariness concepts (as in Shayara Bano) without sparking political sensitivities that come with explicit UCC language. This is one of Baxi's (2008) concepts of "judicial governance," whereby the judiciary steps in carefully, gradually and sometimes controversially, filling legislative gaps.

5.4 Legislation of the 22nd Law Commission and renewed debate

The 22nd Law Commission of India, having previously left the topic of the UCC to the 21st Commission five years ago, issued another public consultation in 2023 (Law Commission of India, 2023). This shift is also a sign of the ongoing political



Cover Page



importance of the issue, especially since the issue is central to the ruling party's electoral agenda, and, most importantly, a reminder that the UCC debate is as much about political timing as it is about legal necessity.

6. Conclusion

The Uniform Civil Code is an example of a constitutional clause which Congress intended to leave open. Article 44 was never intended by its framers as an immediately enforceable command but as a long-term aspiration to be pursued through gradual legislative consensus, informed by evolving social conditions rather than judicial fiat. Seven decades of jurisprudence—from Shah Bano through Sarla Mudgal, Danial Latifi, and Shayara Bano—demonstrate a judiciary that has consistently flagged the absence of a UCC while simultaneously recognizing the constitutional limits on its own authority to compel one. Gradual institutional learning is illustrated in the Court's move from explicit reference to Article 44 in its language to grounding its uniformity claims in Article 14—based on equality—arguments. The shift from referring to Article 44 "explicitly" in its language to using equality arguments as the basis for uniformities is a step that the Court has taken over time, reflecting institutional learning: uniformity through the language of non-discrimination elicits less backlash than uniformity as an explicit religious leveling.

The Goa and Uttarakhand precedents suggest that uniformity is not inherently incompatible with India's federal and pluralistic character, but they also reveal the risk of an uneven national landscape. Ultimately, this paper concludes that resolving the UCC debate requires neither pure judicial activism nor legislative inertia, but a deliberative, consultative reform process—of the kind briefly modeled by the Law Commission's 2018 paper—that codifies gender-just principles within, and potentially across, religious personal law traditions. Constitutional tension, in this sense, is not a defect to be eliminated but a structural feature that has, so far, forced incremental and negotiated reform rather than either theocratic stagnation or majoritarian imposition. Whether this equilibrium can hold as political pressure for a national UCC intensifies remains one of the most consequential open questions in Indian constitutional law.

References

1. Agnes, F. (2016). *Family law and gender inequality in India*. Oxford University Press.
2. Baxi, U. (2008). *The future of human rights* (3rd ed.). Oxford University Press.
3. Constituent Assembly Debates, Vol. VII (1948, November 23). Lok Sabha Secretariat, Government of India.
4. Constitution of India. (1950). Government of India.
5. Danial Latifi v. Union of India, (2001) 7 SCC 740 (Supreme Court of India).
6. Galanter, M. (1989). *Law and society in modern India*. Oxford University Press.
7. Goa, Daman and Diu (Administration) Act, 1962, No. 1 of 1962 (India).
8. Government of Uttarakhand. (2024). *Uttarakhand Uniform Civil Code Act, 2024: Official gazette notification*. Department of Law, Government of Uttarakhand.
9. John Vallamattom v. Union of India, (2003) 6 SCC 611 (Supreme Court of India).
10. Law Commission of India. (2018). *Consultation paper on reform of family law* (21st Law Commission). Ministry of Law and Justice, Government of India.
11. Law Commission of India. (2023). *Public notice inviting views on the Uniform Civil Code* (22nd Law Commission). Ministry of Law and Justice, Government of India.
12. Menski, W. (2001). *Modern Indian family law*. Curzon Press.
13. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 (Supreme Court of India).
14. Muslim Women (Protection of Rights on Divorce) Act, 1986, No. 25 of 1986 (India).
15. Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20 of 2019 (India).
16. Sarla Mudgal v. Union of India, (1995) 3 SCC 635 (Supreme Court of India).
17. Sequeira, V. (2019). The Goa Civil Code: A model for uniform civil legislation in India? *Journal of Indian Law and Society*, 10(1), 45–62.
18. Sharma, A. (2024, February 8). Uttarakhand's UCC and the federalism question. *The Hindu*. <https://www.thehindu.com>



Cover Page



INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH
ISSN:2277-7881(Print); IMPACT FACTOR :10.16(2026); IC VALUE:5.16; ISI VALUE:2.286
Peer-Peer Reviewed, Refereed & Open Access International Journal - As per UGC Norms
(Fulfilled Suggests Parameters of UGC by IJMER)
Volume:15, Issue:7(3), July 2026
Scopus Review ID: A2B96D3ACF3FEA2A
Article Received: Reviewed: Accepted
Publisher: Sucharitha Publication, India
Online Copy of Article Publication Available: www.ijmer.in

-
19. Shayara Bano v. Union of India, (2017) 9 SCC 1 (Supreme Court of India).
 20. Uttarakhand Uniform Civil Code Act, 2024, No. 1 of 2024 (India).