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# Uniformity in Civil Code: Desirability and Challenges

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## ABSTRACT

*The issue of adoption and implementation of uniform or common civil code (UCC) has generated a lot of conflicts and debates and has been politicized by the Indian society in such a way that it has become a complex problem which yields no easy solutions. The present paper explains the origin, concept and need of the UCC. It also analyses the debates of the constituent assembly, which preceded the constitutional form given to the UCC. It also charts the judicial response to the concept along with the analysis of legislative deliberation of a UCC in Uttarakhand. The article offers an insight in the arena of gender discrimination due to diverse personal laws. It also dwells in the model drafts aimed at substantive equality and offers a jurisprudential critique of the concept.*

**Keywords** Uniform civil code, Gender equality, Personal laws, substantive equality.

## I. INTRODUCTION

Since the early days of framing of the Constitution of India, Uniform Civil Code (hereinafter- 'UCC') has been a topic of a great many debates and deliberations. The core idea behind a UCC is to establish a common code of laws governing personal issues like marriage, divorce, inheritance, and adoption applicable to all citizens irrespective of their religious and cultural affiliations. It primarily seeks to substitute different personal laws with a single and secular code applicable to all citizens irrespective of religious faith.

The Uniform Civil Code is envisioned under Article 44 of the Constitution of India (hereinafter- 'the Constitution') which directs the State to "*endeavour to secure for the citizens a uniform civil code throughout the territory of India.*" It is placed under the ambit of Part IV of the Constitution which constitutes of the non-justiciable directive principles. This article was fashioned by the founding fathers of the Constitution in a manner to provide a way for codification as and when time requires.

The core objective of a uniform civil code is encouragement of gender justice. It entails equity, protection to women and marginalised genders, and elimination of discriminatory practices that

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perpetuate gender inequality. The historical evidence accentuates the urgency of a UCC in this realm. For instance, discriminatory Islamic personal practice such as *triple talaq* was invalidated by the Hon'ble Supreme Court highlighting its contravention of the Articles 14 and 15 of the Constitution<sup>3</sup>. Similarly, equal coparcenary rights were provided to the daughters, just as the sons, in 2005 by amending section 6 of Hindu Succession Act, 1956. Aforementioned are only two of many recent examples of both judicial and parliamentary intervention to neutralise gender discriminatory personal legal rules. UCC could be a potent weapon in extending such progressive reforms with respect to gender-just laws in tune with constitutional principles. However, an attempt towards implementing such a code in a diverse country like India is sure to meet with many complexities and sensitivities.

The proponents argue that UCC stimulates national integration and secularism while empowering women as evidenced by the Goa civil code of 1867. This code prioritizes individual rights over communal traditions and enforces monogamy and equal property distribution regardless of faith. Critics, however, contend that it remains a politically motivated attack on the minority identities and further unnecessary at this moment. The 21<sup>st</sup> Law Commission in its consultation paper had proposed that the most crucial point was the rectification of the discriminatory provisions within the personal laws instead of full-fledged UCC which was 'neither necessary nor desirable at this stage'. The 23<sup>rd</sup> law panel has been given the task of identifying all such personal norms that have turned archaic.<sup>4</sup>

Despite the debates and conundrums, Uttarakhand has become the first state to bring a uniform civil code in their state thereby leading the way and causing other states to ponder upon uniform civil code in their own respective states. Ultimately, implementing UCC towards gender justice will pave the way for more just and inclusive society by upholding women's autonomy.

## II. ANALYSING THE CONSTITUENT ASSEMBLY DEBATES ON UCC

The Constituent Assembly of India had a debate on the Uniform Civil Code (UCC) on 23rd November 1948. They discussed the draft Article 35 of the Constitution, which in the final version, became Article 44.<sup>5</sup> The discussion exposed the contradiction between unifying the nation and maintaining the religious identities of the people. Minority communities especially the Muslims, raised their voices expressing their concerns over the risks of majoritarian politics. The debate revealed that more often than not, religious affiliations took precedence over

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<sup>3</sup> *Shayara Bano v. Union of India*, AIR 2017 SC 4609.

<sup>4</sup> Law Commission of India, "Consultation Paper on Reform of Family Law" (31<sup>st</sup> August, 2018).

<sup>5</sup> Constituent Assembly Debates on November 23, 1948 *available* <https://www.constitutionofindia.net/debates/23-nov-1948/> (last visited on September 30, 2025).

national unity. On top of that, the British colonial way of not meddling in personal laws had deepened the rifts among Indians.

The resistance against the draft Article 35 mainly came from the five Muslim members: Mohammad Ismail Khan, Naziruddin Ahmad, Mahboob Ali Baig, B. Pocker, and Hussain Imam. They said that a uniform civil code (UCC) would be unjust to the Muslims and that it would lead to a lack of harmony among the Muslim community. Besides that, the State was not entitled to interfere in the personal laws that are unique to certain communities without getting the consent of the said communities. The move was considered 'hasty' pointing at how the British, during their 175 years of rule, had not meddled with the fundamental personal laws and thus raising a question about the intent and power of the present State to do at once what the Muslims and British had avoided for many years.

Mohammad Ismail led the changes by recommending a proviso: "Provided that no group, section or community of people shall be required to renounce their own personal law if they have such a law." In his view, the right to observe personal laws was one of the basic rights. It was crucial for the way of life, religion, and culture of the communities that had been following these laws for generations. Ismail argued that state interference in these issues was against secular principles. He cited European examples, such as Yugoslavia's treaty obligations to protect minority rights, and other countries that continued to use personal laws. He rejected the idea that uniform personal laws would lead to harmony instead he asserted that allowing communities to retain their laws would forestall dissatisfaction and thus facilitate peaceful coexistence.

Naziruddin Ahmad also put forward another condition: "Provided that the personal law of any community protected by the statute shall not be altered without the prior consent of the community determined in a manner the Union Legislature establishes by law." He stressed that civil laws were deeply intertwined with religious beliefs and practices. He maintained that a uniform code should not have religious and semi-religious laws. Ahmad saw a contradiction between draft Article 19<sup>6</sup> and the latter which guaranteed the right to practice, profess and propagate religion while taking into account public order, health, and morality. He observed that though British-era laws like the Registration Act, Transfer of Property Act, Criminal Procedure Code, Evidence Act, and Sarda Act had been instrumental in creating consistency, they had steered clear of critical personal issues like marriage and inheritance. He was of the opinion that changes should come naturally in tandem with community development and only

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<sup>6</sup> Draft Article 19 took final shape as Article 25 of the Constitution of India.

if the community agrees and warned against rushing for a UCC.

Mahboob Ali Baig inserted another provision: "Provided that nothing in this article shall be construed as affecting the personal law of any citizen." He went on to explain that generally, civil codes refer to laws related to property, contracts, and evidence, and not to personal laws that are linked with religion. For instance, in the case of Muslims, laws about marriage, divorce, and succession are, in essence, religious. Beg faulted the framers for taking it for granted that civil codes comprise personal laws and thus he called for a limited interpretation so as to safeguard the religious communities.

B. Pocker was on Ismail's side when he described the UCC as an oppressive measure not only for Muslims but also for all other communities. By pointing out differences within Hindu law such as the Mitakshara and Dayabhaga systems, he questioned the need for uniformity and asked which system would be the model. Pocker was of the view that democracy necessitates that the majority be the ones to safeguard the rights of the minority. He criticized the article as an overreach that could not bring about a change in society overnight.

Hussain Imam concurred with these views. He emphasized the variety of India in terms of regions and cultures making a uniform code unfeasible for the near future. As an alternative, he recommended waiting for education, literacy, and economic equality to improve, thereby enabling people to be independent before implementing the code.

Some members, in their turn, came to the defense of the UCC. K.M. Munshi, among others, argued that the UCC was a step forward and rebutted the claims that it violated draft Article 19 (Article 25 of the Constitution) or was oppressive to minorities. He pointed out that religious practices that involve secular activities or any social reform could still be the subject of legislation without infringing on the fundamental rights and that the permission for this comes directly from draft Article 19 itself.

Munshi held that Parliament could introduce a civil code even in the absence of draft Article 35 (or Article 44) because of the provisions of draft Article 19<sup>7</sup>. He referred to progressive Muslim countries like Turkey and Egypt where unified civil codes are in place without any concessions for minorities. Besides, he also impressively hinted at the 1937 Shariat Act which was a major step in the direction of the uniformity of dissenting Muslim groups like Khojas and Cutchi Memons for the significant good of the community. Munshi stressed that unification is not the

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<sup>7</sup> Clause (2) of Article 25 mentions clearly: "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulation or restricting"... other secular activity which may be associated with religious practices; (b) for social welfare and reforms".

source of oppression but rather the divisions that are maintained. He cited the examples of several European countries having uniform codes applicable to everyone regardless of their background and urged India to follow the path of national integration without meddling in purely religious matters.

Munshi also emphasized the benefits of UCC for the majority. He made a point about the regional variations in Hindu law (Mayukha, Mitakshara, Dayabhaga) and the resistance of some Hindus who consider inheritance a religious matter. He related UCC to gender equality, stating that without it, the indoctrination of women in Hindu law might continue, which is in contradiction with the clause of the Constitution that prohibits discrimination.

Munshi warned that the existence of fragmented personal laws might be damaging to the national unity, a problem which becomes even more serious due to the British's divisive policy. To explain that personal laws may not always be directly derived from or be a part of religious rights, he mentioned an instance when a person like Allauddin Khilji reformed laws that were against Sharia keeping in view the interest of his territory.

Alladi Krishnaswami Ayyar agreed with this viewpoint, elaborating on the civil codes in general to also comprise contracts, property, succession, and marriage. He rejected the argument that a UCC would cause disharmony. On the contrary, he suggested that it would help eliminate disputes on issues such as inheritance and hence, decrease differences between various groups. Ayyar brought to attention how different legal systems have influenced each other, how Hindu codes have learned from other systems, and how the Succession Act has been influenced by Roman and English laws, thereby supporting development through integration. He asked if the continuation of separate laws is actually beneficial or detrimental to national unity.

First of all, he explained how the British criminal and contract laws were applicable to everyone equally without any problems, moreover, he said that the Muslims have accommodated non-Quranic principles in transactions and contracts. Ayyar emphasized the intercultural interactions that occur during conflicts of civilizations. He invited the opposition to understand the argument but at the same time to move forward with uniting the country. He disagreed with Pocker's statements on Europe, pointing out that countries like France and Germany have unified codes and do not keep personal laws separately. In the end, he said that the Parliament is able to come up with good laws without religion being threatened and that the majority can learn from minorities to better the laws.

The Drafting Committee chairman, B.R. Ambedkar, was in agreement with both Munshi and Ayyar regarding the feasibility of UCC in India. The Chairman was surprised by the opposite

view, as he mentioned how almost every aspect of human relations was already being handled by uniform codes save for marriage and inheritance. He brought to attention uniform laws that are already in place such as the Penal Code, Criminal Procedure Code, Transfer of Property Act, and Negotiable Instruments Act, which are applicable all over the country. Only marriage and succession were left as they were, and draft Article 35 was intended to change that. Ambedkar, opposing the idea of unchangeable Muslim law, brought up the variations in the past: until 1935 the North-West Frontier Province was under Hindu law; areas like the United Provinces and Bombay were applying Hindu succession to Muslims until the 1937 Shariat Act. He referred to North Malabar's Marumakkathayam law which is a matriarchal system and is applicable to Muslims. Ambedkar guaranteed that the next code can have not only appropriate parts from different laws but also Hindu and be voluntary initially, much like the opt-in clause in the Shariat Act. He was against the amendments that were proposed as unnecessary and thus negated them, believing that the Parliament could come up with a good code that does not cause injustice to Muslims.

The debate brought forth the core differences between the communities where religious identity was most of the time stronger than national unity. Those who were against it feared the state meddling in sacred areas, while the ones in favour thought that UCC was necessary for integration, equality, and modernization. Even though the changes were not accepted, the talking point of the day was about future reforms and was a reminder of how important it is to have consensus in the process of building a united India.

### **III. THE TENSION BETWEEN PERSONAL LAWS AND WOMEN RIGHTS**

Personal laws are always based on tradition and long-standing past practices. Historically men have dominated women and this dominance and patriarchy reflects in such laws, which are heavily tilted in favour of men. In 2018, a report given by Law Commission of India on family reforms observed that "various aspects of prevailing personal laws deprive women". KM Munshi strongly highlighted the conflict between personal law and gender equality suggesting how the personal laws, be it Hindu or Muslim, had many provisions that gave way to gender discrimination. He outlined that many Hindus and Muslim Assembly members opposed UCC because they think matters like inheritance and succession need to be essentially governed according to their respective religious dictates. In such a scenario, however, providing for the constitutional mandate of equality for women will become impossible. He emphasized that if such discriminatory practices are protected under smokescreen of religion then Parliament

could never be able to enact reforms to give women equal rights.<sup>8</sup>

Objections were raised in the assembly about religious freedom, cultural identity and non-interference with personal laws which they see as a segment of their way of life of their communities. Religious and cultural practices formed part of one's way of life and their personal autonomy and the personal laws, it was asserted, formed part of it. Therefore, any contravention with the personal laws would tantamount to interference with their way of life.

Prior to 1955, the women were rather considered a chattel and property of their husbands. The women were not treated equally to their male counterparts and polygamy was also prevalent during that period. The Hindu women were not considered as absolute owners of the property except her *stridhana*. She had only limited interest in property which was bequeathed to reversioners on her demise. The women had no right to adopt a child on her own. She was not considered the natural guardian of her children over the course of a lifetime of her husband.<sup>9</sup> They were further denied their coparcenary rights. Despite the gender reforms brought by Hindu Succession (Amendment) Act of 2005 and judicial pronouncements like Vineeta Sharma v. Rakesh Sharma,<sup>10</sup> Shah Bano v. U.O.I.<sup>11</sup> etc. the disparities still remain. And the gap between enactment and implementation still remains visible.

It remains a satire that despite India having the second largest Muslim population throughout the world, it still lacks reforms. It is preposterous to propose that the identity of the community will be lost if they will bestow equal share in inheritance.<sup>12</sup> A survey was conducted by Professor Z.M. Shahid Siddiqui to find out whether women get their equal share in the property by way of inheritance. The conclusion drawn from his survey was that out of 50 respondents who were interviewed, 65% women were denied their share. Right to equality is an individual right and manifestation of individual dignity which cannot be subject to arbitrary control of the community.<sup>13</sup> Though the Muslim women inherit their property, that share remains half of men's share. For example, daughters inherit half of son's share; wife inherits one-eighth and the husband one-fourth.

Under Muslim law, prevalence of polygamy remains the primal manifestation of the conflict of gender equality with personal laws. Another one is the age of marriage of Muslim women which is contrary to Prohibition of Child Marriage Act, 2006 and international human rights standards.

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<sup>8</sup> *Supra* note 3.

<sup>9</sup> GB. Reddy, Women And The Law, 312 (Gogia Law Agency, Hyderabad, 4<sup>th</sup> edition xvi, 1998).

<sup>10</sup> (2020) 9 SCC 1.

<sup>11</sup> AIR 1985 SC 945.

<sup>12</sup> K. Kusum, March towards dignity social- legal perspectives, 158-161, (Regency Publications, New Delhi, 1993).

<sup>13</sup> *Id.* at 161.



*Khula*, a form of divorce where women seek divorce subject to husband's consent or return of *mehr*, cause dilution of her autonomy. In the matter of custody of children women get the *Hizanat* till certain age as for boys it is 7 years and for girls till puberty. Father is recognized as natural guardian of children and mother gets limited recognition.

As far as Christian law is considered the child marriages performed in contravention of Christian Marriage Act, 1872 are not void but only voidable. This leads to exposure of women to early marriages and exploitation. The widows reduced share sometimes indirectly affects daughters since the major portion of share goes to male relatives if there are no children. This is often condemned as discriminatory.<sup>14</sup> Earlier maintenance laws were weak as compared to Hindu and Muslim laws, only alimony pendente lite was recognized and permanent alimony was subject to stringent judicial scrutiny. This made many women financially insecure. The amendment was made in 2001 to clear this flaw and many judicial directions were incorporated to bring gender justice.

Under Parsi personal law the status of women is more fragile than above mentioned personal laws. If a Parsi women marries someone of another religion then their children are not accepted as a part of Parsi community. In arguendo if a Parsi men marries someone out his community then his marriage will be accepted. Non-Parsi women cannot inherit her husband estate but their children can inherit.<sup>15</sup> This reflects that the gender bias prevalent in Parsi Laws.

Abovementioned showcases how the personal laws have been found to discriminate with women in many areas such as inheritance, property, marriage, divorce and in reality one may find any number of provisions in this regard. Article 44 of the Constitution directs the state to make a unified legal code for all which is considered a constitutional goal. Many critics of UCC, however, believe that it will cause intervention in their religious practices and threaten their community autonomy. It might further even become, it is asserted, a purely politically motivated attack on the minority identity. These concerns are valid and should be subject to open deliberations rather than straight dismissal.<sup>16</sup>

The phrase 'conflict of personal laws' is mainly imbibed in two phenomena, the *first* is over delegation of authority to religious and communal bodies to regulate core social relations, establishing their rules and principles which sometimes contravene constitutional mandates like rule of law, equality etc. The *second* is embedded in discriminatory personal law norms which

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<sup>14</sup> Indian Succession Act, 1925, § 33, No. 39, Acts of Parliament, 1925 (India).

<sup>15</sup> Vandita Mororka, Personal Laws and Gender Justice, (India Foundation, 2017).

<sup>16</sup> Leila Seth, A Uniform Civil Code: Towards gender justice, vol. 31, 30-40, India International Centre Quarterly, 31, 30-40, (2005).

causes injustice and inter community conflict.<sup>17</sup> The law changes with the change in society and the Indian personal laws require reformation given there are many archaic provisions that do not fit the psyche of the modern society. But protection of these discriminatory norms under the veil of religious freedom will only be arduous for the State to bring reforms.

During the colonial and post-colonial era, people left the family law matters largely with religious and communal domains creating a parallel legal system which has persisted and now became ever perplexed. The Article 44 as a directive principle institutionalized the friction between constitutional goal and plural personal laws. The judicial interpretation has at times attempted to fix constitution values into personal laws to bestow justice but legislative role overshadowed them. The Muslim Women (Protection of Rights on Divorce) Act of 1986 enacted after *Shah Bano case* is a good example for the same.<sup>18</sup>

Personal laws vary starkly in their respective religious and cultural practices leading to discrimination and inequalities in numerous factors such as polygamy under Muslim law, divorce arbitrariness, inheritance (daughters receives half shares under Sharia), adoption (Islamic *kafala* system verses secular Juvenile Justice System and maintenance). There are many other examples like digital talaqs via SMS which have been upheld in some cases despite *Shamim Ara v. state of U.P*<sup>19</sup> where court emphasized on reconciliation and fallout after *Shah Bano case* where maintenance rights were curtailed by the 1986 Act.

#### IV. JUDICIAL INTERVENTION AND THE NEED FOR UNIFORM CIVIL CODE

The Judiciary has acted as a catalyst for uniform civil code discourse through various landmark judgments. It voiced its concern through various judgments indicating the necessity to have uniformity in personal matters. The Hon'ble Supreme Court, for the first time, in *Mohammad Ahmed Khan v. Shah Bano begum*<sup>20</sup>, opined that it has now become a need of an hour to bring UCC and directed the Parliament to ponder upon enactment of the same. The court held that it is a matter of remorse that Article 44 of the Constitution has remained a dead letter. The court upheld against Muslim orthodoxy and awarded her maintenance comprehending that the code of criminal procedure (now as *Bhartiya Nagrik Suraksha Sanhita*) was a common law under which any women may claim maintenance irrespective of her religion.<sup>21</sup> The court went a step further and held that the maintenance right of Muslim women is no more now restricted to *iddat*

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<sup>17</sup> Kiran Suryanarayana, Uniform Civil Code and the Conflict of Personal laws, vol. 4, Journal of Law and Policy, (2017).

<sup>18</sup> *Id.* at 167.

<sup>19</sup> (2002) 7 SCC 518.

<sup>20</sup> (1985) 2 SCC 556.

<sup>21</sup> *Bhagwan Dutt v. Smt Kamala Devi*, AIR 1975 SC 945.

period only. This decision, in the *Daniel Latifi case*, was seen as a major leap towards uniform civil code.<sup>22</sup>

That one ideal which is pushed the most in attempting to argue for a common civil code remains the issue of national integration. It is argued that it will aid national unity and integration by abolishing conflicting and discriminatory ideologies enmeshed within personal laws. This view was stressed in *Jorden Diengdeh v. S.S Chopra*<sup>23</sup>, where court held that a legislative intervention was warranted in order to enact a uniform civil code for a consistent law on marriage and divorce. It was asserted that the personal laws tailored in respective religious and cultural practices still resulted in disparate rights and unfair treatment and thus uniform laws were needed for cure of the same. It was further needed to prevent arbitrary adjudication of matrimonial matters.

In the case of *Sarla Mudgal v. Union of India*<sup>24</sup>, the court held that an act of conversion of a Hindu male to Islam only for the purpose of performing bigamous marriages would be booked under the Indian penal code<sup>25</sup>. The court strongly stressed on the need of uniform civil code in India. Post this case the judicial trend had shifted a bit towards the argument opposing hasty implementation of UCC for sake protection of national integration. Put in simple manner, it stressed that a common code would not integrate but rather disintegrate the country if enacted prematurely. In *Lily Thomas v. UOI*,<sup>26</sup> the similar question as in Sarla Mudgal's case was posed in front the Apex Court. In this case, the court opined that "enactment of a uniform civil code though desirable may be counterproductive, the time is not yet ripe and the issue should be entrusted to the Law Commission which may examine the same in consultation with the Minorities Commission". The Supreme Court in another case observed the same suggesting that a uniform civil code though is highly desirable, but a hasty and one go implementation thereof can be counter-productive to unity and integrity of the nation.<sup>27</sup>

In *John Vallamottam v. Union of India* again the Supreme court opined that uniform civil code will assist the cause of national integration by eliminating the contrary ideologies.<sup>28</sup>

In *Ahmedabad Women's Action Group (AWAG) v. Union of India*,<sup>29</sup> court urged for the

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<sup>22</sup> *Danial Latifi v. Union of India*, AIR 2001 SC 3958.

<sup>23</sup> (1985) 3 SCC 62.

<sup>24</sup> AIR 1995 SC 1531.

<sup>25</sup> §494 of Indian Penal Code, 1860 for Bigamy is now covered under § 82 of the Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

<sup>26</sup> (2000) 6 SCC 224.

<sup>27</sup> *Pannalal Bansilal v. State of Andhra Pradesh*, 1996 (2) 2SCC 498.

<sup>28</sup> (2003) 6 SCC 611.

<sup>29</sup> AIR 1997 (3) SCC 573.

reformation of personal laws for gender justice and contemplated that the enactment of uniform civil code falls under the domain of legislature. The judiciary had no role in the domain of law making.

The most significant judicial development came in the case of *Shayara Bano v. Union of India*<sup>30</sup> where the practice of triple talaq or *talaq-e-biddat* was challenged. A 5-judge bench of the Hon'ble Supreme court held the practice to be unconstitutional, manifestly arbitrary and violative of the Article 14 of the Constitution. The verdict did not directly rule on uniform civil code but it reaffirmed the judiciary's role in reforming personal laws which should be consistent with the constitutional principles of equality and gender justice.

The court brought into notice the different viewpoints of different communities regarding UCC which were conflicting and it was recognized as a goal yet to be fully accomplished.<sup>31</sup> In the case of *ABC v. State (NCT of Delhi)*<sup>32</sup> the court highlighted obstacle faced by the Christian unwed mothers compared to their Hindu counterparts. It elucidated the need for UCC to remove such disparities. The court accentuated that UCC remains an unaddressed constitutional goal reflecting the pressing need for uniform civil code.

The court praised Goan uniform civil code as a perfect model of secular and uniform family law. It highlighted that the system of Goa uniform civil code is appreciable as it eliminates disparities which are seen in religion based personal laws elsewhere in India, such as those governing Hindus, Muslims, or Christians. The court observed that the Goa code ensures equality and gender justice in consonance with the Article 44 of the Constitution of India, which directs the state to endeavor uniform civil code.<sup>33</sup> It described Goan framework as a shining example of harmonization of uniform laws with diverse communities without infringement of religious freedom, reinforcing earlier rulings in *Sarla Mudgal case* and *Shayara Bano case*.

Recently, Uttarakhand took the step to enact and implement uniform civil code through the Uttarakhand UCC Act<sup>34</sup>. A PIL was filed shortly, representing the Muslim community, contending that UCC overrides religious personal laws and Islamic practices derived from the holy Quran. Solicitor General of India, Tushar Mehta, defended UCC as promoting equality and gender justice by preventing genetic issues from consanguine marriages. He said that this act is not targeting any religion. The court refused to stay the implementation of UCC and the

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<sup>30</sup> *Supra* note 1.

<sup>31</sup> *Shabnam Hashmi v. Union of India*, (2004) 4 SCC 1.

<sup>32</sup> (2015) 10 SCC 1.

<sup>33</sup> *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 SCC 85.

<sup>34</sup> The Uniform Civil Code of Uttarakhand, 2024, No. 3, Acts of Parliament, 2024 (India).

law has remained operational with over 100 marriage registrations already recorded by 2025.<sup>35</sup>

## V. ANALYSING THE UTTARAKHAND UNIFORM CIVIL CODE, 2025

Uttarakhand became the first state in independent India, and second state overall after Goa which had it in place pre-independence, to adopt a uniform civil code. The objective contemplated in this code is to give a marginalised status to women and bring them to justice. The code seeks to enact uniform laws in the key areas of personal nature such as marriage, divorce, inheritance, adoption and guardianship irrespective of their caste, creed, religious belief, or community. The aim of the act is “to govern and regulate the laws related to marriage and divorce, succession, live-in-relationship and matters related thereto.”<sup>36</sup>

As far as the provisions are concerned, they are uniform for all regardless of the religion professed by the parties. The essential conditions pertaining to marriages have been set in consonance with the Special Marriage Act, 1954. Many remarkable features are worth highlighting: Polygamy is prohibited, marriage is not allowed within degrees of prohibited relationship unless permitted by the customs and usage of the society provided they are not against public order and morality, age of marriage is fixed to be 21 years for man and 18 years for woman.<sup>37</sup> Any contravention of such provisions would be punishable with six-month imprisonment and fine.<sup>38</sup> The registration of marriage is made compulsory from the date of commencement of the Uttarakhand Compulsory Registration of Marriage Act, 2010 which is 26<sup>th</sup> of October, 2010 onwards. It is also made mandatory for any decree of divorce or nullity of marriage and as well where either of parties is a resident of state.<sup>39</sup>

The grounds of divorce or judicial separation stated in the act are: adultery, cruelty, desertion of a period of two years, conversion, unsound mind or any mental disorder of a kind and extent that aggrieved party cannot be expected to live with the respondent.<sup>40</sup> Therefore, marriage solemnised before or after the enforcement of this code can be dissolved only in accordance with provisions of code irrespective of any customs or usage. An act of dissolving the marriage in contravention of this code would be punishable with imprisonment extendable up to three years and fine.<sup>41</sup> The matrimonial remedy granted by this code is restitution of conjugal rights

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<sup>35</sup> The constitutional validity of Uttarakhand UCC has been challenged under *Almasuddin Siddiqui v. State of Uttarakhand*, 2025.

<sup>36</sup> *Supra* note 32.

<sup>37</sup> The Uniform Civil Code of Uttarakhand, 2024, § 4, No. 3, Acts of Parliament, 2024 (India).

<sup>38</sup> The Uniform Civil Code of Uttarakhand, 2024, § 32(1), No. 3, Acts of Parliament, 2024 (India).

<sup>39</sup> Choudhary Laxmi Narayan and Mridula Narayan, Uniform Civil Code, Uttarakhand, 2024- Uniformizing Marriage Laws and Legalizing Live-in-Relationships, *Journal of Psychosexual Health*, 6(3), 220-223, (2024).

<sup>40</sup> The Uniform Civil Code of Uttarakhand, 2024, § 22 and 25, No. 3, Acts of Parliament, 2024 (India).

<sup>41</sup> The Uniform Civil Code of Uttarakhand, 2024, § 29 and 32(2), No. 3, Acts of Parliament, 2024 (India).

and cohabitation on an order of the court.<sup>42</sup>

An observation of the conditions of marriage and grounds of divorce suggests that the Act seeks to prohibit polygamy, child marriage, triple talaq, practices of *nikah-halala*, *iddat*, and promote gender equality regardless of the religious beliefs of the parties. The code also makes it mandatory to abide by the provisions of the code by imposing deterrence of sanction. Few of the significant changes brought by this code are the mandatory registration of marriage, penal provisions appended etc. In this way this code made an effort to achieve the aims and objectives of Article 44 of the constitution of India.<sup>43</sup>

The provision regarding maintenance<sup>44</sup> envisaged under the code is gender neutral i.e. applicable to both wife and husband. Any *mahr*, *stridhana* or any property gifted to wife shall be in addition to her claim of maintenance. This code is the first legislation in India to regulate the live-in-relationships.<sup>45</sup> An obligatory provision is made under this act relating to registration of live-in-relationships. The registration thereof is prohibited where one partner was made to enter in a live-in-relationship by force, coercion, fraud or misrepresentation of fact or identity.<sup>46</sup> All the registrations of live-in-relationships are to be listed only for record purpose and the statements of such relationships are to be forwarded by the Registrar to the local police station, again for the record purpose.

This code has taken a major step towards implementing Article 44 of the Constitution in letter and spirit. Moreover, appending the provision related to live-in-relationships in the Act is a sign of progress amidst changing societal norms in modern day India.

Goan common civil code is derived from Portuguese civil code of 1867 and it applies to all the citizens irrespective of religion. The registration of marriage is compulsory so as to check child and bigamous marriage. It allows both spouses to access alimony and divorce which reflects promotion of gender equality. The same feature is adopted in the Uttarakhand uniform civil code. The civil code of Goa ensures equality in inheritance laws distributing the property equitably among successors irrespective of gender or religion. It further assures the joint ownership of spouses.<sup>47</sup>

The most consequential provision in this code is the pre-nuptial public deed relating to the

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<sup>42</sup> The Uniform Civil Code of Uttarakhand, 2024, § 21, No. 3, Acts of Parliament, 2024 (India).

<sup>43</sup> *Supra* note 37 at 221.

<sup>44</sup> The Uniform Civil Code of Uttarakhand, 2024, § 33, No. 3, Acts of Parliament, 2024 (India).

<sup>45</sup> The Uniform Civil Code of Uttarakhand, 2024, § 378-389, No. 3, Acts of Parliament, 2024 (India).

<sup>46</sup> The Uniform Civil Code of Uttarakhand, 2024, § 380, No. 3, Acts of Parliament, 2024 (India).

<sup>47</sup> Mrs. Salini C and Dr. S. Ambika Kumari, A Comparative Study on Goa Common Civil Code and Uttarakhand Uniform Civil Code, International Journal of Law and Management and Humanities, 652-665, vol. 8, issue 3, (2025).

disposal of immovable and movable property in the event of demise and divorce. During the marriage, both spouses have a common right over the estate, but on dissolution of property, it is divided equally between son and daughter. The philosophy underpinning the Portuguese Civil Code is to strengthen the family as the backbone of the society by ensuring justice and equality between both the spouses.

Goa is considered as a shining example of a visionary common civil code. And the Uttarakhand example appears to be a step forward in that quest. The dream of a uniform civil code for India may not actually be a distant dream given the examples of Goa and Uttarakhand. Chief Justice of India V.Y Chandrachud had once expressed his hope that it would one day awaken the rest of bigoted India.<sup>48</sup>

## **VI. MODEL DRAFTS AND LEGAL DOCTRINES**

As seen earlier, Shah Bano case brought a vital change in the legal system of India. In the post Shah Bano period, some attempts were made to formulate the uniform civil code. The foremost objective of these drafts was to bring certain uniformity in the diverse family laws. The draft makers adopted a formal notion of equality which proves to be adverse to women's rights. The approach should be towards substantive equality, not just a formal notion of equality.

### **Drafts by legal scholars**

The draft formulated by Bar Council of India in 1986 dealt with the whole gamut of personal laws in key areas of marriage, divorce, maintenance, custody and guardianship of children, adoption, legitimacy, inheritance, succession, implementation machinery and procedures. The draft recommends the mandatory registration of marriage and prescribes that a marriage ceremony is essential for claiming maintenance, which would cause a significant impact to women's rights. The section 125 of code of criminal procedure (as of now section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023<sup>49</sup>) has been embedded to provide maintenance to wives and children during subsistence of marriage and also after its dissolution.

The draft also elucidates the concept of joint ownership of matrimonial property. The property acquired by the spouse before marriage is deemed to their separate property. This includes presents or gifts received by women i.e. stridhana, mahr, etc. The spouses are entitled to equal share after dissolution of marriage or death. Keeping in view the formal equality model, it provides maintenance to both husband and wife which is reflected in Hindu Marriage Act. Such

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<sup>48</sup> Shamim Ahmad Ansari and Dr. Naseem Akhtar, Uniform Civil Code in India: A comparative analysis, *International Journal of Applied Research*, 10 (1), 106-110, (2024).

<sup>49</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023, § 144, No. 46, Acts of Parliament, 2023 (India).

concept is not common in other laws like Indian Divorce Act, Muslim personal law, Special Marriage Act.

Therefore, the overall result displayed of this draft is that despite their stated objective, the primary goal of the draft seems to be with uniformity and regulation of sexuality rather than a genuine concern for protecting rights of women and children.<sup>50</sup>

### **Recommendations by Vimochana and Lawyers Collective (1988)**

The major focus of this draft is the protection of economic rights of women within marriage. The draft encompasses provision related to joint ownership of property acquired after marriage and grants women the right to reside in the matrimonial home. The husband is restricted from selling the matrimonial home without the consent of the wife. The archaic provision of restitution of conjugal rights is abolished under this draft. To grant security to women, it is recommended that a divorce urged by the husband on the ground of irretrievable breakdown of marriage should be granted only after he makes reasonable and adequate economic provision for wife. The wife's right of residence in her matrimonial home is not extinguished upon divorce.<sup>51</sup>

As the women face many obstacles after the enforcement of maintenance order, putting note on this, the draft suggests that the husband should voluntarily disclose all his assets and income immediately after a petition for divorce is filed by either of the spouses. The draft provides civil and criminal remedies to prevent violence against the women. It also proposes the abolition of adultery. The concept of father as the natural guardian of a child is abolished under this draft. It majorly protects the mother's right to custody by stating that custody should be given to the parent who has taken responsibility of the child in the past. The mother would not be disentitled to custody of child on the basis of lack of her earning capacity or she has no dwelling.

The major drawback of this draft is at one side it recommends the compulsory registration of marriage while at other side it grants rights to women in informal relationships. The draft introduces the remedy of irretrievable breakdown of marriage which was proposed by the Law Commission in its 71<sup>st</sup> report. This was abandoned as many women organisations raised voice against it. The opposition was based on the fact that the remedy perhaps be not suitable for Indian cultural ethos and women will be worse affected by it.<sup>52</sup>

### **Recommendations by the All India Democratic Women's Association (AIDWA) 1995**

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<sup>50</sup> 1, Flavia Agnes, *Family Laws and Constitutional Claims*, Oxford University Press, (2011).

<sup>51</sup> *Id.* at 177.

<sup>52</sup> *Id.* at 178.



This organisation suggested that there shall be an umbrella legislation for the existing personal laws. It proposed that secular legislation should concern the specific areas such as right to matrimonial property, protection against domestic violence and marriage registration facilities. This may pose impediments in the path of immediate reform but this would be indispensable step in the direction of reforming secular legislation. The organisation also contends that before implementing a comprehensive code, there should exist equality between men and women.

The legislation on joint matrimonial property would provide recognition to women's participation to the household and remove the incidents of destitution which are common among women of all communities. The registration of marriage would be helpful to women as it would be a documentary proof of a valid marriage in the event of dispute. The remedies both civil and criminal are given in the Domestic Violence Act to secure women against any kind of cruelty.

Many other organisations and women groups in the decade 1999-2000, were engaged with the process of drafting uniform laws which would remove discrimination against women. During this period, the term gender-just law was introduced to get rid of the deadwood of communal undertones of the demand for a uniform civil code.<sup>53</sup>

#### **Bill formulated by the National Commission for Women (1994)**

This bill formulated crucial provisions regarding registration of marriage, strict measures against non-registration of marriage, abolition of polygamy, abolition of the concept of restitution of conjugal rights,<sup>54</sup> the period of separation by mutual consent is decreased from one year to three months. The bill consists of only section that deals with the economic rights of women in maintenance and residence, both during the subsistence of marriage and after dissolution of marriage. Therefore, bill adopted the model of formal equality by granting similar rights of maintenance and residence in the matrimonial home to both the spouses.

#### **Private Member's Bill (1994)**

The bill titled, The Marriage Women's (Protection of Rights) Bill, 1994, is important for a number of reasons as it provides new remedies unlike other matrimonial statutes, applied step by step approach, based on the model of substantive equality. The debates in the Parliament related to this bill provide new ideas to legislative responses in protecting the women's economic rights. The bill stipulates the right of residence in matrimonial home to women regardless owned by husband or his family members. The bill required to be re-introduced but faded away on the commencement new government.

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<sup>53</sup> *Supra* note 48 at 180.

<sup>54</sup> The Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

These abovementioned drafts made a good attempt to make uniform laws and uplift the status of women. The implications of introducing the concept of joint family property, equal right to maintenance etc. depicts that somewhere there is need to have common law for such areas. The law is change according to the need of the society that is why the founding fathers of constitution stipulated that uniform civil code will not remain as a dead letter. It will be operative at the ideal time as per the mindset evolved in the people with the time.

## VII. UCC VIS-À-VIS LAW AND ORDER: A JURISPRUDENTIAL CRITIQUE

Going by the idea of Sigmund Freud, the human psyche is pre-designed in a manner that it favours order and uniformity over chaos. This proclivity of orderliness could be observed very clearly in his personal life and daily chores. This comfortable attitude towards repetitive patterns is innately present in the psyche of the humans barring the example of bohemians. They are comfortable with maintain the status quo and repulsive to change. This human predilection to repeat experiences or arrangements or inclination towards status quo is not just manifested in his personal life but also in his interaction with society and his general outlook towards it. It is enmeshed so much so that they become repulsive in welcoming changes at even societal level arguably. Thus, the general societal psyche, which is the sum total of those individual psyche, get so tied to the established societal order that any occurrence of disturbance freaks them out.<sup>55</sup>

Another psychic inclination of humans, per Freud, is that they tend to react adversely to conditions and changes under which their relations are controlled arbitrarily.<sup>56</sup> For instance, consider the situation of a particular community which is following a certain custom in a certain order. Even a slight modification in those practises and its manner or any other change appended- irrespective of the fact that change is for his benefit- will draw a great repulsion from its adherents. And if that happens arbitrarily, then it is bound to be met with a great opposition- a cherry on the top. They so fix themselves in that skeleton of their recurring practices. So, any disruption in the status quo leads to dismay and discontent among humans.

Humans thus naturally fashion laws and other instruments of social control with aim of realising above said ideals. *Law and order* in the society, therefore, is seen as a major function of law and justice. The disruptions and far-reaching changes in the law bring chaos in the society. The people are unwelcoming to sudden changes in the law because they have placed their faith on the status quo in conducting their affairs. But such a status quo is not always beneficial to the society and sometimes it becomes the reason for civilizational collapse. The reality remains that

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<sup>55</sup> Edgar Bodenheimer, *The Philosophy and Method of the Law*, 178 (Harvard University Press, Cambridge, Massachusetts, 1962).

<sup>56</sup> *Id.*

disorders and disruptions to status quo are inevitable- whether in nature or life. But not all forms of disorders are harmful. Some disorders, it is submitted, are order creating disorders and they are meant to protect a society from decaying into an archaic and destructive situation.

UCC is also seen as a disorder in identical manner. The people are fearful that enforcement of uniform civil code will cause turmoil within the society. Diverse groups live in the society following their own rituals and customs. They have made themselves habitual of following the past experiences in such a manner that any sudden change in their habitual life will make them panic. Regardless, it is submitted that UCC is an *order creating disorder* in reality meant to reform the society by eliminating the archaic and discriminatory personal practices.

Noticeably in the issue of forming a uniform civil code, India's binding commitments under international law have also started drawing attention of legal and other experts. An opinion which is forthcoming is that since discrimination against any religious group is violative of the UN Covenant on Civil and Political Rights and the Declaration on the Rights to Development adopted by the World Conference on Human Rights, Parliament must focus on separating religion from personal and social laws and must take steps to frame a Uniform Civil Code.

The landmark judgment of *Shayara Bano case* where the Hon'ble Supreme Court discarded the triple talaq marked a monumental moment in the Indian legal system. This perhaps brought a massive outcry among the Muslim community but after some time it was brought into control. This can be proclaimed as disorder in the customary practices followed by them but if seen through the lens of justice then there is an order conveyed even in this disorder, and a view to uplift the rights of women and remove discrimination. Dilution of article 370 of the Constitution was also feared for same reason and was supposed to wreck societal havoc in Kashmir valley but with time the tense law and order situation was brought into control as Kashmir heads towards normalcy.

The main agenda behind uniform civil code is to uplift and provide protection to the rights of women. The change is difficult to accept by the people but it is a reform necessary for the overall well-being of the society, especially the women. Uttarakhand, through its uniform civil code, has shown as to how these apprehensions could be tackled and has paved the way for other states to bring uniformity in the personal laws. As of now, Gujarat is also planning for the same. With the time, the dream of the founding fathers of the Constitution to bring a UCC through the country may become a reality.

## VIII. CONCLUSION

In conclusion, a justifiable uniform civil code is based on two foundational elements that are

gender justice and legal uniformity, starting with unequivocal protection of women's rights in marriage, inheritance and personal laws. The intention behind having a uniform civil code, enshrined under Article 44 of the Constitution, is not meant actually to replace personal laws and religious identity but rather to eradicate discrimination within and substitute it with a legal system enmeshed with both religious wisdom and modern necessities. The judiciary numerous times has stressed on the need for a uniform civil code in order to remove unequal practices and seek justice.

If the goal of UCC has to be achieved at all, there can be no instant answers. In a pluralist society like India where people have faith in their respective religious beliefs or tenets propounded by different religions or their offshoots, the founding fathers, while making the secular Constitution to integrate all sections of the society as a united Bharat, were confronted with problems to unify and integrate people of India professing different religious faiths who were born in different sub-sections in the society having different castes and sex, and speaking different languages.

The directive principles of the Constitution themselves aim to foster uniformity among individuals of different faiths and beliefs while visualising diversity. A uniform law, though perhaps desirable for the purpose of simplicity and uniform treatment, enactment thereof in one go may be detrimental. Making law or amendment to a law is a slow process. The mischief or defect which is most acute can be remedied by process of law at stages. Gradual changes like codification of uniform civil codes by various states, in a slow and phased manner taking into consideration synthesis of all systems with gender equality as a guiding light, can be considered as the only feasible solution.

The common civil code of Goa is the classic example of gender-neutral law. It outlines the uniform application of laws across communities, compulsory registration of marriage, equal rights in divorce and dissolution, gender-equal inheritance and succession laws, protection of women's rights in matrimony, flexibility for customary exceptions and proper judicial and administrative framework. The challenges like political resistance, cultural and religious sensitivities were all mitigated by applying constitutional safeguards. Erstwhile, it might have been difficult to tackle such situations but with the time it was adopted smoothly. Inspired by Goan common civil code, Uttarakhand enacted its own uniform civil code which also comprises similar provisions as above and can be considered as a progressive step in accomplishing the dream of founding fathers of the constitution.

The aspiration of fetching uniformity in the personal legislations grounded in the nationalistic

perspective is deeply problematic. It is submitted that compelling religious homogeneity, the shift towards uniformity to achieve national integration should be ingrained in the nourishment of the religious diversity. As far as women's rights are considered, it is an attempt to ensure the abolishment of derogatory practices from all personal laws and it would be more successful if the deliberation around personal laws shifts from a purely religious to gender-just perspectives. Gender equality and individual rights should be the first priority when it comes to improving personal laws. This will create a clear roadmap in the path of codification of uniform civil code.

The former Chief Justice of India, DY Chandrachud also made pitch for the uniform civil code and contended that the constitution expresses the desirability of a UCC. He expressed that it should be brought only after taking all the segments of the country and the society into confidence, and it must be ensured that the uniform civil code would be in their interest.

Therefore, let it be a slow march into the sunlight for, in the words of Martin Luther King, *"injustice anywhere is a threat to justice everywhere."*

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