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# Uniform Civil Code in India: A Constitutional Mandate and International Perspective

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## ABSTRACT

*The Uniform Civil Code (UCC) represents one of the most enduring and constitutionally significant debates in post-Independence India. Enshrined as a Directive Principle of State Policy under Article 44 of the Constitution of India, the UCC aspires to replace the existing pluralism of religion-based personal laws with a single, secular, and uniform civil framework governing marriage, divorce, inheritance, maintenance, and adoption for all citizens irrespective of religious affiliation. This research paper undertakes a comprehensive legal analysis of the UCC through a dual lens: constitutional jurisprudence and comparative international law. It examines the constitutional basis and tensions inherent in the UCC directive, traces the evolution of the Supreme Court's jurisprudence from Mohd. Ahmed Khan v. Shah Bano Begum (1985) to Shayara Bano v. Union of India (2017) and beyond, critically evaluates the gender-discriminatory provisions embedded in major personal law systems, surveys the experience of comparative legal systems including France, Turkey, Germany, Tunisia, and Morocco, assesses India's obligations under international human rights instruments including the ICCPR and CEDAW, and examines the Goa Civil Code as a domestic proof of concept. The paper concludes that a carefully designed, consultatively developed, and rights-based UCC is both constitutionally mandated and practically achievable, and offers concrete suggestions for the way forward.*

**Keywords:** Uniform Civil Code, Article 44, Personal Laws, Gender Justice, Constitutional Mandate, Comparative Law, CEDAW, ICCPR, Goa Civil Code, Legal Pluralism.

## I. INTRODUCTION

The concept of a Uniform Civil Code for India has remained one of the most debated and contentious constitutional issues since Independence. At its core, the UCC envisions a single set of civil laws governing marriage, divorce, inheritance, adoption, and maintenance, applicable to all citizens irrespective of their religion, caste, or community. Article 44 of the

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Constitution of India, enshrined under Part IV as a Directive Principle of State Policy, directs the State to endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.<sup>3</sup> The aspiration for such a code traces its intellectual lineage to the Constituent Assembly debates of 1946–1949, where visionary leaders like Dr. B.R. Ambedkar forcefully championed it as a *sine qua non* of national integration and gender justice.<sup>4</sup>

India is a land of extraordinary religious, cultural, and social diversity. This diversity is reflected in its multiplicity of personal laws — Hindu personal laws codified through various legislative acts, Muslim personal law largely governed by customary religious texts, and separate regimes for Christians, Parsis, Jews, and tribal communities. While the framers of the Constitution recognised the sensitivity of the subject and refrained from immediately legislating upon it, they embedded the aspiration for uniformity as a future goal of the Indian State. The choice to place the UCC directive under Part IV (Directive Principles) rather than Part III (Fundamental Rights) was a deliberate compromise, reflecting the political realities of the time.<sup>5</sup>

The question of a Uniform Civil Code sits at the intersection of multiple constitutional values: secularism, equality before law (Article 14), freedom of religion (Articles 25–28), cultural rights of minorities (Articles 29–30), and the directive in Article 44.<sup>6</sup> Each of these constitutional provisions pulls in different directions, creating a tension that the judiciary, legislature, and civil society have grappled with for over seven decades. The constitutional discourse on UCC is therefore not merely a debate about law reform; it is a debate about the very identity and soul of the Indian republic.

From a comparative and international perspective, the UCC debate in India also resonates with global discourse on the relationship between legal pluralism, multiculturalism, and universal human rights. Several democratic nations — France, Germany, Turkey, and the Scandinavian countries — have adopted unified civil codes, while others retain elements of personal law pluralism. The interaction of international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>8</sup> with domestic personal law frameworks presents another important dimension of study.

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<sup>3</sup>Constitution of India, 1950, Art. 44.

<sup>4</sup>Constituent Assembly Debates, Vol. VII, 23 November 1948 (Speech of Dr. B.R. Ambedkar).

<sup>5</sup>Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966), p. 79.

<sup>6</sup>Constitution of India, 1950, Arts. 14, 15, 25–28, 29–30, 44.

<sup>7</sup>International Covenant on Civil and Political Rights (ICCPR), 1966, Art. 23(4); India ratified ICCPR on 10 April 1979.

<sup>8</sup>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Art. 16; India ratified CEDAW on 9 July 1993.

Recent legislative and judicial developments, including the Supreme Court's landmark five-judge constitutional bench judgment on triple talaq in *Shayara Bano v. Union of India* (2017),<sup>9</sup> the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019,<sup>10</sup> and the 22nd Law Commission's renewed public consultation on UCC (2023),<sup>11</sup> make this a particularly timely subject for legal research. This paper undertakes a comprehensive, multi-dimensional study of the UCC debate in India, examining constitutional foundations, tracing judicial evolution, critically analysing existing personal laws, drawing upon international comparative experience, and charting a viable path forward.

## II. CONSTITUTIONAL FRAMEWORK AND ARTICLE 44

### A. Article 44 as a Directive Principle of State Policy

Article 44, positioned within Part IV of the Constitution — the Directive Principles of State Policy — constitutes a foundational but non-justiciable constitutional obligation. Unlike the Fundamental Rights in Part III, the Directive Principles are not directly enforceable by any court.<sup>12</sup> However, Article 37 of the Constitution provides that these principles are "fundamental in the governance of the country" and that "it shall be the duty of the State to apply these principles in making laws."<sup>13</sup> This formulation confers on Article 44 a constitutional weight that transcends mere aspirational rhetoric; it establishes a positive obligation on the legislative organs of the State to work progressively towards the realisation of a uniform civil code.

The Supreme Court has consistently reaffirmed this understanding. In the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum*,<sup>14</sup> Chief Justice Y.V. Chandrachud, writing for a five-judge Constitutional Bench, issued a notable *obiter dictum* lamenting Parliament's failure to enact a UCC and emphasising that "a common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies." This observation, though *obiter* in character, signalled the Court's view that the constitutional mandate of Article 44 represents a serious and continuing obligation rather than a contingent or permissive policy aspiration.

The deliberate placement of the UCC directive in Part IV, rather than Part III, was not a demotion of its constitutional importance but a recognition of the political and social complexity involved in its realisation. As Granville Austin observed, the Constituent Assembly viewed the

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

<sup>10</sup>Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019).

<sup>11</sup>22nd Law Commission of India, Notice Inviting Views/Suggestions on Uniform Civil Code (2 June 2023).

<sup>12</sup>M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2018) Vol. I, p. 1147.

<sup>13</sup>Constitution of India, 1950, Art. 37.

<sup>14</sup>*Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945, per C.J. Y.V. Chandrachud.

Directive Principles as the "conscience of the Constitution," providing the normative direction for legislative action over time. The non-justiciability of Article 44 is therefore an acknowledgment of the democratic and deliberative character of constitutional implementation, not an exemption from the constitutional obligation itself.

### **B. Fundamental Rights Vis-à-Vis Uniform Civil Code**

The constitutional discourse on UCC is complicated by the potential tension between the directive in Article 44 and several Fundamental Rights provisions, particularly the right to equality (Article 14), freedom of religion (Articles 25–26), and the cultural rights of minorities (Article 29). Understanding how these provisions interact is essential to assessing both the constitutional validity of a UCC and the scope of permissible legislative action.

Articles 25 and 26 guarantee individuals and religious denominations, respectively, the freedom of religion, including the freedom to manage religious affairs.<sup>15</sup> However, Article 25(2)(b) expressly authorises the State to make laws providing for "social welfare and reform" and for "throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."<sup>16</sup> The Supreme Court, in interpreting the scope of Articles 25 and 26, developed the "essential religious practices" doctrine in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar*,<sup>17</sup> holding that only those practices which are "essential to religion" are protected under Articles 25 and 26.

The critical question for UCC constitutionality is whether personal laws governing marriage, divorce, inheritance, and maintenance constitute "essential religious practices" protected from State regulation. The consensus of both judicial authority and scholarly opinion is that civil law governing the legal consequences of personal relations is part of the secular domain and does not constitute an essential religious practice. The secular courts have, since *State of Bombay v. Narasu Appa Mali*,<sup>18</sup> consistently held that personal laws, as applied in the civil sphere, are not immune from legislative reform on the ground of religious freedom.

The right to equality under Article 14 provides a powerful constitutional argument in *support* of UCC rather than against it. The continued operation of religion-based personal laws creates a system in which the civil rights of citizens vary according to their religious affiliation — a form of differential treatment that is difficult to reconcile with the constitutional guarantee that

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<sup>15</sup>Constitution of India, 1950, Arts. 25–26.

<sup>16</sup>Constitution of India, 1950, Art. 25(2)(b).

<sup>17</sup>*Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

<sup>18</sup>*State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 (Chagla C.J. and Gajendragadkar J.).

the State shall not deny any person equality before the law.<sup>19</sup> Article 15(3), which permits the State to make special provisions for women and children, further strengthens the constitutional case for personal law reform aimed at eliminating gender discrimination.<sup>20</sup>

### C. Judicial Pronouncements on UCC

The Supreme Court's engagement with the UCC question spans over four decades and reveals a trajectory of increasing judicial urgency. In *Jordan Diengdeh v. S.S. Chopra* (1985),<sup>21</sup> Justice O. Chinnappa Reddy made an impassioned plea for Parliament to enact a UCC, noting the "crying need of the hour" for a common civil code that would advance national integration and gender justice. In *Sarla Mudgal v. Union of India* (1995),<sup>22</sup> Justice Kuldeep Singh delivered a strongly worded judgment calling on Parliament to implement a UCC, observing that the lack of uniformity in personal laws leads to practices such as conversion-for-bigamy that undermine the integrity of the civil law system.

The landmark judgment in *Shayara Bano v. Union of India* (2017) represented a decisive judicial intervention in the sphere of personal law reform. A five-judge Constitutional Bench, by a 3:2 majority, struck down the practice of *talaq-e-biddat* (instantaneous triple talaq) as unconstitutional, holding that it violated the constitutional guarantee of equality (Article 14) and the right to a dignified life (Article 21). The judgment, while not directly enacting a UCC, demonstrated the Court's willingness to use constitutional fundamental rights as a standard for evaluating and reforming personal law practices, setting an important precedent for further judicial engagement with personal law reform.

In *John Vallamattom v. Union of India* (2003),<sup>23</sup> the Supreme Court struck down Section 118 of the Indian Succession Act as unconstitutional under Article 14 and, significantly, invoked Article 44 in the course of its reasoning, underscoring that the constitutional aspiration for UCC informs the Court's approach to personal law adjudication even where a comprehensive code does not yet exist. Similarly, in *Vineeta Sharma v. Rakesh Sharma* (2020),<sup>24</sup> the Court's unanimous ruling conferring equal coparcenary rights on daughters represented a significant judicially driven step towards gender-equalising personal law reform.

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<sup>19</sup>Constitution of India, 1950, Art. 14.

<sup>20</sup>Constitution of India, 1950, Art. 15(3) (enabling protective discrimination in favour of women and children).

<sup>21</sup>*Jordan Diengdeh v. S.S. Chopra*, AIR 1985 SC 935, per O. Chinnappa Reddy J.

<sup>22</sup>*Sarla Mudgal v. Union of India*, AIR 1995 SC 1531, per Kuldeep Singh J.

<sup>23</sup>*John Vallamattom v. Union of India*, AIR 2003 SC 2903.

<sup>24</sup>*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

### III. PERSONAL LAWS AND THE NEED FOR UNIFORMITY

#### A. Hindu Personal Law

Hindu personal law underwent comprehensive codification through four major legislative acts passed between 1955 and 1956: the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956.<sup>25</sup> These collectively replaced the earlier mosaic of customary practices and Dharmashastra-based rules. Despite the significant advance that codification represented, Hindu personal law retained important gender inequalities, most prominently the exclusion of daughters from coparcenary rights in the joint Hindu family under the Mitakshara system. Under the Hindu Succession Act, 1956 as originally enacted, a daughter was not a coparcener and had no automatic share in ancestral property — a structural inequality of enormous practical significance.<sup>26</sup>

The Hindu Succession (Amendment) Act, 2005 remedied this deficiency by conferring equal coparcenary rights on daughters, making them coparceners by birth on par with sons. The Supreme Court in *Vineeta Sharma v. Rakesh Sharma* (2020) clarified that the 2005 amendment applies to daughters born before the amendment and that the daughter's right accrues by birth irrespective of whether her father was alive on the date of the amendment. Notwithstanding this landmark reform, other inequalities persist in certain customary communities, and the continued application of customary practices in some regions that deprive women of inheritance rights remains a constitutional concern.

The Special Marriage Act, 1954<sup>27</sup> provides a secular framework for civil marriage applicable to all Indian citizens irrespective of religion, representing in embryonic form the kind of secular, religion-neutral civil law that a full UCC would provide. Its underutilisation, and the social stigma attached to marriage under it in many communities, illustrates the gap between the formal availability of secular civil law and its practical accessibility.

#### B. Muslim Personal Law

Muslim personal law in India is primarily governed by the Muslim Personal Law (Shariat) Application Act, 1937,<sup>28</sup> which mandates the application of Shariat to Muslims in matters of marriage, succession, inheritance, and charitable endowments. Unlike Hindu personal law,

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<sup>25</sup>Hindu Marriage Act, 1955 (Act 25 of 1955); Hindu Succession Act, 1956 (Act 30 of 1956); Hindu Minority and Guardianship Act, 1956 (Act 32 of 1956); Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956).

<sup>26</sup>Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), s. 6.

<sup>27</sup>Special Marriage Act, 1954 (Act 43 of 1954), s. 4.

<sup>28</sup>Muslim Personal Law (Shariat) Application Act, 1937 (Act 26 of 1937), s. 2.

Muslim personal law in India has not been comprehensively codified by secular legislation. It continues to be governed largely by traditional Islamic jurisprudence (fiqh), particularly the Hanafi school, supplemented by limited legislative interventions. The absence of codification means that the content of Muslim personal law depends on the interpretation of classical texts, without the standardising effect of legislative text, resulting in uncertainty, inaccessibility, and susceptibility to patriarchal interpretation.

Key gender-discriminatory practices include: *talaq-e-biddat* (instantaneous triple talaq), declared unconstitutional in *Shayara Bano* (2017) and subsequently criminalised by the Muslim Women (Protection of Rights on Marriage) Act, 2019; polygamy, which permits a Muslim man to have up to four wives simultaneously, a practice incompatible with the international human rights standard of equal rights in marriage; differential inheritance rules under the classical Hanafi rules, whereby a female heir typically receives half the share of a male heir of the same degree of relation; and limited post-divorce maintenance rights, historically confined to the *iddat* period of approximately three months. The post-2017 legislative reform represents a significant but partial step; the broader architecture of Muslim personal law remains unreformed.<sup>29</sup>

### C. Christian, Parsi, and Tribal Personal Laws

Christians in India are governed primarily by the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869.<sup>30</sup> The Indian Divorce Act, as originally enacted, imposed highly restrictive and gender-discriminatory grounds for divorce: a wife could only seek divorce on the ground of adultery coupled with additional aggravated circumstances, far stricter requirements than those applicable to a husband. The Indian Divorce (Amendment) Act, 2001<sup>31</sup> introduced significant reforms, including mutual consent divorce and a gender-neutral list of grounds for divorce. Parsi personal law is governed by the Parsi Marriage and Divorce Act, 1936,<sup>32</sup> which, while largely codified, contains community-specific provisions that would not survive scrutiny under a UCC.

A significant and often overlooked dimension of personal law pluralism in India is the existence of tribal customary laws. The Constitution itself provides a degree of protection for tribal customs through the Fifth and Sixth Schedules, which vest powers in tribal councils and state legislatures to legislate on matters affecting Scheduled Tribe communities, including customary

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<sup>29</sup>Lok Sabha Debates, 17th Lok Sabha, Session II (June 2019) — Introduction of the Muslim Women (Protection of Rights on Marriage) Bill, 2019.

<sup>30</sup>Indian Christian Marriage Act, 1872 (Act 15 of 1872); Indian Divorce Act, 1869 (Act 4 of 1869).

<sup>31</sup>Indian Divorce (Amendment) Act, 2001 (Act 51 of 2001).

<sup>32</sup>Parsi Marriage and Divorce Act, 1936 (Act 3 of 1936).

law.<sup>33</sup> Article 371A provides specific protections for Naga customary law. Any proposed UCC must address the legitimate claims of tribal communities to maintain their customary practices and legal identities. The Law Commission of India, in its 2018 Consultation Paper, specifically noted that tribal customary laws should not be disturbed by a UCC — a position that is both a political and legal imperative.

#### **IV. INTERNATIONAL PERSPECTIVE ON CIVIL CODE UNIFORMITY**

##### **A. International Human Rights Framework**

International law does not directly mandate a Uniform Civil Code for domestic legal systems. Sovereignty in matters of family law is generally regarded as within the domain of national competence. Nevertheless, several international human rights instruments contain provisions that have significant implications for personal law systems and the gender-discriminatory practices they perpetuate. The Universal Declaration of Human Rights (1948) provides at Article 16 that men and women of full age have the right to marry and found a family without any limitation due to religion, and mandates equal rights for men and women in marriage, during marriage, and at its dissolution — a standard that multiple Indian personal laws fail to meet.<sup>34</sup>

The ICCPR, which India ratified on 10 April 1979, requires at Article 23(4) that States take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution. The Human Rights Committee, in its General Comment No. 28 on equality of rights between men and women, has specifically called upon India to review and reform its personal law framework to ensure conformity with the ICCPR.<sup>35</sup>

CEDAW, ratified by India on 9 July 1993, is the most comprehensive international instrument for the protection of women's rights in the family context. Article 16 specifically requires States parties to ensure equal rights in marriage, divorce, parental responsibilities, and property rights in marriage. India ratified CEDAW with a reservation to Article 16(1), stating that it would be applied in conformity with India's policy of non-interference in the personal affairs of any community without its initiative and consent. The CEDAW Committee in its 2014 Concluding Observations on India expressed serious concern about the persistence of discriminatory personal laws and urged India to withdraw its reservation.<sup>36</sup> The CEDAW Committee's General Recommendation No. 29 specifically requires States to ensure equal rights of both spouses upon

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<sup>33</sup>Constitution of India, 1950, Fifth Schedule (para. 5); Sixth Schedule (para. 12A).

<sup>34</sup>Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810 (1948), Art. 16.

<sup>35</sup>Human Rights Committee, General Comment No. 28: Equality of Rights between Men and Women (Art. 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 26.

<sup>36</sup>CEDAW Committee, Concluding Observations on India, UN Doc. CEDAW/C/IND/CO/4-5 (2014), paras. 18–19.

dissolution of marriage.<sup>37</sup> India's obligations under the ICESCR, ratified on the same date as the ICCPR, impose a corresponding obligation to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights.<sup>38</sup>

The Supreme Court in *Vishaka v. State of Rajasthan* (1997)<sup>39</sup> adopted the principle that international human rights norms ratified by India may be read into the Constitution where domestic law is silent or ambiguous. This principle applies equally to the UCC context: India's CEDAW and ICCPR obligations provide a normative framework for the interpretation of Articles 14 and 15 in the context of personal law reform.

## **B. Comparative Domestic Experiences**

### ***France and Republican Universalism***

France is the paradigmatic example of a unified civil code tradition. The Napoleonic Code, promulgated on 21 March 1804,<sup>40</sup> introduced a comprehensive, secular, and uniform civil law applicable to all French citizens without distinction of religion, race, or origin. France operates a strictly secular republican model (*laïcité*) under which religious law has no place in civil affairs. Civil marriage is compulsory; religious ceremonies have no legal standing without a preceding civil ceremony. The French experience demonstrates that a unified civil code is fully compatible with a diverse, multiethnic, and multireligious society, though the strict application of *laïcité* has generated tensions with Muslim communities regarding religious dress codes and the accommodation of religious practices in public spaces.

### ***Turkey: Legal Modernisation in a Muslim-Majority State***

Turkey's 1926 Civil Code, based on the Swiss Civil Code of 1907,<sup>41</sup> was a remarkable example of top-down legal modernisation in a predominantly Muslim country. Mustafa Kemal Atatürk's secular revolution abolished religious personal laws, including the Ottoman millet system, and replaced them with a secular civil code abolishing polygamy, establishing equal rights for women in divorce and inheritance, and making civil marriage compulsory. The Turkish experience is particularly instructive for the Indian debate because Turkey, like India, had a strong Islamic personal law tradition. However, the Turkish model has important limitations:

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<sup>37</sup>CEDAW Committee, General Recommendation No. 29 on the Economic Consequences of Marriage, Family Relations and their Dissolution, UN Doc. CEDAW/C/GC/29 (2013).

<sup>38</sup>International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Art. 3; India ratified ICESCR on 10 April 1979.

<sup>39</sup>*Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

<sup>40</sup>Code Napoléon (*Code civil des Français*), promulgated 21 March 1804, superseded by the current *Code civil* (France).

<sup>41</sup>Turkish Civil Code, 1926 (Law No. 743), replaced by the Turkish Civil Code, 2001 (Law No. 4721).

reforms imposed by authoritarian state power in the absence of democratic deliberation have remained contested within Turkish society, demonstrating that legal reform imposed without democratic consensus may face sustained resistance.

### ***Germany, Canada, and Islamic Nations***

Germany's Bürgerliches Gesetzbuch (BGB, enacted in 1900)<sup>42</sup> applies a single secular personal law to all citizens regardless of religion, while accommodating religious diversity by permitting religious marriages as private ceremonies without binding legal force in civil law unless they comply with fundamental principles including gender equality. Canada, despite its strong constitutional commitment to multiculturalism, maintains a uniform secular personal law, demonstrating that strong multiculturalism and legal uniformity are not contradictory.

The argument that a UCC is incompatible with Muslim personal law deserves examination in light of the practice of Islamic nations themselves. Tunisia's Code du Statut Personnel (1956)<sup>43</sup> abolished polygamy, required judicial divorce, and established equal grounds for divorce for both spouses — at the time, one of the most progressive family law codes in the Muslim world. Morocco's Moudawwana reform (2004),<sup>44</sup> achieved through extensive national consultation, significantly modernised Islamic family law while maintaining legitimacy within the Islamic legal tradition. These examples powerfully refute the claim that personal law reform in the direction of gender equality is incompatible with Islamic values or with the preferences of Muslim populations.

### **C. Human Rights Dimensions and Lessons for India**

The human rights case for a Uniform Civil Code rests primarily on the principles of equality and non-discrimination. In a constitutional democracy that guarantees equality before law, it is constitutionally anomalous that a citizen's legal rights in the most intimate spheres of life should depend on their religious affiliation. The gender justice dimensions are particularly compelling: multiple personal law systems discriminate against women in marriage (through inadequate protection against child marriage and lack of free consent requirements), divorce (through unequal or unavailable rights to initiate dissolution), and inheritance (through differential share entitlements).<sup>45</sup>

International experience yields several important lessons for India. First, legal uniformity and

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<sup>42</sup>Bürgerliches Gesetzbuch (BGB), German Civil Code, 1900 (as amended).

<sup>43</sup>Code du Statut Personnel (Tunisia), 1956, Decree of 13 August 1956 (as amended).

<sup>44</sup>Moudawwana (Moroccan Family Code), 2004 (Dahir No. 1-04-22 of 3 February 2004).

<sup>45</sup>CEDAW Committee, General Recommendation No. 21 on Equality in Marriage and Family Relations (1994), para. 13.

religious diversity are not mutually exclusive; France, Germany, Turkey, and Canada demonstrate that secular civil codes can coexist with, and indeed protect, religiously diverse populations.<sup>46</sup> Second, reform from within is more sustainable than imposition from without; the Tunisian and Moroccan experiences suggest that personal law reform achieves greater acceptance when it engages with the religious tradition and claims legitimacy from within. Third, codification is not the same as abolition; a UCC need only ensure that the civil consequences of marriage, divorce, and succession are governed by a uniform, secular standard while parties remain free to celebrate their marriages according to religious tradition. Fourth, India's CEDAW and ICCPR obligations, endorsed through ratification, provide a normative framework for reform that is both internationally grounded and domestically authoritative, with Article 51(c) of the Constitution directing the State to foster respect for international treaty obligations.<sup>47</sup>

## V. CHALLENGES AND THE WAY FORWARD

### A. Political, Religious, and Social Challenges

The enactment of a Uniform Civil Code faces formidable challenges. The UCC has been a subject of intense political controversy since the founding of the Republic. Its association with Hindu nationalist politics has led many minority communities — particularly Muslims — to view UCC as an instrument of majoritarian imposition rather than a neutral legal reform. This perception has created a paradoxical political situation: any government that attempts to legislate a UCC risks accusations of religious majoritarianism, while deferral risks accusations of religious appeasement. This political trap has prevented successive governments of different political orientations from taking decisive action for over seven decades.

From the perspective of India's Muslim community, the largest minority community affected by any UCC, the concerns are both legal and existential. Muslim personal law is understood by orthodox Muslim scholars not merely as a set of civil law rules but as an expression of divine command. However, it is important to note that Muslim women's organisations, including the Bharatiya Muslim Mahila Andolan, have been among the strongest advocates for reform of Muslim personal law. Their voices challenge the monolithic characterisation of Muslim opinion on UCC and demonstrate that the reform agenda is not alien to Muslim community members, particularly women.

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<sup>46</sup>Robert D. Baird, "Uniform Civil Code and the Politics of Diversity in India" (1999) 41(3) *Journal of Church and State* 469.

<sup>47</sup>Constitution of India, 1950, Art. 51(c).

Tribal communities have perhaps the most pressing concerns about UCC, given the specific constitutional protections conferred on tribal customary law and land rights under Article 371A and the Fifth and Sixth Schedules. Any UCC that purports to apply uniformly to Scheduled Tribe communities in states like Nagaland and Meghalaya would face immediate constitutional challenges. The Parsi community, given its small size and the centrality of community identity to Parsi culture, has expressed concerns about the homogenising effect of a UCC on Parsi family law and inheritance practices.

### **B. The Goa Civil Code as a Domestic Proof of Concept**

The state of Goa is the only Indian state that has a Uniform Civil Code, a legacy of Portuguese colonial rule which applied the Portuguese Civil Code of 1867 to all residents regardless of religion. After Goa's liberation in 1961, this Code was continued in force. The Supreme Court in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira* (2019)<sup>48</sup> acknowledged the Goa Civil Code as a "shining example" for the rest of India.

The Goa Family Law provides a single set of rules on marriage, divorce, inheritance, and succession applicable to all residents of Goa regardless of religion. Key features include compulsory civil registration of all marriages; equal rights of men and women in divorce proceedings; a community property regime (*meação*) under which spouses share equally in property acquired during the marriage; and equal inheritance rights for children irrespective of gender.<sup>49</sup> The Goa Civil Code has been largely accepted by Goa's diverse population over six decades, demonstrating that a uniform code, carefully designed and respectful of local traditions, can achieve social acceptance in a religiously diverse context.

However, the Goa Civil Code retains a discriminatory provision permitting Hindu men who married before the commencement of the Code to practise polygamy if their first wife failed to produce a male child by age 25 or any child by age 30. This anachronistic provision has been widely criticised and must not be replicated in any national UCC. The Goa model teaches that legal uniformity in the civil sphere is achievable in India; the political will and sound design principles are what is lacking, not the legal or social feasibility.

### **C. Law Commission Recommendations and the Path Forward**

The Law Commission of India has examined the UCC question on multiple occasions. The Law Commission's 185th Report (2003) adopted an incremental approach, recommending specific

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<sup>48</sup>*Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) SCC OnLine SC 1467.

<sup>49</sup>G. Souza, "Goa's Common Family Law: A Critical Appraisal" (2009) 4(2) *Indian Journal of Law and Society* 112.

reforms to existing personal laws without recommending a comprehensive UCC.<sup>50</sup> The 18th Law Commission's Consultation Paper on Reform of Family Law (2018) noted that a UCC "is neither necessary nor desirable at this stage" and instead recommended reforms within existing personal law frameworks to eliminate discriminatory provisions, specifically identifying polygamy, differential inheritance rules, and limited divorce rights for women as priority areas.<sup>51</sup> The 22nd Law Commission, issuing a public notice in June 2023 inviting views on UCC, signals renewed official engagement with the subject, and its forthcoming report will be a significant input to future legislative action.

These successive Commission reports suggest a viable pathway: rather than sudden, comprehensive displacement of all personal laws, India could adopt a phased approach beginning with elimination of specific discriminatory practices through targeted amendments, followed by gradual convergence of personal law rules towards a common standard, and ultimately the enactment of a comprehensive code when political conditions permit. This incremental strategy is consistent with the constitutional language of "endeavour" in Article 44, which suggests a continuing obligation rather than an immediate duty.

## VI. CONCLUSION AND SUGGESTIONS

### A. Conclusion

The question of a Uniform Civil Code in India is, at its heart, a question about the kind of republic India wishes to be. It is a question about the meaning of equality in a pluralist society; about the relationship between secular constitutionalism and religious identity; and about the capacity of the democratic state to undertake bold, constitutionally mandated legal reform in the face of political resistance.

First, Article 44 is a constitutional mandate, not merely a pious aspiration. The Supreme Court's consistent position — from *Shah Bano* (1985) through *Sarla Mudgal* (1995) to *Shayara Bano* (2017) — that Parliament is constitutionally obligated to endeavour towards a UCC reflects the foundational commitment of the Constitution's framers to national unity and gender justice.

Second, the existing personal law regime perpetuates unconstitutional inequality. The critical analysis in Part III of this paper demonstrates that Hindu, Muslim, Christian, and Parsi personal laws, in their current forms, contain provisions that discriminate against women in matters of marriage, divorce, maintenance, and inheritance — provisions that are inconsistent with Article

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<sup>50</sup>Law Commission of India, *185th Report on Reform of Family Law* (New Delhi: Government of India, 2003), paras. 2.11–2.15.

<sup>51</sup>Law Commission of India, *Consultation Paper on Reform of Family Law* (31 July 2018), p. 7.

14 and with India's obligations under CEDAW and the ICCPR.<sup>52</sup>

Third, a Uniform Civil Code is constitutionally feasible. The argument that UCC violates religious freedom under Articles 25–26 is not persuasive because personal law is part of the secular domain of civil relations and does not go to the core of religious belief or practice. The essential religious practices doctrine clearly places civil law rules on marriage, divorce, and inheritance in the secular category subject to State regulation. The existence of the Goa Civil Code and the Special Marriage Act provide domestic proof of concept for secular civil law frameworks.

Fourth, international experience supports reform. Turkey, Tunisia, France, and Germany have demonstrated that a unified secular civil law is compatible with religious diversity. India's reservation to CEDAW Article 16(1) is constitutionally inconsistent and should be withdrawn as part of a comprehensive commitment to gender equality in personal law.<sup>53</sup> Fifth, the path to a UCC must be consultative and democratic. A UCC imposed without broad-based consultation and democratic deliberation will be constitutionally contested and socially unstable; the process of arriving at a UCC is as important as its eventual content.

## **B. Suggestions**

1. **Constitute a High-Level Expert Committee.** Parliament should constitute a high-level Expert Committee comprising eminent jurists, constitutional lawyers, Islamic scholars, Hindu and Christian religious scholars, gender experts, tribal representatives, and civil society organisations, to draft a UCC through a transparent, inclusive, and time-bound consultative process.<sup>54</sup> This consultative approach will give the resulting code democratic legitimacy and improve its prospects of judicial survival and social acceptance.

2. **Design a Rights-Based, Gender-Just, Minimum-Standard Code.** The UCC should be designed as a minimum-standard code, establishing a floor of rights (equal rights in marriage and divorce, equal inheritance rights, equal maintenance rights) below which no personal law may fall, while allowing communities the freedom to maintain non-discriminatory cultural customs and religious ceremonies.

3. **Withdraw India's Reservation to CEDAW Article 16(1).** India should withdraw its reservation to CEDAW Article 16(1) as a signal of its genuine commitment to gender equality in personal relations and as an alignment of domestic law with international human rights

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<sup>52</sup>National Human Rights Commission, *Annual Report 2020–21* (New Delhi: NHRC, 2022), p. 47.

<sup>53</sup>Vienna Convention on the Law of Treaties, 1969, Art. 27.

<sup>54</sup>B.R. Ambedkar, *Annihilation of Caste* (Critical Quest, 2007 edn.), p. 88.

obligations, supported by a concrete legislative programme to reform the specific personal law provisions inconsistent with CEDAW Article 16.

4. **Continue Incremental Reform in Parallel.** Even before a comprehensive UCC is enacted, Parliament should pursue a programme of incremental reform within existing personal law frameworks, including: codification of Muslim personal law incorporating a gender-just interpretation of Islamic legal principles; statutory prohibition of polygamy across all personal law systems; standardisation of the minimum age of marriage to 18 for women across all religious communities; reform of inheritance rules to provide equal shares for sons and daughters; and reform of maintenance rules to provide equitable post-divorce maintenance for women across all personal law systems.

5. **Review and Update the Goa Civil Code.** The Goa Civil Code should be reviewed, updated to remove its discriminatory provisions including the residual polygamy exception, and further studied as a model for national-level legislation. The Goa experience should be comprehensively documented to inform the design of a national UCC.

6. **Provide Specific Protections for Tribal Communities.** Any UCC legislation must include specific provisions that respect the constitutional protections for tribal customary law under Articles 371A, the Fifth and Sixth Schedules. The UCC should apply minimum standards of gender equality to all communities including Scheduled Tribes, but should allow for community-specific exceptions in relation to non-discriminatory customary practices, subject to periodic democratic review.

7. **Launch a National Legal Literacy Campaign.** A public legal education and awareness campaign should accompany any UCC legislation to ensure that communities, particularly women in rural areas and marginalised communities, understand the nature and scope of the reform and their rights under the new framework, conducted in all scheduled languages and through multiple media channels.

The Uniform Civil Code is a long-overdue constitutional commitment. Its realisation requires political courage, constitutional fidelity, genuine consultation, and a firm commitment to the twin values of equality and fraternity that animate the Indian Constitution. The continued operation of discriminatory personal laws in a constitutional republic that guarantees equality before law is a contradiction that cannot be sustained indefinitely. The time has come for India to honour, in deed as well as aspiration, the constitutional promise of equal civil law for all its citizens — a promise made by the founders of this republic over seven decades ago and still awaiting fulfilment.