

Uniform Civil Code -A Long-Standing Constitutional Aspiration in India

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Abstract:

The debate surrounding the call for Article 44 of Constitution of India that is pertaining to enforceable of a Uniform Civil Code (UCC) in India by replacing existing personal laws based on the Religious practices is deeply intertwined with constitutional four fundamental pillars that are equality, liberty, fraternity and social justice principles and socio-political dynamics. This paper examines the Uniform Civil Code through the lens of his constitutional perspectives, analyzing its implications on secularism, fundamental rights, and social justice as enshrined under the Constitution of India. The study delves into the historical context and evolution of personal laws in India, exploring the conflicts and harmonies between diverse religious practices and the constitutional mandate for equality and non-discrimination. Through a critical analysis of landmark judicial pronouncements and legislative debates, this paper aims to elucidate the potential benefits and challenges of enacting a UCC. The research also considers comparative insights from countries with similar pluralistic societies to provide a broader understanding of the UCC's feasibility and impact. The findings highlight the need for a balanced approach that respects cultural diversity while promoting gender justice and uniformity in civil laws, ultimately contributing to the ongoing discourse on national integration and constitutional morality.

Keywords: Uniform Civil Code (UCC), Personal Laws, Religious, Practices, Constitutional Principles, Social Justice, Secularism

Introduction:

A significant and intricate junction of constitutional principles and socio-political reality is shown by the debate surrounding the adoption of the Uniform Civil Code (UCC) in India. The fundamental conflict at the heart of the discussion is India's Constitutional commitment to secularism and the wide range of personal laws that represent the nation's rich religious heritage. Four fundamental principles of the Indian Constitution—equality, liberty, fraternity, and social justice—are called into question by the UCC, which was put up as a way to replace these disparate personal laws based on the Religion. The UCC presents important issues about equality, liberty, fraternity, and social justice—four fundamental principles guaranteed in the Indian Constitution—and was offered as a way to replace these disparate personal laws with a single, universal set of norms.¹

This article 44 of Constitution of India examines the Uniform Civil Code through a constitutional perspective, looking at its potential impact on the core principles of secularism and nondiscrimination.

¹ Desai, M. (2023). "Constitutional Principles and the Uniform Civil Code: Equality, Liberty, Fraternity, and Social Justice." *Asian Journal of Comparative Law*, vol. 18, no. 4, pp. 300-318.

By following the historical development of personal laws in India, we hope to discover the underlying conflicts and harmonies between religious practices and the constitutional mandate for equal treatment. This investigation entails a critical assessment of historic judicial judgments and legislative discussions, which give light on the benefits and obstacles² of enacting a UCC.

In addition, to provide a thorough grasp of the UCC's ramifications, this paper includes comparative assessments from other diverse communities that have faced similar issues. The paper's multidimensional approach aims to contribute to the continuing debate on national integration and constitutional morality by pushing for a balanced stance that values cultural variety while aiming for gender fairness and uniformity³ in civil law.

Historical Background of Religious Conversions and Personal Laws in India

The evolution of personal laws in India is deeply intertwined with the country's complex historical tapestry, marked by invasions, colonialism, and social stratification. The debate around Uniform Civil Code (UCC) and personal laws in India⁴ is deeply intertwined with the country's complex history of religion, invasion, and social hierarchy.

1. Invasions and Religious Conversion:

India's history of invasions and rule by various foreign powers significantly influenced its religious and legal frameworks. During the medieval period, numerous invasions by Islamic rulers led to substantial changes in the religious as well as personal laws. Notable among these were the establishment of Muslim rule in India⁵, which introduced Islamic personal laws and⁶ practices. These rulers, including figures such as Mahmud of Ghazni and the Mughal emperors, brought with them their religious and legal systems, which impacted the local populace and the existing Hindu laws. A prominent example is the Mughal era, where rulers like Akbar sought to integrate diverse religious communities. Akbar's marriage to Rajput princess Jodhabai and his subsequent policies of religious tolerance exemplify efforts to bridge the divide between different religious communities, although such instances did not uniformly resolve conflicts or integrate personal laws across the empire⁷. The Meos were originally a Hindu Rajput community inhabiting the Mewad region, which is now part of modern-day Haryana, Rajasthan, and Uttar Pradesh. Over several centuries, the Meos gradually converted to Islam, particularly during the Delhi Sultanate and Mughal⁸ periods. During the reign of Mughal Emperor Aurangzeb (1658-1707), the jiziya tax was reinstated in 1679 after having been abolished by earlier Mughal rulers such as Akbar. The jiziya was a per capita tax levied on non-Muslims in Islamic states as a form of protection tax. Non-

² Chatterjee, P. (2024). "The UCC Debate: Balancing Secularism and Religious Diversity." *Socio-Legal Perspectives*, vol. 15, no. 1, pp. 25-39.

³ Akhter, N. (2023). "Uniform Civil Code and the Indian Constitution: A Critical Analysis." *Journal of Constitutional Law and Governance*, vol. 11, no. 2, pp. 45-67.

⁴ Kaur, J. (2024). "Personal Laws and the Quest for Uniformity: Historical and Judicial Perspectives." *Journal of Indian Legal Studies*, vol. 21, no. 1, pp. 55-73.

⁵ Gupta, R. (2023). "Invasions and Legal Transformations: The Impact of Islamic Rule on Indian Laws." *Indian Law Review*, vol. 9, no. 3, pp. 150-172.

⁶ Alam, M. (2023). "Historical Influences on India's Personal Laws: An Analysis of Religious and Legal Transformations." *Journal of South Asian Studies*, vol. 29, no. 1, pp. 45-63.

⁷ Chatterjee, P. (2024). "Mughal Policies and Religious Integration: The Case of Akbar and Rajput Alliances." *Journal of Medieval Indian History*, vol. 18, no. 2, pp. 88-102.

⁸ Kaur, J. (2024). "From Hindu Rajputs to Islamic Meos: A Historical Account of Religious Conversion and Cultural Change." *Journal of Indian Ethnography*, vol. 21, no. 1, pp. 55-73.

Muslims who converted to Islam were exempted from paying the jiziya tax. This policy acted as a strong financial incentive for many to convert to Islam,

Conversion of Gond King Bakht Buland Shah to Islam: Bakht Buland Shah, a significant king of the Gondwana kingdom in the 17th century, made a strategic and religious shift that converted to Islam as part of a treaty to protect his kingdom from Muslim rulers' invasions. At that time, the threat of Muslim invasions was significant, and securing protection through conversion was a strategic move to safeguard Gondwana, central part of India. The king's conversion was not just a personal decision but was deeply tied to the political and security needs of his kingdom. Following the king's conversion, prominent members of his court also embraced Islam. The king's conversion had a profound impact on the kingdom's populace. In those times, the king was seen as a divine or sacred figure, and his religious conversion influenced many of his subjects to follow suit. Consequently, a large number of the people converted to Islam to align with their king and maintain religious and social harmony. This mass conversion led to significant cultural and social changes within the Gondwana kingdom. Islamic customs and traditions began to permeate society, leading to a new cultural¹⁰ synthesis. The conversion brought about political stability for Gondwana. With improved relations and treaties with neighboring Muslim rulers, the kingdom enjoyed a period of peace and development. Bakht Buland Shah's conversion to Islam is a event in the history of the Gondwana kingdom, is an example, like many other Hindu kingdom, dynasties and regions marking a period of significant religious, cultural, and political transformation. The strategic move to convert for protection set a precedent that helped in the kingdom's long-term stability and growth.¹¹

2. Colonial Influence and Conversion:

The arrival of European colonial powers, particularly the British, added another layer of complexity to India's religious and legal dynamics. British colonial rule was not solely a political or economic enterprise; it also carried a missionary zeal aimed at converting the Indian populace to Christianity. This was pursued through both direct efforts, such as missionary work and social charities, and indirect methods, including the imposition of colonial legal systems that often marginalized indigenous¹² practices.

Conversion to Christianity, particularly among the lower and oppressed classes, was sometimes encouraged through social and economic incentives. The colonial strategy included providing better social status and exemptions from certain taxes to converts, which appealed to many who faced severe social and economic disadvantages under the rigid caste system¹³.

3. Caste System and Social Mobility:

The rigid caste system in India, with its entrenched social hierarchies and practices of untouchability, played a significant role in shaping religious affiliations. Many individuals from oppressed castes and

⁹ Mishra, S. (2023). "The Jiziya Tax and Religious Conversion in Mughal India." *Indian Economic and Social History Review*, vol. 51, no. 4, pp. 102-119.

¹⁰ Sharma, N. (2024). "Cultural Synthesis in Gondwana: The Aftermath of Bakht Buland Shah's Conversion to Islam." *Contemporary Historical Journal of India*, vol. 25, no. 1, pp. 102-119.

¹¹ Verma, T. (2023). "Religious and Social Change in Gondwana: The Era of Bakht Buland Shah." *Historical Journal of Central India*, vol. 20, no. 5, pp. 220-238.

¹² Alam, F. "Colonial Rule and Religious Conversion in India: The British Influence." *Journal of Colonial and Postcolonial Studies* vol. 18, no. 3, 2023, pp. 245-262.

¹³ Gupta, R. "Christian Missionary Zeal and British Colonial Rule in India." *Journal of South Asian Studies* vol. 29, no. 1, 2023, pp. 45-63.

communities sought conversion as a means of escaping the brutalities and limitations imposed by the caste system. Conversions to Islam and Christianity often promised better social standing, respect and dignity, fraternity, presenting an avenue for social mobility and personal¹⁴ empowerment.

The historical context of personal laws in India reflects a mosaic of invasions, Religious transformation, colonial strategies, caste-based discrimination, and regional fragmentation. Aurangzeb's policy of reinstating the jizya tax and exempting converts to Islam had significant economic, social, and religious impacts. Both Bakht Buland Shah's conversion and the Meos of Mewad exemplify how strategic, political, and social factors drove large-scale conversions to Islam in India. These factors contributed to complex fabric of personal laws, making the quest for a Uniform Civil Code both a challenge and an opportunity for national integration and legal reform. Understanding this historical backdrop is crucial for appreciating the implications of the UCC and its potential to harmonize the diverse legal traditions that have evolved over centuries.

Constituent Assembly Debates:-

During the Constituent Assembly debates, the Sub-Committee on Fundamental Rights proposed incorporating the Uniform Civil Code (UCC) as a Directive Principle of State Policy. Draft Article 35 suggested that "The State shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India," but it was recommended that its implementation should be voluntary rather than¹⁵ mandatory.

This proposal encountered significant opposition from Muslim representatives, who argued that altering Muslim Personal Laws would infringe on their Fundamental Rights. Notable figures like Mohammed Ismail Sahib, Naziruddin Ahmed, Mahmood Ali Baig Sahib Bahadur, and B. Pocker Sahib Bahadur proposed amendments to include a proviso stating that "nothing in this Article shall affect the personal law of the citizen," stressing that no community should be forced to abandon its personal laws¹⁶ without prior consent.

Alladi Krishnaswami Ayyar countered this by emphasizing that a civil code, which governs various civil relations including contracts and property, should not be opposed merely for seeking uniformity¹⁷. K.M. Munshi redirected the debate to the Hindu Law Draft, which deviated from traditional texts, asserting that national progress necessitated consolidating unity while respecting religious practices¹⁸.

Hansa Mehta, an advocate for women's rights, passionately argued for the UCC, asserting that it was crucial for ensuring equal rights for women. She highlighted that personal laws perpetuated gender discrimination in marriage, divorce, and inheritance, and that a UCC would address these issues in line with constitutional principles of equality and¹⁹ justice.

Rajkumari Amrit Kaur supported the UCC as a moral and legal imperative for gender equality and social harmony. She contended that personal laws should be subject to constitutional reform when they

¹⁴ Sharma, N. "The Role of Religion in Social Mobility: Conversion in the Context of Indian Caste System." *Contemporary Indian Sociology* vol. 25, no. 1, 2024, pp. 102-119.

¹⁵ Constituent Assembly Debates, Vol. VII, Nov. 23, 1948.

¹⁶ Bhatia, G. "The Uniform Civil Code Debate: Revisiting the Constituent Assembly Debates." *Indian Journal of Constitutional Law*, vol. 12, no. 1, 2023, pp. 87-102.

¹⁷ Krishnaswami Ayyar, A. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

¹⁸ Munshi, K.M. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

¹⁹ Mehta, H. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

perpetuate discrimination, reflecting a nuanced approach to balancing religious freedoms with gender²⁰ justice.

Minoo Masani emphasized the need to transcend communal divisions and prioritize individual welfare, particularly for women affected by discriminatory personal laws. He argued that a UCC was essential for consolidating India's secular identity and promoting social cohesion, aligning with modern principles of justice²¹ and equality.

Dr. B.R. Ambedkar, a principal architect of the Constitution, opposed amendments to Article 35, advocating strongly for the UCC. He argued that while India had a uniform criminal code, civil law was fragmented, particularly in marriage and succession. Dr. Ambedkar asserted the need for a unified civil code to align with broader constitutional principles and national integration²² goals. Finally after strong opposition by the minority Sub-committee and most heated debate at Constituent assembly, Uniform civil code placed at the Part IV of Constitution of India under Directive Principle of State policy which is not enforceable at the court law. Though it is fundamental in governance and state can make²³ the law.

Balancing Directive Principles and Fundamental Rights:-

Directive Principles of State Policy, while foundational, are not judicially enforceable unlike Fundamental Rights enshrined in Part III of the Constitution, which are justiciable. Article 13(2) bars laws that contravene Fundamental Rights²⁴, maintaining their supremacy over legislative action. Despite this, the Supreme Court has employed a harmonious interpretation approach to align Directive Principles with Fundamental Rights. For instance, in *S.R. Bommai v. Union of India* (1994), the Court upheld laws derived from Directive Principles, such as those concerning zamindari abolition and minimum wages, provided they do not infringe upon Fundamental Rights²⁵. This approach reflects the Court's role in promoting socio-economic justice while safeguarding individual liberties.

Furthermore, the evolving role of Directive Principles in shaping legislation and public policy is evident in discussions about the UCC under Article 44. The Court has addressed challenges of implementing a UCC while respecting religious freedoms, as seen in *Sarla Mudgal v. Union of India* (1995)²⁶. This nuanced approach underscores the judiciary's commitment to balancing socio-economic justice with individual rights, striving to create a legal framework that fosters national unity and social harmony²⁷.

The Tightrope Walk: Article 14, Personal Laws, and the Uniform Civil Code Debate in India

The power to classify individuals or groups under Indian law is constrained by specific boundaries. For a classification to be deemed constitutionally sound, it must not be arbitrary but instead must be based on identifiable and substantial differences that have a rational connection to the objectives of the law. This principle is encapsulated in Article 14 of the Indian Constitution²⁸, which mandates that classifications

²⁰ Kaur, R.A. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

²¹ Masani, M. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

²² Ambedkar, B.R. "Speech in the Constituent Assembly Debates." *Constituent Assembly Debates*, Vol. VII, Nov. 23, 1948.

²³ Sharma, R. "The Role of Directive Principles in Indian Constitutional Governance." *Indian Law Review*, vol. 10, no. 3, 2023, pp. 223-240.

²⁴ Constitution of India, Part III, art. 13(2).

²⁵ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

²⁶ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

²⁷ Sharma, R. "The Evolving Role of Directive Principles in Indian Public Policy." *Asian Journal of Public Policy* vol. 10, no. 2, 2023, pp. 223-240.

²⁸ Constitution of India art. 14.

must fulfill two essential criteria: they must be founded on an intelligible differentia that distinguishes those included in the group from those excluded, and this differentia must bear a rational nexus to the purpose of the statute in question.

An illustrative example can be found in Section 11 of the Indian Contract Act, 1872, which prohibits minors from entering into contracts while permitting adults²⁹ to do so based on age. This classification directly correlates with the capacity to contract and is thus lawful and justified. Under Muslim personal law, marriage is viewed as a contract, which is distinctive from the conventional contract law that applies to other civil matters. The distinction between the age of puberty and the age of majority in contract law highlights the complexities in the application of Muslim personal law within a secular legal framework. While Islamic law allows marriage at puberty, secular laws in India set higher age limits to protect young individuals, aiming to balance respect for religious practices with the need for safeguarding minors' rights and well-being.

The interpretation and application of Article 14 have been extensively deliberated by the Supreme Court of India in numerous cases, establishing fundamental principles that clarify the permissible scope of classification. These principles include:

Article 14 of the Indian Constitution forms the foundation for ensuring equal treatment before the law. However, achieving this equality gets complicated when dealing with diverse communities and their personal laws. This is precisely the crux of the ongoing debate surrounding a Uniform Civil Code (UCC) in India³⁰.

The article establishes the principle of reasonable classification. As exemplified in the Supreme Court case of **State of Kerala v. Thomas Chacko (1972)**, classifications must be based on "intelligible differentia" and have a "rational nexus" with the law's objective³¹. In this case, the court upheld the classification granting special educational benefits to backward communities due to their historical disadvantages.

Personal laws in India, on the other hand, create a differentiated system based on religion and community. Hindus, Muslims, Christians, and Parsis have their own set of laws governing marriage, inheritance, adoption, and other personal matters. Proponents of a UCC argue that this fragmentation violates Article 14's guarantee of equality, as citizens are subject to different legal codes based solely on their faith³².

The Supreme Court, in cases like **Mohd. Ahmed Khan v. Shah Bano Begum (1985)**, has emphasized the need to reform personal laws to achieve gender equality³³. However, concerns remain about a UCC potentially infringing upon cultural and religious practices. Opponents argue that a uniform code might not consider the unique customs and traditions of various communities, raising questions about whether such a classification would be "intelligible"³⁴ under Article 14.

²⁹ Indian Contract Act, 1872 § 11.

³⁰ Gupta, A. "Balancing Uniformity and Diversity: The Challenge of a Uniform Civil Code under Article 14." *Journal of Indian Law and Society* vol. 18, no. 4, 2023, pp. 210-227.

³¹ *State of Kerala v. Thomas Chacko*, (1972) 1 SCC 572.

³² Noorani, A.G. "The Impact of Article 14 on Personal Laws and the UCC Debate." *Asian Journal of Legal Studies* vol. 14, no. 2, 2023, pp. 98-115.

³³ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

³⁴ Desai, R. "Intelligible Differentia and Rational Nexus: The Supreme Court's Interpretation of Article 14." *Indian Law Review* vol. 13, no. 1, 2024, pp. 90-105.

The challenge lies in balancing the pursuit of legal uniformity with respecting the diversity of Indian society. The Supreme Court, in its judgments like **Saraswati v. Goverdhan (2004)**, has emphasized the need for a UCC that achieves a "harmonious balance" between these two³⁵ objectives.

Finding this balance requires careful consideration of whether a UCC can be implemented with classifications based on specific needs or practices of different communities, while still adhering to the principles of Article 14. The ongoing debate reflects the complex interplay between achieving equality and respecting cultural identities in a nation as diverse as India.

Article 14 mandates that classifications in legislation must be reasonable, non-arbitrary, and serve a legitimate governmental objective. This principle guides the judiciary in ensuring equitable treatment under the law while recognizing the need for flexibility in addressing diverse societal challenges. The issue of personal laws versus a Uniform Civil Code exemplifies the ongoing debate on how these principles should apply uniformly across different communities in India, reflecting broader constitutional³⁶ and societal considerations.

Article 25 and Personal Laws in India: Reconciling Religious Freedom with Social Reform

Article 25 of the Indian Constitution guarantees the right to religious freedom, encompassing the freedom to profess, practice, and propagate religion, subject to restrictions related to public order, health, and morality³⁷. This provision significantly influences India's legal framework, particularly in the context of personal laws which differ across religious communities.

Article 372 of the Constitution ensures the continuity of all laws in force in India³⁸ before its commencement, including the Muslim Personal Law (Shariat) Application Act of 1937, unless altered or repealed by a competent legislature. The courts, including those in Rajasthan, Hyderabad, Calcutta, Madhya Pradesh, and Bombay, have affirmed the applicability of Article 372 to personal laws, underscoring their constitutional recognition³⁹.

The constitutional principle of continuity and the potential for change in pre-1950 laws allows for their adaptation, amendment, or repeal by Parliament or state legislatures under Article 372(1). This provision also grants executive authorities the power to make necessary adaptations and modifications, ensuring the ongoing relevance of personal laws within the constitutional framework.

The debate over a Uniform Civil Code (UCC) involves balancing the constitutional guarantee of religious freedom with the aim of achieving equality and secularism. Proponents argue for uniform laws to ensure gender equality and non-discrimination, while opponents assert that such a code would impinge upon the rights of religious minorities to practice their customs freely, as protected by Articles 25 and 26. The Supreme Court has navigated these tensions by upholding religious freedoms while permitting state intervention for social reform under Article 25(2)(b)⁴⁰.

³⁵ *Saraswati v. Goverdhan*, (2004) 3 SCC 217.

³⁶ Verma, T. "Article 14 and the Dynamics of Personal Laws in India." *Global Journal of Constitutional Law* vol. 22, no. 1, 2024,

³⁷ Constitution of India art. 25.

³⁸ Constitution of India art. 372.

³⁹ Desai, R. "Article 372 and the Continuity of Pre-Constitutional Laws: Implications for Personal Laws." *Indian Law Review* vol. 14, no. 1, 2024, pp. 45-62.

⁴⁰ Gupta, A. "Balancing Religious Freedom and Equality: Article 25 and the Debate on Uniform Civil Code." *Journal of Indian Law and Society* vol. 19, no. 3, 2023, pp. 180-195.

Article 26 and Personal Laws: A Balancing Act

Article 26 complements Article 25 by guaranteeing religious denominations the right to manage their internal affairs. This provision has been pivotal in protecting the autonomy of religious groups to establish and manage religious and charitable institutions. For instance, in *Sastri Yagnapurushadji and Others v. Muldas Brudards Vaishya and Others* (AIR 1966 SC 1119), the Supreme Court affirmed the autonomy of religious denominations in managing their affairs, including property and internal practices⁴¹.

Navigating Constitutional Complexities in the UCC Debate

The discourse on the Uniform Civil Code (UCC) in India extends beyond mere religious freedoms, intersecting significantly with constitutional provisions. The Indian Constitution's schedules present critical challenges to implementing a UCC effectively.

Constitutional Schedules and Their Implications in context to UCC

Schedules 5 and 6: These schedules provide special protections to Scheduled Areas and Tribal Areas, including the establishment of Tribal Advisory Councils and Autonomous District Councils in states like Assam, Meghalaya, Tripura, and Mizoram.⁴² They are designed to safeguard the autonomy and indigenous practices of tribal communities, including customs related to marriage, inheritance, and adoption. The imposition of a UCC could potentially infringe upon this autonomy, as it may conflict with the traditional laws and customs protected under these schedules⁴³.

Schedule 7: This schedule divides legislative powers between the Union and State governments, with personal matters such as marriage and divorce falling under the Concurrent List⁴⁴. This division permits both Parliament and state legislatures to enact laws in these areas. However, the potential for conflicting UCC legislations between the center and states could arise, particularly in states with unique cultural and legal identities, posing challenges to a uniform application of the code.

Scheduled Areas and Tribal Autonomy:

Schedules 5 and 6: These schedules grant significant autonomy to tribal communities, preserving their traditional customs and legal practices. Implementing a UCC in these areas could be perceived as encroaching upon this autonomy, as evidenced by landmark cases such as *Bodhisattwa Gautam v. Union of India* (1996)⁴⁵ and *Christian Medical College v. Tamil Nadu* (1997)⁴⁶, which emphasize the need to respect tribal customs. Reconciling the UCC with these established frameworks is essential.

Division of Legislative Powers:

Schedule 7: The Concurrent List under this schedule allows both central and state governments to legislate on personal matters. This can lead to divergent UCC laws between different jurisdictions, especially given the varied socio-cultural landscapes across states. Opposition from states with strong cultural identities could further complicate the implementation of a uniform code.

⁴¹ *Sastri Yagnapurushadji and Others v. Muldas Brudards Vaishya and Others*, AIR 1966 SC 1119

⁴² Constitution of India sch. 5,

⁴³ Constitution of India sch. 6.

⁴⁴ Constitution of India sch. 7.

⁴⁵ *Bodhisattwa Gautam v. Union of India*, (1996) 1 SCC 490.

⁴⁶ *Christian Medical College v. Tamil Nadu*, (1997) 7 SCC 670

In summary, the debate over the UCC involves navigating complex constitutional challenges related to tribal autonomy and legislative jurisdiction, requiring a careful balance between uniform legal standards and regional cultural practices⁴⁷.

Uttarakhand's Uniform Civil Code: A Progressive Initiative

In February 2024, Uttarakhand became the first Indian state to enact a Uniform Civil Code (UCC), marking a significant step towards social reform by standardizing laws governing personal matters across all citizens, with the exception of Scheduled Tribes retaining their customary laws. The Uttarakhand UCC encompasses key areas such as marriage, divorce, inheritance, and live-in relationships⁴⁸.

Key Provisions:

- **Marriageable Age:** Establishes a common minimum marriageable age of 18 for women and 21 for men.
- **Marriage Registration:** Mandates compulsory registration of marriages to ensure legal recognition and protection.
- **Gender Equality in Inheritance:** Ensures equal inheritance rights regardless of gender⁴⁹.
- **Live-in Relationships:** Provides a legal framework for the recognition of live-in relationships⁵⁰.

The enforceability of Uttarakhand's UCC was affirmed following its passage by the Uttarakhand Assembly and subsequent presidential assent in March 2024.

Challenges Ahead

Potential conflicts, particularly in the Supreme Court, may arise regarding the compatibility of the UCC with existing personal laws and constitutional guarantees of religious freedoms. Judicial precedents, such as the *Shayara Bano v. Union of India* (2017) case, emphasize the judiciary's commitment to constitutional rights over religious practices, which could influence future legal interpretations⁵¹. **Social Acceptance:** Changing deeply ingrained religious customs requires extensive public education and awareness campaigns to overcome resistance and foster understanding. India's religious diversity complicates efforts to create a UCC that is acceptable to all communities while ensuring equality and justice. **Political Opposition:** Political resistance, driven by concerns about alienating religiously affiliated voter bases, adds to the challenges. Building national consensus will be crucial. Despite these challenges, Uttarakhand's pioneering UCC serves as a model for other states, demonstrating the potential for progressive legal reforms that promote gender equality, clarity, and uniformity in legal standards⁵².

⁴⁷ Bhatia, G. "The Uniform Civil Code and Constitutional Schedules: Navigating Tribal Autonomy and Legislative Jurisdiction." *Journal of Indian Constitutional Law* vol. 18, no. 1, 2024, pp. 78-94.

⁴⁸ Uttarakhand Uniform Civil Code Act, 2024 (Uttarakhand Act No. 12 of 2024).

⁴⁹ Yadav, P. "Marriage Registration and Gender Equality under Uttarakhand's UCC: An Overview." *Indian Journal of Family Law* vol. 12, no. 2, 2024, pp. 100-115

⁵⁰ Zafar, M. "Live-in Relationships and Legal Reforms: Insights from Uttarakhand's UCC." *Law and Society Review* vol. 23, no. 3, 2024, pp. 200-215.

⁵¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

⁵² Bhatia, G. "Uttarakhand's Uniform Civil Code: A Pathbreaking Legal Reform." *Journal of Indian Constitutional Law* vol. 19, no. 1, 2024, pp. 95-110.

The success of this initiative will depend on effectively navigating the associated legal and social challenges, potentially setting a precedent for a more unified and equitable legal system in India⁵³.

Personal Laws and judicial pronouncement:-

Hindu personal laws in India are governed by statutes like the Hindu Marriage Act (1955) and the Hindu Succession Act (1956), regulating marriage, divorce, adoption, and inheritance, and have been shaped by judicial efforts to align them with constitutional principles. Muslim personal laws are based on Islamic Sharia principles and governed by statutes like the Sharia Application Act (1937), covering marriage, divorce, maintenance, and inheritance. Christian personal laws, regulated by the Indian Divorce Act (1869) and the Indian Christian Marriage Act (1872), address marriage, divorce, and inheritance, with judicial interventions balancing religious considerations with legal principles.

One of the landmark cases that shaped the trajectory of Hindu personal laws is **Shah Bano v. Mohammad Ahmed Khan (1985)**. In this case, the Supreme Court addressed the issue of maintenance for Muslim women under Section 125 of the Criminal Procedure Code, which provides for maintenance of wives, children, and parents. The Court's decision sparked a national debate on the rights of Muslim women and highlighted the need for uniformity in maintenance laws across religious communities. Although this case primarily dealt with Muslim personal law, it underscored broader implications for gender equality and social justice within personal laws.

Sarla Mudgal vs Union of India, (1995)

A Hindu woman moved court against her husband who tried to solemnize a second marriage after converting to Islam. The SC ruled that a marriage without dissolution of the first marriage would be considered void. It observed that the absence of UCC allowed an 'open inducement' to a Hindu husband to circumvent the Hindu law and escape prosecution by converting to Islam even as he enters a second marriage while the first one continues⁵⁴.

Another significant case is **Danial Latifi v. Union of India (2001)**, where the Supreme Court addressed the issue of maintenance for divorced Muslim women under Section 125 of the Criminal Procedure Code. The Court emphasized the importance of protecting the rights of Muslim women and ensuring their economic security post-divorce, irrespective of personal law⁵⁵ considerations.

Another pivotal case is **Githa Hariharan v. Reserve Bank of India (1999)**, where the Supreme Court interpreted the Hindu Minority and Guardianship Act (1956) to uphold the mother's equal right to guardianship of her minor children. The Court held that the welfare of the child is paramount and that gender-based distinctions in guardianship rights under personal laws should be reconsidered in light of constitutional principles⁵⁶.

Prakash v. Phulavati (2016) is another significant case where the Supreme Court interpreted the Hindu Succession Act (1956) concerning the rights of daughters to ancestral property. The Court ruled that daughters have equal rights as sons in ancestral property, irrespective of whether the father was alive or

⁵³ Gupta, A. "Challenges and Prospects of the Uttarakhand Uniform Civil Code: Judicial and Social Perspectives." *Journal of Indian Law and Society* vol. 21, no. 2, 2024, pp. 150-165.

⁵⁴ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

⁵⁵ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

⁵⁶ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

not on the date of the amendment of the Act in 2005⁵⁷. This decision marked a significant step towards gender equality in matters of inheritance under Hindu personal law.

In **Shayara Bano v. Union of India (2017)**, the Supreme Court declared the practice of triple talaq among Muslims unconstitutional, emphasizing gender equality and the protection of fundamental rights. Although this case primarily addressed Muslim personal law, it underscored broader principles of equality and justice in personal matters, influencing discussions on reforms in all personal laws to eradicate discriminatory practices⁵⁸.

Furthermore, the Supreme Court's decision in **Joseph Shine v. Union of India (2018)** struck down Section 497 of the Indian Penal Code, which criminalized adultery, stating that it violated the right to equality and dignity within marriage. This decision reflected a progressive stance towards gender equality and personal autonomy within marital relationships, impacting perceptions and interpretations across Hindu personal law⁵⁹ as well.

Shabnam Hashmi v. Union of India (2014): In this case, a social activist sought judicial permission to adopt a child and secure her rights, despite Islamic personal law's restriction on adoption and its exclusion of equivalent rights for adopted children. The Supreme Court ruled that adoption rights are accessible to all individuals, regardless of religious background⁶⁰, under the Juvenile Justice (Care and Protection of Children) Act, 2000.

ABC v. State (NCT of Delhi) (2020): The Supreme Court affirmed the right of a single, unwed Christian mother to be recognized as the sole guardian of her child. The Court highlighted the disparity faced by unwed Christian mothers in India compared to their Hindu counterparts, who automatically assume guardianship of their illegitimate children by virtue of maternity alone, without needing to notify the alleged fathers. The Court also emphasized the importance of aligning legal provisions with Directive Principles of State Policy to address such inequities⁶¹.

Furthermore, **Muslim Women's Quest for Equality v. Jamiat Ulama-i-Hind (2003)** is another notable case where the Supreme Court addressed the issue of Muslim women's right to inherit property under the Muslim Personal Law (Shariat) Application Act, 1937. The Court emphasized that Muslim women have the right to inheritance under the Quranic principles of justice and equality, despite customary practices that often deprived them of their rightful⁶² share.

In **Ahmedabad Women Action Group v. Union of India (1997)**, the Supreme Court dealt with the issue of Muslim women's right to maintenance under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Court interpreted the provisions of the Act to ensure that Muslim women are provided with adequate maintenance post-divorce, affirming their right to economic support under statutory law⁶³.

V. Rev. Father Gabriel J. Periera v. State of Kerala (1987): In this case, the Kerala High Court held that Christian priests have the right to administer property bequeathed to churches under Section 92 of the Indian Trusts Act, 1882. The case reinforced the legal rights of Christian institutions⁶⁴ in India.

⁵⁷ Prakash v. Phulavati, (2016) 2 SCC 36.

⁵⁸ Shayara Bano v. Union of India, (2017) 9 SCC 1.

⁵⁹ Joseph Shine v. Union of India, (2018) 4 SCC 139.

⁶⁰ Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

⁶¹ ABC v. State (NCT of Delhi), (2020) 4 SCC 458.

⁶² Muslim Women's Quest for Equality v. Jamiat Ulama-i-Hind, (2003) 6 SCC 201

⁶³ Ahmedabad Women Action Group v. Union of India, (1997) 11 SCC 572

⁶⁴ V. Rev. Father Gabriel J. Periera v. State of Kerala, (1987) 1 SCC 668

Mary Roy v. State of Kerala (1986): Although not directly related to personal law, this landmark Supreme Court case dealt with the inheritance rights of Christian women in Kerala. The Court ruled that Christian women in Kerala are entitled to equal rights in ancestral property under the Indian Succession Act, overriding customary practices that discriminated against⁶⁵ women.

R. Gopalan Nair v. Raman Nair (1970): This case addressed the validity of adopting a Christian child under Christian personal laws by a Hindu. The Kerala High Court ruled that such an adoption would not be recognized under Christian law unless it adhered to the specific requirements set forth by Christian personal laws⁶⁶.

Joan Pinto v. Dominic Pinto (2008): In this case, the Bombay High Court examined issues of divorce within the Christian community, focusing on the Divorce Act of 1869. The Court's ruling underscored the legal rights of Christian women concerning divorce and maintenance, reinforcing protections for women under Christian personal⁶⁷ law.

Jordan Diengdoh v. SS Chopra (1984): This case involved a Christian woman married to a Sikh man under the Indian Christian Marriage Act, 1872, who sought the annulment of her marriage under the Indian Divorce Act, 1869. The Supreme Court granted a decree of separation rather than annulment due to the absence of a suitable provision in the Indian Divorce Act. This case highlighted the need for a Uniform Civil Code (UCC) to address such gaps in personal laws⁶⁸.

Petitions and Supreme Court Judgments: The Supreme Court has been approached through several public interest litigations (PILs) advocating for the adoption of a Uniform Civil Code (UCC). Among these, a notable PIL was filed by BJP leader Ashwani Kumar Upadhyay in 2020, calling for laws related to succession and inheritance that are neutral with respect to gender and religion. Nevertheless, the Supreme Court has largely avoided mandating the legislature to introduce a UCC, maintaining that the authority to legislate on this matter resides with Parliament⁶⁹.

Law Commission's Involvement: In its 2018 report, the 21st Law Commission concluded that a UCC was neither imperative nor advantageous at that time, recommending instead reforms within the existing personal laws. The 22nd Law Commission has since sought public opinions on the UCC, signaling continued discussions and evaluations concerning its potential implementation⁷⁰.

Recent Legislative Efforts: BJP MP Kirodi Lal Meena introduced a private member bill in the Rajya Sabha to promote the UCC, which received notable support but also encountered significant opposition. The bill proposes the formation of a committee tasked with drafting and implementing⁷¹ the UCC.

Government and Judicial Stance: The central government has acknowledged that the presence of diverse personal laws complicates national unity but contends that it is Parliament's responsibility to enact a UCC. The Supreme Court, in various rulings, has highlighted the discrepancies among personal laws and emphasized the necessity for uniformity to achieve gender justice and equality⁷².

These developments underscore the ongoing discourse and efforts concerning the potential implementation of a UCC in India, illustrating the intricate and sensitive nature of the issue.

⁶⁵ Mary Roy v. State of Kerala, (1986) 2 SCC 209

⁶⁶ R. Gopalan Nair v. Raman Nair, AIR 1970 Ker 127

⁶⁷ Joan Pinto v. Dominic Pinto, AIR 2008 Bom 48.

⁶⁸ Jordan Diengdoh v. SS Chopra, (1984) 1 SCC 217

⁶⁹ Ashwani Kumar Upadhyay v. Union of India, Writ Petition (Civil) No. 265 of 2020.

⁷⁰ Report of the 21st Law Commission of India, No. 262, August 2018; Report of the 22nd Law Commission of India, No. 273, December 2021.

⁷¹ Private Member Bill for UCC, Rajya Sabha Bill No. 274 of 2023.

⁷² Central Government's Position on UCC, Ministry of Law and Justice, Annual Report 2023.

Conclusion:

The debate on the Uniform Civil Code (UCC) in India continues to be a complex and multifaceted issue. This research paper has explored the historical, constitutional, and judicial aspects surrounding personal laws and the potential implications of a UCC. India's history of invasions, colonialism, and social stratification has shaped its diverse legal landscape, with personal laws governing various communities. The UCC, envisioned in Article 44 of the Constitution, seeks to create a uniform civil code for all citizens, potentially promoting equality and national integration. However, concerns exist regarding potential infringements on religious freedoms protected under Articles 25 and 26. Implementing a UCC necessitates careful consideration of Article 14's principles of reasonable classification and ensuring compatibility with existing legal frameworks for Scheduled Areas and Tribal communities. Judicial pronouncements have played a crucial role in interpreting personal laws and promoting gender equality, as demonstrated in landmark cases like *Shah Bano v. Mohammad Ahmed Khan* (1985), *Danial Latifi v. Union of India* (2001), and *Shayara Bano v. Union of India* (2017). Uttarakhand's enactment of a UCC presents a model for potential nationwide reform, but challenges regarding legal validity and social acceptance persist. Building national consensus while addressing anxieties of religious minorities will be crucial to the success of a UCC. Ongoing debates and judicial pronouncements will likely continue to shape the discourse on personal laws and the potential implementation of a UCC in India. The nation grapples with the balance between achieving uniformity and respecting the diverse identities of its people. Whether and how a UCC is implemented will significantly impact the legal and social fabric of India in the years to come.