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# Uniform Civil Code in India: An Enigma So Far

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## ABSTRACT

*A unified set of civil laws governing marriage, divorce, inheritance, and adoption for all religious and cultural groups is proposed under India's Uniform Civil Code (UCC). Opponents contend that the UCC could jeopardize India's cultural variety and religious freedom, while supporters believe it as essential for gender equality, national integration, and streamlining the legal system. The historical context, constitutional foundation, judicial actions, and advantages and disadvantages of the UCC's implementation in India are all examined in this paper. It also discusses the different perspectives of religious autonomy and secularism, offering a thorough examination of the arguments for and against a UCC in a diverse country like India. While addressing concerns about religious freedom, it critically assesses arguments for and against the UCC, emphasizing how it might solve gender inequities. In an effort to strike a balance between uniformity and India's varied culture, this paper examines workable implementation strategies for the UCC using examples such as the Goa Civil Code. In the end, the study aims to determine whether the UCC, in spite of its difficulties, could be a step toward a more just and equitable India. It also suggests workable strategies for resolving the firmly established problems of legal reform, religious plurality, and national cohesion.*

**Keywords:** Uniform Civil Code, UCC, Implementation, India, DPSP.

## I. INTRODUCTION

*“The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion.”*

- Dr. B. R. Ambedkar

In terms of civil rights, like as marriage, divorce, inheritance, and adoption, the Uniform Civil Code (UCC) is a proposed set of rules that would apply consistently to all Indian citizens,

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regardless of their religious affiliation.<sup>2</sup> Article 44 of the Indian Constitution, which placed the UCC under the Directive Principles of State Policy and calls on the government to strive toward a common civil code for all citizens, is where the UCC got its start, it is defined as "One nation, One Law". However, because of India's intricate cultural and religious diversity, Article 44 is still non-binding, and the UCC has not yet been put into effect. In India, the UCC debate is on whether the state should preserve religious liberty and cultural preservation through distinct personal laws or support national unity and gender equality by legal uniformity.<sup>3</sup> The UCC's proponents contend that disparities and inconsistencies in civil concerns caused by many personal laws including those of Islam, Hinduism, and Christianity can disadvantage people, particularly women. Opponents counter that implementing a UCC may jeopardize the cultural and religious liberties protected by Article 25 of the Constitution and that personal laws are essential to religious identity.<sup>4</sup>

Particularly in situations when personal laws clash with fundamental rights, the judiciary has been instrumental in drawing attention to the necessity of a UCC. Prominent instances like the Sarla Mudgal case (1995) and the Shah Bano case (1985) have emphasized the judiciary's position that a UCC may avoid such problems and that personal laws shouldn't violate individual rights. However, the adoption of a UCC continues to be a contentious topic in India, illustrating underlying tensions between gender equity, secularism, and religious freedom.<sup>5</sup>

The purpose of this paper is to present a thorough examination of the UCC by discussing its constitutional foundation, historical roots, and judicial interpretations. The historical background will look at how India's personal laws have changed over time and emphasize early reform initiatives. The balance between secularism and cultural preservation will be examined in the constitutional analysis, which will concentrate on the relationship between Article 44 and fundamental rights like Article 25 (freedom of religion). Judicial viewpoints will be covered in detail, which emphasized the judiciary's demand for a single code to address discrepancies in personal laws. Along with addressing concerns about religious autonomy and cultural identity, the paper will critically analyze the arguments for and against the UCC, examining how it might advance gender equality, secularism, and social cohesion. It will also look at practical considerations for implementing the UCC in a pluralistic society, taking inspiration from models like the Goa Civil Code, and offer suggestions for striking a balance between uniformity

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<sup>2</sup> M. Harini & M. P. Akil, Uniform Civil Code, 21 SUPREMO AMICUS (392) (2020).

<sup>3</sup> Gunjeet Singh, Uniform Civil Code and Its Fallacies, 4 INT'L J.L. MGMT. & HUMAN. 660 (2021).

<sup>4</sup> Harshita Jain, Critical Analysis of Objections to Uniform Civil Code, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

<sup>5</sup> Satyam Singh & Shobhitabh Srivastav, Uniform Civil Code: A Critical Study Of Individual Rights And The Role Of Secular State, 3(11) JCIL (2017).

and diversity. The paper seeks to advance a sophisticated understanding of the UCC's role in creating a contemporary, just Indian legal system by using this methodical methodology.

## II. HISTORICAL BACKGROUND AND CONSTITUTIONAL PERSPECTIVE

The origins of the Uniform Civil Code can be found in the colonial period, when British officials in India decided not to amend personal laws in order to prevent religious minorities from becoming offended. However, they deliberately decided not to codify the personal laws of the country's many religious sects. Its main objective was to incite religious strife among the populace of the country, which aided in the formulation of its divide-and-rule policy. Each community was permitted by the British to handle civil problems in accordance with its own laws and customs. In the end, this arrangement produced unique legal frameworks for various religious groups in areas like adoption, inheritance, and marriage.<sup>6</sup> Dr. B.R. Ambedkar and other framers of the Indian Constitution stressed the necessity of a UCC as a way to bring the nation together and guarantee equal rights for all of its people. He also spoke about Article 44 and its call for a uniform code, observed "It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."<sup>7</sup>The Constituent Assembly, however, recognized that the country's religious diversity might make its immediate implementation too difficult and ultimately chose to place the UCC under the Directive Principles of State Policy rather than the enforceable sections of the Constitution due to the sociopolitical complexity of post-partition India.<sup>8</sup>

The Indian state's cautious approach to religious and cultural liberty is reflected in Article 44's continued status as an aspirational objective rather than a legally enforced requirement. Due to several significant court rulings that brought attention to the conflict between individual laws and basic rights, the discussion surrounding the implementation of a UCC grew in intensity. For example, in the Shah Bano case (1985), a Muslim woman filed for maintenance from her husband after they divorced. Using Section 125 of the Criminal Procedure Code, which grants maintenance rights irrespective of religious affiliation, the Supreme Court decided in her favor. The disparities that women experience under personal laws were highlighted by this ruling, which generated a great deal of discussion.<sup>9</sup> In a similar vein, the Court desired a UCC in the

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<sup>6</sup> Rohan Dutta, An Overview of India's Uniform Civil Code, 6 INT'L J.L. MGMT. & HUMAN. 1057 (2023).

<sup>7</sup> Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948

<sup>8</sup> Choudhary, R. (2020). Uniform Civil Code. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3649628>.

<sup>9</sup> Government of India, Law Commission of India, Saxena, S., Badola, P., Belove, O., Gupta, S., & Mishra, A. (2018). Consultation Paper on Reform of Family Law. [https://law.py.gov.in/docs/ucc\\_21lc\\_rfl.pdf](https://law.py.gov.in/docs/ucc_21lc_rfl.pdf)

Sarla Mudgal case (1995),<sup>10</sup> contending that individual constitutional rights should not be violated by personal laws. These examples support the judiciary's belief that a UCC could assist in resolving disputes resulting from disparate personal laws and defending people's rights, particularly where religious practices clash with the values of justice and equality. The legislative has been hesitant to move, citing possible backlash from religious communities, despite the Indian judiciary's constant backing for the necessity of a UCC to handle these issues. Therefore, the hopes for a unified legal system and the realities of India's heterogeneous cultural terrain are balanced in the constitutional underpinning for a UCC.

### III. ARGUMENTS IN FAVOR OF A UNIFORM CIVIL CODE

Supporters of the Uniform Civil Code contend that national cohesion and gender equality depend on it. The current personal law system in India frequently leads to discriminatory behaviors, which disproportionately affect women. For example, various religious personal laws still maintain clauses that restrict women's rights in divorce, property, and maintenance, even though Hindu personal laws have been changed to better protect women's inheritance rights.<sup>11</sup> By creating a uniform framework that treats every citizen fairly, a UCC would guarantee that gender justice is upheld in all communities. Proponents contend that by eradicating prejudices ingrained in religious traditions, such a code would uphold women's rights and promote their empowerment. Additionally, a UCC is viewed as a way to support national integration and secularism. Proponents contend that the law shouldn't distinguish between individuals in a secular state according to their religious membership. A UCC would promote a single national identity over disparate religious identities by standardizing civil laws. A genuinely secular legal system that upholds the same norms for all citizens and promotes equality and unity would look like this. Supporters contend that a UCC would foster social cohesion by averting disputes between communities brought on by disparate personal laws.<sup>12</sup>

Additionally, proponents contend that by lowering the legal complications brought on by several personal laws, a UCC would aid in streamlining the legal system. Currently, courts deal with a large number of instances involving conflicts between fundamental rights and personal laws, which leads to legal ambiguity and puts more strain on the judiciary. Such complications would be removed by a single code, guaranteeing uniform standards among communities and

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<sup>10</sup> Ibid.

<sup>11</sup> Sturman R. The Politics of Personal Law. In: *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights*. Cambridge Studies in Indian History and Society. Cambridge University Press; 2012:107-238.

<sup>12</sup> Secularism and its critics - Rajeev Bhargava - Oxford University press. (n.d.). <https://global.oup.com/academic/product/secularism-and-its-critics-9780195650273?lang=en&cc=za>.

simplifying the administration of justice.<sup>13</sup> Furthermore, since citizens would not have to deal with disparate legal systems because of their religion affiliation, a UCC would give them more clarity and security in civil concerns. To summarize, the arguments in support of a UCC focus on legal clarity, gender equity, and secularism. By removing discrimination within personal laws, reaffirming India's secular nature, and streamlining the legal system, it will promote a more egalitarian society.<sup>14</sup>

#### **IV. ARGUMENTS OPPOSING THE IMPLEMENTATION OF A UNIFORM CIVIL CODE**

A uniform code, according to the UCC's opponents, may jeopardize religious and cultural identities, especially for minority communities. Personal laws frequently reflect deeply held religious convictions in a country as culturally varied as India. Critics worry that a UCC may weaken these distinctive identities by enforcing a uniform framework that minimizes the value of traditions and rituals. Minority communities, who see personal laws as crucial to their cultural autonomy, should be particularly concerned about this issue.<sup>15</sup> Many people find that religious traditions provide them a sense of identity and continuity, therefore imposing a UCC could upset their way of life. Representatives of the community and religious leaders frequently voice concerns that a UCC may undermine religious freedom and spark social turmoil. The right of citizens to declare, practice, and spread their faith is safeguarded under Article 25 of the Constitution.<sup>16</sup> Critics contend that a UCC may infringe on individual liberty by meddling in religious rituals and activities. The imposition of a UCC may also give minorities the impression that the majority is forcing its beliefs on them, which could make them feel excluded.

Moreover, some argue that a single code cannot adequately meet the wide range of legal requirements in India. Various communities, particularly tribal and rural populations, have distinctive customs that are important to their identity. If a UCC ignores these procedures, it may cause more legal problems than it fixes.<sup>17</sup> Opponents contend that a more effective approach that upholds justice and respects diversity may be to amend individual personal laws to address gender disparity. In conclusion, those opposed to a UCC contend that a more nuanced strategy is needed in India's pluralistic society, concentrating on improvements within individual laws as opposed to enforcing a single standard across all communities.

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<sup>13</sup> Kumar, A. (2024, March 11). Constitutional Aspects Revolving Around Uniform Civil Code: A Critical Analysis. TSCLD. <https://www.tscl.com/uniform-civil-code-a-critical-analysis>

<sup>14</sup> Ibid.

<sup>15</sup> Menski, W. (2008). The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda. *German Law Journal*, 9(3), 211–250. <https://doi.org/10.1017/s2071832200006416>

<sup>16</sup> Ibid.

<sup>17</sup> Gender, Religion and Democratic Politics in India on JSTOR. (n.d.). [www.jstor.org](http://www.jstor.org). <https://www.jstor.org/stable/27896590>

## V. JUDICIAL PRONOUNCEMENTS

The Indian judiciary has continuously backed the concept of a Uniform Civil Code (UCC) when basic rights and personal laws are in conflict. The Supreme Court has underlined the necessity of a UCC to preserve the values of equality, justice, and secularism in a number of significant judgments. The judiciary's statements demonstrate its conviction that a UCC would protect against discrimination and standardize the legal system. significant cases that highlight the Court's position on the UCC are listed below.

### 1. Shah Bano Case (1985)

One of the most important cases pertaining to the UCC is Mohd. Ahmed Khan v. Shah Bano Begum,<sup>18</sup> also referred to as the Shah Bano case. A Muslim woman named Shah Bano filed for maintenance from her husband under Section 125 of the Code of Criminal Procedure (CrPC) following his divorce by issuing a decree of "talaq." Her husband contended that he was only required to pay support during the three months following the divorce, or the iddat period, under Muslim personal law. The Supreme Court decided in Shah Bano's favor, holding that all citizens, regardless of faith, are protected from destitution by Section 125 of the CrPC. The Court emphasized that personal laws should not infringe upon the fundamental right to maintenance by ruling that Shah Bano was entitled to maintenance after the iddat period. The Court noted the necessity of a Uniform Civil Code in its ruling, claiming that by granting everyone the same rights regardless of faith, the law would contribute to the unification of India's secular identity.

Some segments of society saw the ruling as interfering with religious rules, which ignited a nationwide debate. The Shah Bano verdict was essentially overturned when the government, under compulsion, passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which restricted Muslim women's claim to maintenance to the iddat period. Nevertheless, the case raised awareness of the UCC controversy and the necessity of resolving the conflict between constitutional rights and personal laws.

### 2. Sarla Mudgal Case (1995)

A Uniform Civil Code was further supported by the Supreme Court in the Sarla Mudgal v. Union of India<sup>19</sup> case. The case concerned a Hindu guy who married a second wife without divorcing his first after converting to Islam. Polygamy is allowed under Muslim law but forbidden under Hindu law. After converting to Islam, the guy was able to get around the ban

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<sup>18</sup> AIR 1985 SC 945

<sup>19</sup> AIR 1995 SC 1531.

on polygamy by taking advantage of the legal distinctions between Hindu and Muslim personal rules. The Supreme Court decided that a Hindu man who was still legally married under Hindu law may not convert to Islam purely for the purpose of engaging in polygamy. Because it permitted people to avoid the responsibilities of their first marriage contract, the Court ruled that such conversions for personal benefit were against the values of justice and equality. The Court stressed in its ruling that private laws shouldn't clash with fundamental rights and advocated for the establishment of a UCC to stop the abuse of religious laws for private gain.

The difficulties of upholding several personal laws within a secular framework were brought to light by the Sarla Mudgal case. The Court's support for a UCC emphasized the necessity of a uniform legal norm that would stop people from taking advantage of variations in religious laws, fostering consistency and equity in marriage and family-related issues.

### **3. Danial Latifi Case (2001)**

The question in the *Danial Latifi v. Union of India*<sup>20</sup> case was whether the Muslim Women (Protection of Rights on Divorce) Act, 1986, was constitutional. The Shah Bano case prompted the passage of the Act, which restricted Muslim women's post-divorce maintenance rights to the iddat period. Muslim women, however, contested this clause at the Supreme Court, claiming it infringed upon their right to equality and dignity. The Act was affirmed by the Supreme Court, which gave it a progressive interpretation. According to the Court, the Act requires the husband to provide the ex-wife with a "reasonable and fair provision" that should be paid during the iddat period and must be enough to sustain her for the remainder of her life if she does not remarry. This interpretation brought the Act's provisions into line with the values of justice and equality by guaranteeing that divorced Muslim women got equitable support after the iddat period.

Even when limited by personal rules, the Court's consideration for the rights of divorced Muslim women was shown in the *Danial Latifi* case. The ruling emphasized the judiciary's dedication to upholding individual rights within the parameters of personal laws and emphasized the drawbacks of maintaining distinct religious codes in a secular society, even though it did not specifically call for a UCC.

### **4. Shayara Bano Case (2017)**

A major turning point in the judiciary's attitude to personal laws was the *Shayara Bano v. Union of India*<sup>21</sup> case, also known as the Triple Talaq case. The instantaneous triple talaq (talaq-e-

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<sup>20</sup> AIR 2001 SC 3958.

<sup>21</sup> AIR2017 SC 4609.



biddat) practice, which permitted a Muslim man to divorce his wife by saying "talaq" three times in one sitting, frequently without any chance for reconciliation, was contested by Shayara Bano. Bano claimed that the practice infringed upon her basic rights to dignity, equality, and nondiscrimination. In a 3:2 majority decision, the Supreme Court declared that instantaneous triple talaq was unnecessary for Islamic practice, arbitrary, and unconstitutional. In highlighting the Court's position on personal rules that violate fundamental rights, the ruling emphasized that religious laws must adhere to the values of equality, justice, and human dignity. Following the decision in Shayara Bano's favor, triple talaq was made illegal by the Muslim Women (Protection of Rights on Marriage) Act, 2019.

The Shayara Bano case highlighted the necessity of eliminating discriminatory practices in personal laws, which advanced the judicial support for a Uniform Civil Code. The decision represented a wider judicial tendency toward developing a common framework that upholds fundamental rights across religious communities, even though it was particular to Muslim personal law.

## VI. CONSTITUTIONAL LEGAL PROVISION

A number of the Indian Constitution's legal provisions serve as the foundation for the Uniform Civil Code (UCC), which is mirrored in particular legislative and judicial decisions. These clauses set the parameters for the UCC discussion by striking a balance between secular values, religious freedom, and the requirement for consistency in civil cases.

### 1. Article 44 – Directive Principles of State Policy<sup>22</sup>

A Uniform Civil Code for all citizens is expressly called for in Article 44 of the Indian Constitution. It says:

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

The Directive Principles of State Policy (Part IV of the Constitution), which serve as rules for the State to abide by in its governance, include this article. In order to maintain equality and national cohesion, the founding vision for a unified legal system controlling civil matters like marriage, divorce, inheritance, and adoption is reflected in the Directive Principles, despite the fact that they are non-justiciable, meaning they cannot be enforced in court.

Article 44 was inserted by the Constitution's writers with the hope that India would eventually adopt a unified legal system that reflected the secular character of the nation. However, because

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<sup>22</sup> INDIA CONST. art. 44

Article 44 is non-binding, the legislature has discretion over how it is implemented, allowing for religious and cultural diversity.

## **2. Article 14 – Right to Equality<sup>23</sup>**

All Indian citizens are guaranteed equal protection under the law and equality before the law under Article 14. This equality principle is at the heart of the case for a UCC. Religious groups frequently have quite different personal laws, which results in disparities in how people are treated in civil cases like marriage, divorce, and property rights. These differences can occasionally result in discriminatory actions that specifically impact the rights of women.

Proponents contend that by guaranteeing that everyone is treated equally under a single civil code, regardless of their faith, a UCC would advance the constitutional promise of equality. In its decisions on personal law disputes, the Supreme Court has frequently referenced Article 14, highlighting the fact that religious traditions that run counter to the values of justice and equity cannot infringe upon the fundamental right to equality.

## **3. Article 15 – Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex, or Place of Birth<sup>24</sup>**

Discrimination on the basis of religion, race, caste, sex, or place of birth is forbidden by Article 15. Given that personal laws frequently result in varied treatment depending on religious affiliation and that different communities are governed by different laws, this article further strengthens the call for a UCC.

Articles 14 and 15 have been violated due to the discriminatory consequences of some personal laws, especially those pertaining to marriage, inheritance, and maintenance. Proponents of a UCC contend that the existence of many religiously based personal laws is incompatible with the Indian State's secular character and encourages inequity. They support a UCC as a way to end these differences and guarantee that every person, regardless of their religious background, has equal rights.

## **4. Article 25 – Freedom of Religion<sup>25</sup>**

Article 25 protects freedom of conscience and the right to freely profess, practise, and spread religion, subject to public order, morality, and health. Although religious practices are protected by this article, the extent of this right has frequently been contested in relation to a UCC.

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<sup>23</sup> INDIA CONST. art. 14

<sup>24</sup> INDIA CONST. art. 15

<sup>25</sup> INDIA CONST. art. 25

Since personal laws enable people to live in accordance with their beliefs, opponents of a UCC contend that they are a necessary component of religious freedom. They argue that enforcing a UCC may violate religious freedom under Article 25 by interfering with religious rites and practices. Though religious rituals are protected, the Supreme Court has made it clear that they cannot infringe upon morals, public order, or individual rights. For example, discriminatory practices against women, such as triple talaq, have been declared unconstitutional. The judiciary has stated that actions that violate fundamental rights are not protected by Article 25, implying that the right to equality and gender justice must be weighed against religious freedom.

### **5. Article 26 – Freedom to Manage Religious Affairs<sup>26</sup>**

According to Article 26, religious denominations are allowed to govern their own religious affairs. Which states:

“Subject to public order, morality, and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.”

In essence, this article gives religious organizations the freedom to manage their own internal religious affairs, including rites and customs. According to one interpretation of Article 26 in the context of the UCC, religious organizations need to be able to administer and adhere to their own religious regulations without intervention from the government.

Though this degree of independence is not unrestrained. The Supreme Court has held that religious denominations' policies and procedures must adhere to the larger principles of the constitution, including those of morality, public order, and health. For instance, the judiciary has stepped in to say that certain personal laws or practices cannot supersede fundamental rights if they discriminate against a particular gender, as is the case with triple talaq or polygamy. According to the Court's understanding, religious organizations are free to handle their internal religious affairs, but any unfair or discriminating practices may be examined in light of the equality guaranteed by the Constitution.

## **VII. INTRODUCTION TO THE GOA CIVIL CODE**

The Goa Civil Code, also referred to as the Portuguese Civil Code, is the only state in India which incorporates a variant of the Uniform Civil Code. When Goa became a part of India in 1961, this code, which had been in place during Portuguese colonial control, was maintained.

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<sup>26</sup> INDIA CONST. art. 26

Because it offers a uniform legal framework for personal concerns like marriage, divorce, inheritance, and adoption for all inhabitants, regardless of their religious views, the Goa Civil Code sets a unique example in the Indian legal system. Since it shows how a common civil law may be applied practically across religious communities, it continues to be a major point of reference in the current discussion regarding a UCC for the entire country.<sup>27</sup>

### **Key Elements of the Goa Civil Code**

#### **1. Consistency Among Religious Communities**

The universal application of the Goa Civil Code to all citizens, regardless of their religious beliefs, is one of its distinguishing features. The Goa Civil Code mandates that people of all religions adhere to a single set of rules for marriage, divorce, succession, and other personal concerns, in contrast to other regions of India where civil matters are governed by personal laws based on religious connections. With the goal of fostering equality and guaranteeing that no group is given special treatment in civil matters, this law places Muslims, Hindus, Catholics, and others under the same legal framework. Important topics like gender equality and inheritance rights, which have frequently been contentious under distinct personal laws, are addressed by Goa's equal application of civil law. By effectively removing differences in legal treatment based on religious identification, the Goa Civil Code guarantees that every Goan citizen has equal legal standing in matters pertaining to their personal lives.<sup>28</sup>

#### **2. The Goa Civil Code Regarding Marriage and Divorce**

A community property system is enforced by the Goa Civil Code's marriage rules, which means that any property gained by either spouse during the marriage is regarded as joint property and is divided equally in the case of a divorce. This idea of communal property promotes gender equality by preventing one couple from controlling all the money and safeguarding each party's financial rights. Additional requirements based on Canon Law, which the Catholic Church adheres to, are outlined in the Goa Civil Code for Catholics. Catholic marriages must take place in a church, and divorce is only allowed in certain situations, such as adultery or serious mental illness, according to the code. An example of how a UCC might be modified to accommodate many faiths within a common framework is provided by this merging of civil and religious

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<sup>27</sup> De Souza, G. (2022, May 11). Explained: The Goa civil code, the new model for a uniform civil code. *Hindustan Times*. <https://www.hindustantimes.com/india-news/explained-the-go-a-civil-code-the-new-model-for-a-uniform-civil-code-101652304333768.html>

<sup>28</sup> Herald Team, & Herald Team. (2019, September 21). Goa: A shining example of Uniform Civil Code. *Herald Goa*. <https://www.heraldgoa.in/review/goa-a-shining-example-of-uniform-civil-code/151472>

standards, which permits a common legal framework while honoring specific religious rituals.<sup>29</sup>

### 3. Rights of Succession and Inheritance

All heirs are granted equal rights under the unique inheritance and succession rules of the Goa Civil Code. In contrast to many religious personal rules in other regions of India, both male and female children have equal rights to inherit property. For instance, females are just recently granted equal rights to inherit property under Hindu law, whereas in certain interpretations of Muslim law, daughters are entitled to half of their sons' inheritance share. To promote gender equality and eliminate potential sources of prejudice, Goa's law requires equitable distribution among all legal heirs, irrespective of gender or religion. In order to avoid arbitrarily excluding legitimate heirs, the rule also mandates that at least half of a deceased person's property be bequeathed to their children. By ensuring equitable property distribution and protecting family rights, this law makes it difficult for anyone to avoid or disinherit family members without a valid basis.<sup>30</sup>

### 4. Laws pertaining to adoption

The civil code of Goa also governs adoption. While adoption methods and approvals vary widely under different personal laws in other Indian states, the Goa Civil Code stipulates a uniform adoption process that applies to everyone. Regardless of the adoptive parents' religious beliefs, this unified approach guarantees that all children are granted the same legal rights and safeguards and streamlines the legal process.<sup>31</sup>

## VIII. RELEVANCE OF THE GOA CIVIL CODE IN THE DEBATE OF UCC

Article 44 of the Indian Constitution, which calls for a Uniform Civil Code (UCC) throughout the country, is embodied in the Goa Civil Code, which is a real-world example of a Uniform Civil Code in India. The Goa Civil Code, according to proponents of a national UCC, demonstrates that common civil laws can be implemented without seriously interfering with religious practices. The code shows how a UCC might advance social harmony, gender equality, and secularism by treating all citizens equally under a single set of laws. The success of the Goa Civil Code has spurred the court, political leaders, and civil rights advocates to propose that this model be replicated on a nationwide basis. The code is frequently used in Supreme Court rulings as an illustration of how a common civil code may function, especially when the court has

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<sup>29</sup> TriumphIAS. (2023, April 7). GOA'S CIVIL CODE IS NOT AS UNIFORM. TriumphIAS. <https://triumphias.com/blog/goas-civil-code-is-not-as-uniform/>

<sup>30</sup> Ibid

<sup>31</sup> See supra note 21

demanded that discriminatory practices in personal laws be abolished. For example, the Supreme Court acknowledged the necessity of a UCC to combat disparities, particularly those that impact women under specific religious laws, in the Shah Bano case (1985) and the Sarla Mudgal case (1995).<sup>32</sup>

### **(A) Challenges and Criticisms**

The Goa Civil Code has drawbacks despite of its advantages. Critics contend that the code does not fully adhere to the idea of a "uniform" code because it still includes provisions that support different religious practices, especially among the Catholic community. Catholic marriages in Goa, for instance, are required to abide by canon law, and some clauses only permit divorce under circumstances that the Church specifies. The degree to which the Goa Civil Code actually reflects a secular UCC has come under scrutiny as a result. Furthermore, considering the cultural and religious diversity of India, there may be more resistance to a national UCC. A UCC worries many religious communities because they believe it would violate their religious freedoms and upend long-standing personal laws. Additionally, detractors contend that the Goa Civil Code's success might be attributed in part to the state's distinct historical and demographic background, which may make it impossible to replicate nationwide.<sup>33</sup>

## **IX. A CRITICAL EVALUATION OF STATE OBLIGATIONS UNDER THE UCC**

The idea of the Uniform Civil Code (UCC) is to give all Indian citizens, regardless of their religious background, a standard set of laws covering civil matters, including marriage, divorce, inheritance, and adoption. Article 44 of the Indian Constitution, which instructs the State to work toward securing a UCC nationwide, is the foundation of this idea. However, a number of social, religious, and political obstacles have made its implementation difficult. In this regard, the State's constitutional duties to uphold equality, justice, and secularism offer a solid basis for supporting the UCC. With an emphasis on secularism, gender equality, social justice, and national integration, this critical analysis will look at how these constitutional duties bolster the argument for a UCC.<sup>34</sup>

### **1. Secularism**

One of the key concepts incorporated in the Indian Constitution is secularism, which holds that

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<sup>32</sup> See supra note 20

<sup>33</sup> See supra note 22

<sup>34</sup> VENKATACHALIAH, J. M. N. (n.d.). UNIFORM CIVIL CODE: PURPOSE, PROCESS AND PROSPECTS. [https://nja.gov.in/Journals\\_Publications\\_Newsletters/NJA%20Ocasional%20Paper%20Series%20No.7.pdf](https://nja.gov.in/Journals_Publications_Newsletters/NJA%20Ocasional%20Paper%20Series%20No.7.pdf) , also see, Harshita Jain, Critical Analysis of Objections to Uniform Civil Code, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

the state should stay impartial in religious matters and not favor one religion over another. Article 14, which protects equality before the law, and Article 25, which guarantees freedom of religion, both uphold this idea. By offering a common civil law, a UCC would be consistent with this secular framework by prohibiting the state from recognizing or promoting personal laws based on religion. Legal discrepancies have resulted from the persistence of religious personal laws, when various communities adhere to distinct legal frameworks for the same civil issues.<sup>35</sup>

**Critical Analysis:** A UCC would prevent the state from supporting or promoting any certain religious tradition, thus promoting secularism. The state must enact laws that treat all of its residents equally, regardless of their religious beliefs, in order to be considered secular. A UCC would aid in the eradication of disparities brought about by personal laws, such as unequal inheritance rights or discriminatory marriage customs, by applying the same legal requirements to everyone. A UCC guarantees that everyone is treated equally under the law, regardless of their religious identity, prohibiting religious laws from impacting civil concerns in a country as varied as India. For instance, a UCC can be used to prevent gender discrimination under religion personal laws. Despite improvements, there are still certain discriminatory practices in Hindu inheritance law. Additionally, there are aspects in Muslim personal law that are viewed as unfair, particularly in relation to divorce and inheritance. By standardizing these fields and preserving the idea of equality before the law, a UCC would guarantee that all citizens Muslim, Hindu, Christian, or any other religion are treated equally in civil cases.

## **2. Equality and Justice**

One of the most important constitutional duties is equality. According to Article 14 of the Indian Constitution, no one should be denied equality before the law or equal protection under the law. Religious communities frequently have disparate standards for marriage, divorce, inheritance, and maintenance when it comes to personal laws, which causes inequality both within and between communities and between men and women.<sup>36</sup>

**Critical Analysis:** By guaranteeing that all citizens receive the same treatment regardless of their religion, the UCC would act as a mechanism to eradicate such disparities. For example, Muslim women used to have fewer rights than men in terms of inheritance and divorce under Shariat law. Similarly, the previous Hindu Succession Act discriminated against Hindu women by denying them equal inheritance rights. Gender-based injustices are frequently the result of these

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<sup>35</sup> Ibid

<sup>36</sup> Ibid

discriminatory actions. The State would guarantee equal treatment for all citizens, regardless of gender or religion, by implementing a UCC. Women's fundamental rights would be safeguarded by a shared civil code, which would grant them the same rights as males in civil affairs such as inheritance, support, divorce, and marriage. Women's social and economic status would be greatly enhanced by this, particularly in areas where gender-based discrimination is still tolerated by traditional religious rules. A UCC would also guarantee that women's rights to property and maintenance are not conditioned on religious beliefs and minimize discriminatory practices ingrained in personal laws. For instance, a UCC would immediately address discriminatory practices in Muslim law, such as triple talaq and the unequal treatment of women in inheritance, so advancing justice for all residents.

### **3. National Integration and Social Unity**

India is known for its religious variety, with many communities adhering to distinct personal rules. Because each community is governed by its own set of laws, this split frequently adds to social fragmentation, which can occasionally result in conflicts and miscommunications between groups. Separate laws have the potential to exacerbate divides and impede the development of national cohesion.<sup>37</sup>

Critical Analysis: By guaranteeing that all citizens, regardless of their religious identification, abide by the same civil laws, a UCC would promote social cohesion and national unification. A UCC would establish a more coherent and united legal system where everyone is subject to the same legal principles and protections, doing away with the notion of distinct personal laws based on religious belief. A UCC's implementation would also stop legal pluralism, which is the practice of having multiple laws apply to the same issue according on a person's religion. For instance, even though both people are citizens of the same country, a Muslim's marriage and inheritance rights are governed by Shariat law, but a Hindu's are governed by Hindu law. Different views of equity, justice, and fairness may result from this legal fragmentation, which can also threaten national unity.

UCC, on the other hand, would establish a unified national identity under the law, promoting equality of citizenship and a sense of belonging for all Indians. The notion that all citizens are equal before the law and entitled to the same legal protections, irrespective of their religious beliefs, would be strengthened by this. In order to address long-standing community divisions and strengthen the social fabric of the nation, the establishment of a UCC may act as a unifying factor.

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<sup>37</sup> Ibid



#### **4. Promote Social Reforms**

History has seen the application of religiously based personal laws to defend antiquated social mores and customs that run counter to modern ideas of justice and equality. For instance, under personal laws, customs like child marriage, polygamy, dowries, and uneven inheritance were widespread but are now viewed as retrograde. A UCC might offer a route to social improvement by substituting a consistent legal framework for individual laws.<sup>38</sup>

Critical Analysis: By doing away with antiquated customs that go against the principles of equality, human dignity, and fairness outlined in the constitution, the implementation of a UCC will encourage social reforms. For example, polygamy is illegal under Hindu law but nevertheless permitted under some interpretations of Muslim personal law. By ensuring that everyone is subject to the same laws, a UCC would put a stop to such discriminatory behaviors. Furthermore, UCC can better address problems like child marriage and dowries because these customs are common in many communities and would be eradicated by a unified legal framework that would apply to all religions. The UCC would offer the legal resources required to uphold modern social standards that support the rights of underprivileged groups, women, and children. In addition, by offering a unified legal framework that supports the values of human rights, gender equality, and individual liberty, a UCC would promote progressive reforms. It would ensure that all citizens, regardless of religious heritage, are held to the same norms and make it simpler to enact and enforce reforms in areas like marriage and inheritance.

## **X. CONCLUSION**

One of the most contentious and intricate legal reforms in India is still the Uniform Civil Code (UCC), with issues spanning the domains of gender justice, national unity, secularism, and cultural identity. The UCC seeks to create a common set of civil rules that cut across religious, regional, and ethnic boundaries and grant all individuals equal rights. It is the result of colonial legacy, constitutional mandates, and democratic aspirations. The goal of social cohesion and national unification while honoring India's rich diversity and pluralistic culture shapes the discussion around UCC. The legislative structure, court rulings, state implementations, and the social and cultural difficulties of the UCC have all been examined in this study article. The Indian Constitution's Article 44, which declares UCC a Directive Principle of State Policy, first and foremost reflects the founders' goal of a one legal system. The Constitution's framers hoped that eventually India would adopt a legal system that forgoes religiously based personal laws, allowing all citizens to live in equality under a single body of civil laws. However, the UCC has

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<sup>38</sup> Ibid

not yet been fully implemented because of India's great diversity and the delicate nature of religious and cultural customs. This suggests that the legislature and courts are taking a practical stance that aims to maintain social harmony while defending the principles of justice and equality. As this study demonstrates, efforts to reform personal law have been fragmented, resulting in notable changes in certain areas particularly those pertaining to women's rights while ignoring others.

When examining court rulings, the judiciary's position on the UCC is demonstrated by seminal instances like *Shah Bano* (1985), *Sarla Mudgal* (1995), and *Shayara Bano* (2017). The Supreme Court has often called for legislative action to create a UCC, and these instances highlight that. Each of these decisions upholds the judiciary's belief that constitutional provisions, especially those pertaining to gender justice and equality, might occasionally clash with personal laws. Therefore, the judiciary has played a crucial role in raising awareness of the UCC and highlighting the necessity of a cogent approach to rights and obligations that goes beyond religious law. However, the legislature has generally reacted cautiously to the judiciary's calls, demonstrating the popular opposition and political sensitivities surrounding consistency in personal legislation. The possibilities and difficulties of implementing UCC nationally are illustrated by Goa's example, as it is the only Indian state to do so. Despite its flaws, Goa's Family Law shows that cultural variety and a working UCC can coexist, indicating that it may be possible to codify civil rules with care and consideration. However, the Goa experience also highlights gaps and discrepancies, suggesting that in order to prevent alienating communities, a UCC's application must be flexible enough to accommodate local and societal quirks.

In summary, the UCC calls for a gradual, inclusive approach that respects India's pluralistic framework, even while it promises increased social cohesion, gender equity, and national unity. A successful UCC might entail creating a flexible framework that permits individual freedom of belief while providing unambiguous, equitable standards in areas like as adoption, marriage, divorce, and inheritance, as opposed to enforcing a strict set of regulations. The need for a UCC may increase as India's socioeconomic and demographic environment changes, requiring discussion and agreement-building among interested parties to guarantee inclusive, representative, and balanced reform. Although the UCC's implementation may be a drawn-out and controversial process, it has the ability to fulfill the constitutional ideal of equality before the law and promote a diverse yet united national character that honors India's distinctiveness while promoting justice and equality for all of its residents.

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