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Beyond Uniformity: The Uniform Civil Code, Gender Equality and Religious Autonomy in India: A Comparative Constitutional Study of South Africa and France

SAKSHI GARG[*], NISHTHA JANGRA[**], AND DR. RITU MALIK[***]

ABSTRACT

This article examines the relationship between the Uniform Civil Code (UCC), substantive gender equality and religious autonomy in India. It adopts a doctrinal legal method, analysing constitutional provisions, legislation, judicial decisions and selected comparative approaches. It distinguishes formal uniformity from equality in practice and considers family-law issues involving marriage, divorce, maintenance, inheritance and guardianship. The article examines the constitutional interaction of Articles 14, 15, 21, 25 and 44, together with the implications of state-level reform in Uttarakhand. It argues that common civil standards can advance legal certainty and individual rights, but their legitimacy depends on constitutional safeguards, meaningful consultation and protection against the dilution of existing rights. A phased, rights-based approach is proposed in place of an assumption that identical rules necessarily deliver justice.

Keywords: *Uniform Civil Code, Family Law, Personal Laws, Gender Equality, Article 44, Common Law for All, Women Upliftment*

I. INTRODUCTION

India is a country of great diversity, with multiple religions, communities, societies and cultures. This diversity can be seen throughout India, in its people, in their customs and traditions, and also in the laws by which they are governed. The main aim of implementing a UCC is to create a body of law that can govern everyone uniformly, regardless of a person's religion. In family law in particular, the main aim of a UCC is to eliminate practices that are illogical or not in harmony. This paper seeks to assess whether a uniform framework for family law can advance substantive gender equality without unnecessarily restricting constitutionally protected religious autonomy. It adopts a doctrinal and comparative legal method; its primary materials

[*] Author is a Student at Chandigarh University, Gharaun, Punjab, India.
[**] Author is a Student at Chandigarh University, Gharaun, Punjab, India.
[***] Author is an Assistant Professor at Chandigarh University, Gharaun, Punjab, India.

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are the Constitution of India, legislation governing personal and family law, and reported judicial decisions.

A. Definition and purpose of the Uniform Civil Code

The Uniform Civil Code is one of the most debatable and controversial topics. It aims to establish a uniform set of rules that apply to all individuals, regardless of their religious or cultural identity, and that would regulate private affairs such as marriage, adoption, maintenance, succession and divorce. The main aim behind a UCC is to eliminate gender inequality and prejudice in order to advance equality, justice and secularism. The establishment of a UCC has always been a contested issue. Supporters say that a UCC would eliminate discriminatory traditions from society, while opponents have raised concerns about secularism and cultural sensitivity. In India, the issue remains complex and politically delicate, and it requires careful consideration and the development of consensus before significant changes are made to private legal regulation.

B. Brief overview of family law in India

Family law in India is the branch of law that deals with personal laws, legal relationships and disputes within the family. These laws cover a wide range of topics, including divorce, inheritance, adoption, maintenance, guardianship and other family-related matters, and they also cover how marriage rituals are conducted. Hindus, Muslims, Christians and the followers of other major religions have distinctive family laws by which they are governed.[1] Every religion has its own cultural practices and its own roots, and that is why every religion has its own personal law. It has always been difficult for India's judicial system to resolve this complex web of personal rules. The main aim of a Uniform Civil Code is to resolve these complications by providing a legal framework that governs everyone equally, irrespective of religion.

C. Distinction between uniformity and equality

Uniformity and equality are often treated as the same thing in the UCC debate, but they are not. Uniformity means one set of rules for everyone. Equality means fair treatment and fair outcomes, whatever a person's religion or gender. A law can be uniform and still unfair, and a law can deliver equality without being uniform.

[1] *See, e.g.*, The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955); The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956); The Hindu Adoptions and Maintenance Act, No. 78 of 1956, INDIA CODE (1956); The Hindu Minority and Guardianship Act, No. 32 of 1956, INDIA CODE (1956); The Muslim Personal Law (Shariat) Application Act, No. 26 of 1937, INDIA CODE (1937); The Indian Christian Marriage Act, No. 15 of 1872, INDIA CODE (1872); The Divorce Act, No. 4 of 1869, INDIA CODE (1869); The Indian Succession Act, No. 39 of 1925, INDIA CODE (1925).

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Indian constitutional law itself does not read equality as identical treatment. Article 14 allows reasonable classification, and Article 15(3) permits special provisions for women.[2] The Supreme Court has also looked at the real effect of a law, not just its appearance. In *Shayara Bano v. Union of India*, instant triple talaq was struck down because it was arbitrary and harmed women, not simply because it differed from other communities' rules.[3]

Uniformity alone does not guarantee equality. Hindu law was codified into common statutes in the 1950s, yet daughters did not receive equal coparcenary rights until the 2005 amendment,[4] which *Vineeta Sharma v. Rakesh Sharma* later clarified.[5] Equally, equality does not always need uniformity. Targeted reform, such as the abolition of instant triple talaq through the 2019 Act,[6] shows that specific discriminatory rules can be changed without replacing entire personal-law systems. Article 25 supports this approach, since religious freedom is protected but remains subject to the other fundamental rights.[7]

France and South Africa illustrate the point from opposite directions. France relies on a single secular civil law, while South Africa recognises religious and customary marriages but tests them against constitutional equality. Together they suggest that uniformity is only a method, while equality is the goal. A UCC must therefore be justified by the equality it delivers, not by its uniformity alone.

II. HISTORICAL PERSPECTIVE

A. Historical perspective of the Uniform Civil Code

The UCC controversy has its origins in India's colonial past, when India developed a diverse system of personal laws influenced by religious traditions, customs and community practice, with different communities, such as Hindus, Muslims, Christians and others, being governed by different rules in matters like marriage, divorce, inheritance and adoption.

After Independence, the main question, whether a diverse society would accept a common law governing all citizens, gave rise to the debate surrounding the Uniform Civil Code.

[2] INDIA CONST. arts. 14, 15(3).
[3] *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
[4] The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956), § 6(1), as substituted by The Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).
[5] *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.
[6] The Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, INDIA CODE (2019), § 3.
[7] INDIA CONST. art. 25(1).

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B. Evolution of personal laws in India

The development of personal laws in India is closely connected with the country's religious, cultural and social diversity. Before the enactment of modern legislation, matters relating to marriage, divorce, inheritance, adoption and family relationships were largely governed by religious texts, customs and community practices. Consequently, different religious communities followed different rules concerning their personal lives.

During the colonial period, the British administration generally allowed personal matters to continue to be regulated according to the religious traditions of different communities. After Independence, India continued with diverse personal laws while introducing legislative reforms to codify and modernise family laws. At the same time, the idea of a Uniform Civil Code remained an important constitutional objective under Article 44.

III. Personal laws and the constitutional debate on uniformity

India's family law is made up of several different systems of personal law under one overall legal framework. India is a secular country in which different religious groups, such as Hindus, Muslims, Sikhs, Christians and others, are governed by different personal laws in personal and family matters such as marriage, divorce, maintenance, adoption, guardianship and inheritance. This diversity reflects India's rich religious traditions, but it can make the legal system more complex and create challenges in the administration of family laws.

A. Challenges posed by the Uniform Civil Code

1. **Gender inequality:** Different personal-law systems have historically contained different rules concerning marriage, divorce, maintenance, inheritance, guardianship and adoption. Where those rules give different rights or remedies based on gender, they can create concerns regarding substantive equality. The UCC debate therefore raises the question of whether family-law rights should depend on religious personal law or should be governed by common equality-based standards. A careful assessment must therefore examine the actual provisions rather than presume that every difference between personal-law systems amounts to discrimination.
2. **Legal inconsistency:** One of the major difficulties of having multiple personal-law systems is that the legal consequences of similar family situations may differ depending on which personal law applies. For example, rules concerning marriage, divorce, maintenance or succession may vary between communities. This can create differences in legal rights and remedies for individuals in situations that are otherwise

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comparable. A common civil framework could potentially establish common standards for these matters.

3. **Complexity in family law:** The existence of multiple personal laws, together with general family laws and judicial interpretations, can make family-law disputes complicated. Courts and lawyers may have to determine which law applies, whether a particular practice has legal validity, and how personal law interacts with constitutional provisions and secular legislation. A common framework could potentially simplify the legal structure and make family-law rights easier for citizens to understand.

IV. Possible approaches to UCC reform in family law

A. Removal of discriminatory provisions

One possible approach is to identify and reform specific provisions that produce unjustified discrimination, rather than assuming that every difference between personal laws must be eliminated. A UCC could establish common minimum standards relating to equality, consent, marriage, divorce, maintenance, inheritance and children's rights. The important question would be whether those standards are genuinely non-discriminatory and constitutionally compatible.

B. Gender justice

A properly designed UCC could provide common protections to individuals irrespective of religion or gender. This could be particularly relevant to areas such as maintenance after divorce, property and inheritance rights, matrimonial rights and guardianship. However, gender justice should not mean merely making laws identical for men and women. Substantive equality requires examining whether the practical operation of legal rules produces unequal outcomes, even when their language appears formally neutral.

C. Strengthening national integration

Supporters of the UCC argue that common civil laws could strengthen the idea of equal citizenship by ensuring that family-law rights do not vary according to religious identity. However, this argument needs to be balanced against India's religious and cultural diversity.

A common civil framework may contribute to national integration, provided that legitimate cultural and religious freedoms and equal citizenship are respected.

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V. Potential benefits of the Uniform Civil Code

A. Benefits for women: protection of women's rights

Personal laws play a significant role in determining the position of women within the family. They regulate important matters such as marriage, divorce, maintenance, inheritance, guardianship and other aspects of family law. Since different communities may be governed by different personal laws, women may have different rights and remedies depending on which law applies to them. A UCC could therefore give equal protection to women's rights.

B. Marriage and matrimonial rights

Marriage creates several legal rights and responsibilities for both spouses. A fair legal system should ensure that marriage is based on free consent, a valid minimum age, monogamy where constitutionally mandated, protection against forced marriage and equal rights for both spouses. Registration of marriage is also important because it provides legal proof of the marital relationship. Different personal laws have traditionally provided different rules relating to marriage. Such differences can become a concern when they result in different levels of legal protection for women. A UCC could therefore establish common minimum standards relating to consent, age of marriage, registration, prohibited relationships and matrimonial rights, while still allowing individuals to follow their religious marriage ceremonies.

Marriage registration is particularly important for women because official proof of marriage can help them claim their legal rights relating to maintenance, inheritance, divorce and other family matters. The Uttarakhand UCC provides a structured procedure for marriage registration, including prescribed documents and specific time limits.[8]

Sarla Mudgal v. Union of India considered the legal consequences of conversion and a second marriage while an earlier marriage subsisted.[9] The case reveals how overlapping legal regimes may create incentives for strategic reliance on different personal laws. Nevertheless, its facts should not be used to suggest that every religious conversion is suspect or that all personal-law differences produce abuse. A proportionate response should target legal evasion and protect valid relationships and individual freedom of conscience.

[8] The Uniform Civil Code, Uttarakhand, Uttarakhand Act No. 3 of 2024, §§ 6, 10, https://cdnbbsr.s3waas.gov.in/s3bc7f621451b4f5df308a8e098112185d/uploads/2025/03/20250325909844456.pdf (providing for compulsory registration of marriages and requiring the memorandum of a marriage solemnised after commencement to be submitted within sixty days of the marriage); *see also* The Uniform Civil Code Rules, Uttarakhand, 2025, rr. 8(1)(a), 9, https://ucc.uk.gov.in/server/file/uploads/shared-files/ucc-rules-en.pdf.

[9] *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

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C. Divorce

Divorce can have a major effect on a woman's dignity, independence and financial security. Therefore, both spouses should have fair grounds and procedures for ending a marriage, and women should not be placed at a disadvantage because of the personal law applicable to them. The issue of unequal or arbitrary divorce practices can be seen in *Shayara Bano*, where the Supreme Court set aside the practice of *talaq-e-biddat*, commonly known as instant triple talaq.[10] The decision became an important development in the discussion on gender justice and the reform of personal laws. The judges reached their conclusions through differing legal routes, so the decision should not be presented as a single, unrestricted proposition that all personal-law practices are subject to one identical constitutional test. Parliament subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019,[11] and that legislative response raises additional questions about the design and proportionality of remedies.

The case demonstrates that personal-law practices can be examined in light of constitutional values when they affect individual rights, and it is best used to show the importance of examining the precise practice, the statutory setting and the reasoning of the relevant opinions. In the context of the UCC, this raises the question of whether common rules relating to divorce could provide equal protection to both men and women while protecting their dignity and legal rights.

D. Maintenance and alimony

Maintenance is an important part of the financial security of women, particularly after separation or divorce. In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court recognised the right of a divorced Muslim woman to claim maintenance under the secular law then contained in Section 125 of the Code of Criminal Procedure, 1973.[12] The corresponding provision is now found in Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023.[13] The significance of *Shah Bano* lies not only in its discussion of Article 44 but also in the practical problem of protecting a divorced person from destitution. Subsequent legislative and judicial developments must be read together; a single judgment cannot stand in for the present statutory framework.

[10] *Shayara Bano*, (2017) 9 SCC 1.
[11] The Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, INDIA CODE (2019).
[12] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556. *See* The Code of Criminal Procedure, No. 2 of 1974, INDIA CODE (1974), § 125.
[13] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023), § 144.

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The *Shah Bano* case became an important part of the wider debate concerning personal laws, women's rights and Article 44 of the Constitution. It also demonstrated the role that secular legal provisions can play in protecting individuals where personal laws provide different rules. A gender-just UCC could provide clear and common standards for maintenance and alimony. Such rules should consider factors such as the financial needs of the parties, their income, the length of the marriage, the standard of living, childcare responsibilities and the financial effect of separation or divorce.

E. Inheritance and property rights

Property rights are closely connected with the economic independence of women. Without adequate rights in family property, women may remain financially dependent on other family members. Therefore, equality in inheritance is an important part of gender justice.

The Hindu Succession (Amendment) Act, 2005 brought an important change by giving daughters equal coparcenary rights in Hindu joint family property.[14] The Supreme Court further clarified this position in *Vineeta Sharma*, holding that a daughter acquires coparcenary rights by birth and that it is not necessary for the father to have been alive when the 2005 amendment came into force.[15] This is a valuable example of the difference between formal legislative reform and the later judicial clarification needed to make rights effective. A future common framework should draw from such experience by providing clear commencement rules, transition provisions and accessible remedies for disputes involving family property.

The principle emerging from *Vineeta Sharma* is relevant to the UCC debate because equality in family law should provide women with actual economic rights and not merely recognise equality in principle. A future UCC should therefore aim to provide equal and effective inheritance rights to women and men.

At the same time, any reform should not reduce rights that women have already gained through progressive legislation. Instead, gender justice should aim to build upon the existing protections and provide the highest reasonable level of equality and economic security for women.

VI. Will a UCC violate personal or religious beliefs?

The implementation of a UCC can raise concerns regarding the protection of individual and religious beliefs, particularly in matters of personal law such as marriage, divorce, maintenance, adoption and succession. India follows a system of legal pluralism in which different religious

[14] The Hindu Succession (Amendment) Act, No. 39 of 2005, India Code (2005); The Hindu Succession Act, No. 30 of 1956, India Code (1956), § 6(1).
[15] *Vineeta Sharma*, (2020) 9 SCC 1.

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communities are governed by their own personal laws and follow customs that have been observed historically. Therefore, changes to these laws may give rise to conflict and to opposition from those who do not support them. A well-designed UCC could nevertheless help to eliminate gender inequality and give women an equal status in relationships and in society.

A UCC has the ability to eliminate or bridge religious and cultural divides and to create a sense of national togetherness. Its aim is to create a common legal system for every citizen of the country and to govern everyone under a single common set of laws. Article 25 of the Indian Constitution guarantees freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality, health and the other provisions of Part III.[16] Religious freedom is therefore not absolute under the Constitution of India, and reasonable restrictions apply to it. The State can regulate religious activities to ensure that they do not violate the rights of other people, and it can regulate the secular activities associated with religious practice.[17] A UCC could increase everyone's access to the law, make it easier to comprehend, and reduce legal complexity and disputes. If properly designed, a UCC could establish a fair and reasonable legal system that prioritises the protection of the fundamental rights of the people and protects individual liberty, so that every person, regardless of religion, is governed equally.

VII. Implementation of a UCC in India

The implementation of a UCC is not an easy task for the Government of India: with so much cultural diversity, and as the most populous country in the world, India faces great difficulty in implementing a common set of personal laws. Article 44 of the Indian Constitution, a Directive Principle of State Policy in Part IV, deals with the concept of the UCC. The States can also legislate on these matters, because marriage, divorce, adoption and succession fall within Entry 5 of the Concurrent List, as discussed below.[18]

A. Challenges in implementing a UCC

i. Religious and cultural diversity

India has very diverse religious communities, whose people follow different traditions, cultures and practices. Creating a common framework for everyone is a real challenge. Some people believe that a unified code may infringe the right to religious freedom and the traditions of the people.

[16] India Const. art. 25.
[17] India Const. art. 25(1), (2)(a).
[18] India Const. art. 246(2), sched. VII, list III, entry 5.

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In *Kesavananda Bharati v. State of Kerala*, the Supreme Court developed the basic structure doctrine, limiting the power to amend the Constitution.[19] This doctrine does not itself establish the validity of a Uniform Civil Code.

Any enacted code must be evaluated independently against applicable fundamental rights, legislative competence and other constitutional requirements. The constitutionality of specific provisions cannot be presumed in advance.

ii. Lack of social and political consensus

One of the major challenges in implementing a UCC is the lack of social and political consensus. India is a country where different religious communities follow different personal laws and customs relating to marriage, divorce, maintenance, adoption and succession. As a result, there are differences of opinion among the people, and the opposition often disregards the idea. Some groups may support the UCC as a means of promoting equality, justice and uniformity in society. Political parties and social groups may differ regarding its implementation. Political and social consensus is therefore needed.

B. Constitutional balancing

Under the Indian Constitution, everybody has the right to profess, practise and propagate their religion, subject to the limits that the Constitution itself sets. A UCC should be implemented, and care should be taken that its implementation does not violate anyone's religious practices and that it respects and preserves their fundamental rights.

The challenge is therefore to ensure that a UCC does not interfere with constitutionally protected freedoms. The State needs to determine which activities are religious and which relate to personal law, such as marriage, divorce, adoption and maintenance.

Thus, constitutional balancing means finding an appropriate way to reconcile Article 44's objective of uniformity with the Fundamental Rights guaranteed by the Constitution.

C. Practical problems in implementation

i. Repealing or modifying the existing personal laws

One of the major problems in implementing a UCC would be deciding what should happen to the existing personal laws followed by different religious communities according to their customs. At present, matters such as marriage, divorce and adoption are governed by the different personal laws of each religion, and the question is how the Government is to decide

[19] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

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which of these laws should be kept as they are, which should be repealed and which should be modified.

VIII. Controversies surrounding the Uniform Civil Code

The Uniform Civil Code has generated debate because it involves personal laws, religious practices, individual rights, cultural traditions and the constitutional structure of India.

While a common civil framework may promote uniformity, its implementation also raises concerns about religious freedom, customary practices, minority interests, political disagreement and legislative powers.

A. Religious freedom (Articles 25 to 28)

One of the major concerns regarding the UCC is its possible effect on religious freedom. Articles 25 to 28 of the Constitution provide protection relating to freedom of religion, subject to constitutional limitations.[20] Some communities may view changes in personal laws as affecting their traditions.

The challenge is therefore to determine which aspects of personal law can be regulated as civil matters while respecting constitutionally protected religious freedom. In *Shayara Bano*, the Supreme Court examined the practice of *talaq-e-biddat*, or instant triple talaq, in the context of constitutional rights and personal law.[21] The judgment also discussed Article 44. However, the case should not be treated as a direction to enact a UCC; its principal issue was the validity of instant triple talaq.

B. Tribal and customary practices

Another concern is the possible effect of a common civil law on tribal and customary practices. Several communities, particularly in parts of Northeast India, have customary rules relating to marriage, inheritance and family matters. Certain communities and regions also enjoy specific constitutional protections. A UCC may therefore raise questions about whether these customary practices would continue to receive protection. At the same time, the existence of a custom does not necessarily mean that every practice must remain unchanged if it conflicts with constitutional rights. The challenge is to promote equality and individual rights without unnecessarily removing legitimate customary protections.

[20] India Const. arts. 25–28.
[21] *Shayara Bano*, (2017) 9 SCC 1.

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C. Majoritarianism and political concerns

A further concern is whether a UCC would genuinely provide religion-neutral rules or whether its provisions could reflect the traditions of the religious majority. This concern arises because personal laws have developed differently among various religious communities.

Therefore, the important issue is not simply whether there should be one common law, but what the contents of that law would be and on what principles they would be based. A UCC based on equality, dignity and individual rights could be examined as a common civil framework, whereas provisions perceived as favouring one community could raise concerns about neutrality and equal treatment.

D. Politicisation of the UCC

The UCC has become an important subject of political and public debate. Different political parties, religious organisations, social groups and scholars have expressed different views regarding its need, scope and implementation.

Political discussion can sometimes shift attention away from the specific legal questions involved. Supporters may emphasise equality, gender justice and uniformity, while critics may focus on religious freedom, minority rights and cultural identity. For legal analysis, it is therefore important to examine the actual provisions and constitutional implications of a UCC rather than relying only on political arguments surrounding it.

E. Federalism and State action

The implementation of a UCC also raises questions about the distribution of legislative powers between Parliament and the State Legislatures. Entry 5 of List III (the Concurrent List) of the Seventh Schedule covers subjects including marriage and divorce, adoption, succession, joint family and partition.[22] Both Parliament and the State Legislatures can therefore legislate on these matters, subject to constitutional limitations. The UCC enacted in Uttarakhand provides an example of State-level legislation in this area.[23] It raises questions about how State legislation would operate alongside existing central laws and any future national UCC. Article 254 may also become relevant where there is inconsistency between a State law and a law made by Parliament on a Concurrent List subject.[24]

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[22] INDIA CONST. sched. VII, list III, entry 5.
[23] The Uniform Civil Code, Uttarakhand, Uttarakhand Act No. 3 of 2024, https://cdnbbsr.s3waas.gov.in/s3bc7f621451b4f5df308a8e098112185d/uploads/2025/03/20250325909844456.pdf.
[24] INDIA CONST. art. 254.

IX. COMPARATIVE ANALYSIS

Looking at the experience of other countries can help India understand both the benefits and the difficulties of introducing a common civil-law framework. Different countries have adopted legal reforms according to their own social, cultural and constitutional conditions. Their experiences therefore cannot be directly applied to India, but they can provide useful lessons for the UCC debate.

A. South Africa

South Africa offers a constitutional model in which cultural and religious diversity can coexist with enforceable guarantees of equality. Section 9 of the Constitution of the Republic of South Africa, 1996 protects equality and prohibits unfair discrimination, including on grounds of gender, religion and culture. Section 15 protects freedom of religion and expressly permits legislation recognising marriages and systems of personal or family law rooted in religion or tradition, provided that such recognition is consistent with the Constitution. Sections 30 and 31 protect cultural participation and community rights but do not place those practices beyond the Bill of Rights.[25]

The Recognition of Customary Marriages Act 120 of 1998 illustrates this approach. Rather than abolishing customary marriages, it gives them legal recognition while regulating validity, registration, spousal status, property consequences and dissolution.[26] The model demonstrates that constitutional equality need not always require identical family-law institutions. However, recognition alone cannot guarantee substantive equality; legal protections must be accessible and effectively enforced, particularly for women whose economic and social circumstances may constrain their ability to claim rights.

B. France: secular citizenship and a common civil-law framework

France represents a different constitutional approach. Article 1 of the Constitution of 4 October 1958 describes France as an indivisible, secular, democratic and social Republic, guarantees equality before the law without distinction based on origin, race or religion, and respects all beliefs.[27] The French principle of *laïcité* shapes the relationship between public institutions and religion. Civil marriage and its legal consequences are regulated through the state civil-law framework, while religious ceremonies may retain personal or communal significance without independently replacing the civil legal requirements.

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[25] S. AFR. CONST., 1996 §§ 9(3), 15(3), 30, 31(2).
[26] Recognition of Customary Marriages Act 120 of 1998 §§ 2–4, 6–8 (S. Afr.).
[27] 1958 CONST. art. 1 (Fr.).

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This framework illustrates the value of predictable civil status and common legal rules. Nevertheless, French secularism cannot be treated as a ready-made template for India. The two countries differ in constitutional history, legal institutions and the relationship between religion and family practices. A formally uniform rule may also leave underlying social inequalities unaddressed. Consequently, the French experience supports legal clarity and equal civic status, but does not by itself establish that complete uniformity is the only constitutionally legitimate route to gender justice.

C. Goa: common rules with historical particularities

Goa is frequently described as an Indian example of a common civil-law framework. Yet its legal arrangements developed through a distinct historical route and include particular rules and exceptions. It should not be treated as proof that a fully identical code already operates without complexity. The appropriate comparative questions are which subjects are governed by common rules, which exceptions remain, whether outcomes are gender-equal, and how administrative and judicial institutions enforce the law. *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira* provides a judicial point of entry into this discussion.[28]

D. Uttarakhand: implementation as a legal design question

Uttarakhand's State-level Uniform Civil Code provides a contemporary opportunity to assess legislative drafting and implementation. A rigorous analysis should separate the statute's enacted provisions from subsequent rules, administrative practice and public claims about its effects. Issues for examination include marriage and divorce registration, succession, applicability and exemptions, privacy, procedural fairness, access to registration services and the position of vulnerable individuals. The Code came into force on 27 January 2025; its subsequent amendments, including the 2026 amendment, must be taken into account in any current evaluation.[29] Section 2 of the 2024 Act excludes members of the Scheduled Tribes and persons whose customary rights are protected under Part XXI of the Constitution.[30] These qualifications are important when assessing claims of universal application.

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[28] *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85.

[29] *Uttarakhand Govt Implements the UCC (Amendment) Ordinance, 2026*, ALL INDIA RADIO NEWS (Jan. 27, 2026), https://www.newsonair.gov.in/uttarakhand-govt-implements-the-ucc-amendment-ordinance-2026 (recording that the Code took effect on Jan. 27, 2025); The Uniform Civil Code, Uttarakhand (Amendment) Act, Uttarakhand Act No. 2 of 2026, UTTARAKHAND GAZETTE (Extraordinary), Apr. 7, 2026, https://ucc.uk.gov.in/api/media/file/ucc_amendment6.pdf.

[30] The Uniform Civil Code, Uttarakhand, Uttarakhand Act No. 3 of 2024, § 2, https://cdnbbsr.s3waas.gov.in/s3bc7f621451b4f5df308a8e098112185d/uploads/2025/03/20250325909844456.pdf.

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E. Comparative implications for India

The contrast between South Africa and France reveals two distinct constitutional techniques: recognition of plural family-law traditions subject to equality guarantees, and a more unified secular civil-law structure. For India, Articles 14, 15, 21, 25 and 44 must be considered together. The South African example supports retaining legitimate cultural practices while subjecting their civil consequences to constitutional scrutiny; the French example highlights the administrative clarity of common rules. Neither model should be transplanted mechanically.

A constitutionally defensible Indian UCC should therefore be assessed through substantive criteria: equal consent and matrimonial remedies, non-discriminatory succession, fair maintenance, children's welfare, legal accessibility and protection of individual choice. Public consultation and carefully drafted transitional provisions are essential. The comparative lesson is that equality is the constitutional objective, whereas uniformity and legal pluralism are alternative regulatory techniques whose legitimacy depends on their actual effects.

F. Lessons for India

The experiences of these jurisdictions suggest that India should approach the UCC carefully rather than focusing only on achieving uniformity. First, legal reform may need to be gradual and properly planned so that people have sufficient time to understand and adapt to the new rules. Second, there should be a balance between equality and legitimate cultural practices. Uniformity should not automatically mean ignoring the diversity of Indian society. Third, consultation and public participation are important. Religious and community representatives, legal experts, academics and other stakeholders should have an opportunity to express their views before major changes are introduced. This can help identify practical difficulties and increase public confidence in the reform.

Finally, the experiences of other jurisdictions show that a common civil framework should focus on equality, individual rights and clarity of law. India cannot simply copy the legal model of another country because its constitutional structure, religious diversity and social conditions are different. The experiences of Goa and Uttarakhand can instead provide useful guidance while India develops a UCC suited to its own constitutional and social context.

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X. CONSTITUTIONAL FRAMEWORK: EQUALITY, AUTONOMY AND LEGAL PLURALISM

A. Article 44 and its constitutional status

Article 44 provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."[31] It is included in Part IV of the Constitution under the Directive Principles of State Policy. Unlike Fundamental Rights, Directive Principles are not directly enforceable by courts. However, Article 37 recognises their importance in the governance of the country.[32] Article 44 therefore establishes a constitutional objective rather than creating an immediately enforceable right to a UCC. It also does not specify what the provisions of a future UCC should contain. Its implementation would require appropriate legislation that complies with other constitutional provisions.

Several Supreme Court decisions have referred to Article 44 in the context of personal-law reform. In *Shah Bano* (1985), the Court discussed maintenance rights and referred to the broader question of uniformity in personal laws.[33] In *Sarla Mudgal*, the Court considered conflicts arising from different personal laws and discussed Article 44 in that context.[34] In *John Vallamattom v. Union of India*, the Supreme Court examined a provision of the Indian Succession Act relating to Christians and struck it down as unconstitutional, making the case relevant to personal-law reform and constitutional equality.[35] In *Jose Paulo Coutinho*, the Court discussed Goa's common civil-law framework and referred to Article 44 as well as its earlier decisions in *Shah Bano* and *Sarla Mudgal*.[36] These cases demonstrate that Article 44 must be considered together with Fundamental Rights, particularly equality, individual liberty and freedom of religion. The constitutional challenge is therefore to determine how greater uniformity in civil laws can be pursued while respecting religious freedom, cultural diversity and individual rights.

B. Article 44 and fundamental rights

Article 44 sets out a directive objective, while Articles 14, 15, 21 and 25 establish enforceable constitutional protections. The legal task is not to treat one provision as automatically cancelling another. Any enacted family-law reform must be examined in light of its text, objectives,

[31] INDIA CONST. art. 44.
[32] INDIA CONST. art. 37.
[33] *Shah Bano*, (1985) 2 SCC 556.
[34] *Sarla Mudgal*, (1995) 3 SCC 635.
[35] *John Vallamattom v. Union of India*, (2003) 6 SCC 611 (holding section 118 of the Indian Succession Act, 1925 violative of Article 14).
[36] *Jose Paulo Coutinho*, (2019) 20 SCC 85.

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classification of affected persons, procedural safeguards and practical effects. The fact that a statute applies uniformly does not by itself establish that its operation is fair. Conversely, the survival of distinct ceremonies or community customs does not necessarily undermine equal civil rights.

A useful distinction is between the civil consequences of a relationship and the religious rites through which it is celebrated. A legislature may consider common rules for consent, age, registration, maintenance and remedies while allowing different ceremonies, provided those ceremonies do not defeat mandatory protections. This distinction is not always straightforward: the legal recognition of a relationship may itself be closely connected with religious practice. It therefore requires careful drafting and judicially reviewable standards rather than broad assumptions about what is purely secular.

C. Substantive equality and non-regression

A gender-just code should be tested against the actual position of persons who are economically dependent, who provide unpaid care, or who face obstacles in enforcing rights. Equal wording may be insufficient where the parties have sharply unequal resources. Maintenance provisions, for example, must address the need for interim relief, disclosure of income, execution of orders and the costs of litigation. Similarly, inheritance reform must consider not only entitlement on paper but also documentation, possession, coercive relinquishment and access to legal assistance.

The principle of non-regression offers a further evaluative standard: reform should not inadvertently withdraw protections already available under existing statutes or binding judicial interpretation. Where different systems protect different interests, the legislature should compare the protections issue by issue instead of choosing a lowest common denominator. This is a proposed policy principle, not a claim that a freestanding constitutional doctrine of non-regression automatically resolves every family-law dispute.

XI. A RIGHTS-BASED ROADMAP FOR FAMILY-LAW REFORM

A. Minimum guarantees before comprehensive uniformity

A practical reform programme could begin by defining non-negotiable civil guarantees: free and informed consent to marriage; transparent marriage registration; fair divorce procedures; accessible maintenance; equal protection of children; and enforceable property and succession rights. These standards should be articulated in religion-neutral terms while allowing cultural diversity in matters that do not undermine the guarantees.

Where a common rule would change an existing right, the legislature should publish an explanation of its expected effects and the available safeguards.

B. Consultation, transition and institutional capacity

Consultation should include women from affected communities, tribal and customary institutions, religious organisations, family-law practitioners, judges, legal-aid providers and scholars. Participation must be meaningful: circulating a draft and recording objections is insufficient unless the final law explains how concerns were addressed. Transitional provisions should clarify the treatment of existing marriages, pending litigation, vested property interests, earlier registrations and orders already passed by courts. Clear public guidance in accessible languages would reduce uncertainty.

Implementation requires more than enactment. Registration offices, family courts, legal-aid services and digital systems must have adequate resources and training. Processes should avoid imposing unnecessary travel, documentation burdens or intrusive disclosure. Where new duties carry penalties, safeguards should prevent disproportionate effects on persons who lack documents or digital access. Periodic review should examine the time taken to secure maintenance and the enforcement of inheritance rights.

C. Evaluation criteria

The success of reform should be measured against a set of criteria: constitutional compatibility; substantive gender equality; clarity and accessibility; respect for legitimate religious and customary autonomy; protection of children; predictable transition rules; and evidence of enforceable outcomes. These criteria are more informative than counting the number of personal-law statutes repealed. They also allow policymakers to compare a comprehensive code with targeted reforms and optional secular legal pathways on the same terms.

XII. Findings and recommendations

The analysis supports four principal findings. First, uniformity is an institutional technique, not a sufficient measure of justice. Second, personal-law reform must focus on particular rights and remedies rather than assuming that all legal differences are harmful. Third, constitutional design requires the simultaneous consideration of Article 44 and enforceable fundamental rights. Fourth, experience from different jurisdictions is useful primarily for identifying drafting choices and implementation risks, not for proving that one model will work unchanged across India.

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Accordingly, lawmakers should publish a clear rights-impact assessment before proposing comprehensive legislation; identify existing protections that must be preserved; provide precise transitional and conflict-of-laws provisions; consult affected communities with particular attention to women and children; and establish independent mechanisms to review implementation. Courts and administrators should receive training, and legal-aid capacity should be strengthened so that statutory rights become practically enforceable.

XIII. CONCLUSION

The Uniform Civil Code debate cannot be resolved by presenting religious autonomy and gender equality as inevitably opposing values. India's constitutional order accommodates diversity while also demanding equal citizenship, dignity and legal protection. Article 44 provides a direction for reform, but the legitimacy of any particular code depends upon its content, constitutional compatibility and practical consequences. A law that is uniform in form yet unequal in operation would not achieve the central objective of gender justice.

The preferable approach is therefore rights-based, consultative and evidence-sensitive. Common minimum guarantees can protect individuals in marriage, divorce, maintenance, guardianship and succession without treating every religious ceremony or customary practice as an obstacle. Comparative experience, judicial precedent and legislative reform should inform the drafting process, while implementation must be assessed against actual access to remedies. The enduring question is not merely whether India should have one civil code, but how family law can secure equality without erasing legitimate pluralism.

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