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CONSTITUTIONAL AND LEGAL FRAMEWORK OF UCC IN INDIA

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Article 44 and Directive Principles of State Policy (DPSP)**Article 44 Constitutional Vision**

The inclusion of article 44 in the Indian constitution was a deliberate decision made by the drafters to encourage the harmonization of personal laws across different religions. Under this, the state will make an effort to provide the people of India with a uniform civil code that applies to the entire nation. The inclusion of the phrase “shall endeavour” in the statement signifies that while the goal of implementing a uniform civil code (UCC) was desirable, it was not to be enforced immediately but was intended to be a long-term legislative objective.

Dr. B.R. Ambedkar was the greatest advocate for establishing a UCC within the Constituent Assembly Debates.² According to him, there should be a uniform civil code to put an end to gender discrimination in personal laws, to make all citizens equal in front of the law, and to adhere to a secular approach of law. Resistance from religious minority members meant the inclusion of Article 44 within the DPSP instead of in the Fundamental Rights because it was a directive provision.

The rationale³ Article 44 was to create legal consistency in the fields of marriage, divorce, inheritance, and succession that previously fell under diverse religious practices. The Constitution, in choosing a UCC, wanted to make sure that the laws that would govern civil relations should be grounded on principles of justice and equality rather than religious beliefs.

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² “Why Ambedkar Supported Uniform Civil Code, The Hindu Business Line, 15 April 2021, available at: <https://www.thehindubusinessline.com/opinion/why-ambedkar-supported-uniform-civil-code/article34320070.ece> (last visited 30 March 2025).”

³ “*Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

DPSP and Fundamental Rights

One of the core constitutional issues of Article 44 is its conformity with Fundamental Rights, i.e., freedom of religion under Articles 25-28. DPSPs are non-justiciable in the context that they cannot be enforced by courts as such.⁴ Fundamental Rights, however, can be enforced, and any law encroaching upon them can be converted into a case to be presented before a court of law. Therefore, there have been various interpretations by the courts regarding whether Article 44 takes precedence over personal laws guaranteed under Article 25.

The Supreme Court has already resolved the conflict between personal laws and constitutional morality through a series of significant judgments. Despite acknowledging the impossibility of DPSP prevailing over fundamental rights, the court has persisted in emphasizing the necessity of harmonizing personal laws to uphold the constitutional ideology. The court has consistently maintained that religious freedom cannot be used as a justification for gender inequality or the denial of rights to citizens, particularly women.

The judiciary has taken on an interpretative role to strike a balance between the objectives of Article 44 and the right to religious freedom. In specific situations, courts have prioritized the “principles of secularism and gender justice over religious practices when they clash with the right to equality as guaranteed by Article 14.”⁵ However, as DPSPs are non-binding, the judiciary has not proceeded to the extent of directing the legislature to enact UCC.

Judicial Interpretations of Article 44

The High Courts and the Supreme Court have been instrumental in shaping the UCC debate by progressive interpretations of Article 44. Some of the landmark judgments that have consolidated the case for a UCC are. “In *Mohd. Ahmed Khan v. Shah Bano Begum (1985)*⁶, one of the strongest UCC judgments, considered the Muslim woman's right to claim maintenance under Section 125 of the Code of Criminal Procedure (CrPC).⁷ The Supreme Court held that personal laws cannot override a woman's right to maintenance and noted that a UCC would promote gender justice and legal uniformity. The case rekindled the national debate on UCC and resulted in the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which watered down the judgment by limiting maintenance rights under Muslim personal law.”

⁴ India Const. art 37.

⁵ India Const. art 14.”

⁶*Supra note, 13.*

⁷*Government of India(1973), The Code of Criminal Procedure, No. 2 of 1974, § 125.*

In another milestone judgment of “*Sarla Mudgal v. Union of India (1995)*”⁸, the Supreme Court considered the issue of bigamous marriage in the disguise of religious conversion. It ruled that a Hindu man cannot convert to Islam only to enter into a second marriage without dissolving the first one, as it is against the spirit of justice and uniformity in personal laws”. The decision stressed the imposition of a common civil code to avoid legal loopholes that were employed for religion-oriented legal exploitation. Further, in *John Vallamattom v. Union of India (2003)*⁹, the court examined the discriminatory provisions of the Indian Succession Act, 1925, restricting Christian charitable gifts. The Supreme Court held the provisions to violate Article 14 and reiterated the necessity of uniform civil laws that are not discriminatory based on religion.

In so doing, the judiciary has always prized the desirability of a UCC, especially where personal laws conflict with fundamental rights. But it has also argued that the implementation of a UCC is a legislative matter and has to be politically and socially acceptable.

Legislative Developments and Law Commission Reports

There have been numerous Law Commission reports and parliamentary discussions over the years regarding whether having a UCC or not is desirable. The most noteworthy developments in this area are:

(i) The 21st Law Commission Report (2018)

The “Consultation Paper on Family Law Reform”¹⁰ by the 21st Law Commission of India did consider the possibility of UCC but felt that the entire replacement of the personal laws with a uniform code was not practicable or preferable at that point of time. The report did recommend incremental reform in the present personal laws in order to introduce gender” equality and non-discrimination.

(ii) The 22nd Law Commission Report (2023)

In 2023¹¹, the 22nd Law Commission once again considered the topic and invited public views on the need and structure of UCC. The renewed attention to UCC once again ignited

⁸*Supra note, 14.*

⁹*John Vallamattom v. Union of India*, (2003) 6 SCC 611.

¹⁰*Compilation of Information on Uniform Civil Code*, Press Information Bureau, Government of India, 31 August 2018, available at: <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> (last visited 2 April 2025).

¹¹*Press Release on Uniform Civil Code*, Press Information Bureau, Government of India, 3 July 2023, available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1932397> (last visited 2 April 2025).

national debates about the social and legal implications of implementing a common civil code.

(iii) State-Level UCC Initiatives

Even though adoption of UCC is still on the national agenda, some state governments have gone ahead. The Uttarakhand government's move to prepare a UCC bill in 2024 is a substantial step towards local codification of uniform personal laws, the first state following Goa to try codifying a UCC.

Despite efforts of the judiciary and legislature to implement a Uniform Civil Code (UCC), some issues persist. Religious resistance is one of the most significant issues. Religious communities feel that their laws are at the heart of their religion and culture and are afraid that a UCC would be a state encroachment on religious matters. Religious resistance is followed by political resistance, as political parties have politicized the UCC, making it an election issue, and thus resulting in politicized debates rather than reformist debates. The debate becomes more and more polarized, and it becomes impossible to agree on the issue.

Also in question is religious autonomy and gender justice. The argument of the proponents is that a UCC would ensure gender equality and address concerns such as discriminatory treatment under personal laws. The opponents argue back that personal laws can be changed within communities, which would be a more long-term way of bringing gender justice, as opposed to imposing a common code.

Finally, India's pluralism of the law complicates matters. With the background of pluralistic legal traditions in the country, a single approach to personal laws might be unsuitable. A phasing of the implementation of the UCC may then be required, with debate time and sequential legal modifications striking a balance between religious diversity and constitutional principles.

Freedom of Religion vs. Fundamental Rights

The Constitutional Framework: Equality v. Religious Autonomy

The Indian constitution walks a tightrope balancing religious freedoms, secularism, and individual rights, “and this tug-of-war between article 14 (right of equality) and articles 25-28 (right to freedom of religion) is the crux of uniform civil code (UCC) debate as it poses the question of whether religious practices can be allowed to override the principle of equality, especially of personal laws.”

Article 14¹² of the Constitution provides that “*the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*” This establishes the promise that all citizens, whether of religion, caste, or sex, will be treated equally under the law. But Articles 25-28 provide religious freedom protection by ensuring that “individuals and religious groups have the freedom to propagate, practice, and profess their religion without interference from the state. The battlefield of the UCC controversy is where religious usage-based personal laws intersect with constitutional protections of equality”, especially gender justice and non-discrimination.

The Supreme Court has repeatedly grappled with the issue of whether religious law could be amended to be harmonious with fundamental rights, especially in the matter of discrimination of women by personal laws. The tension between constitutional equality and religious freedoms has been a recurring concern in legal thought, and the courts have sought to reconcile these competing interests without jeopardizing the secular nature of the Indian legal system.

Article 14: Right to Equality and Non-Discrimination

Article 14 is the cornerstone of legal equality and non-discrimination and prohibits discrimination in civil rights. It provides that all legislation is subjected to the reasonableness test and the non-arbitrariness test and that no group of people is afforded differential treatment without cause. However, the tradition of having varied personal laws for varied religious communities has led to cases where equality has been defeated.

Perhaps the most fundamental issue of dispute regarding the UCC is “one of gender justice in personal law. Throughout history, different religious laws, especially those related to marriage, divorce, and inheritance, have favoured men's rights over women's rights. For example, in Islamic law, a Muslim man has the unilateral right to divorce through triple talaq, while a Muslim woman does not have the same corresponding right. Similarly, Hindu succession laws were historically biased against male heirs, which was rectified by the Hindu Succession (Amendment) Act, 2005.”

The Supreme Court, in some of its decisions, has held the view that personal laws must be reworked in a way that aligns them with Article 14 and removes gender-based discrimination. The landmark judgment “*ShayaraBano v. Union of India (2017)*”¹³ declaring triple talaq

¹² India Const. art 14.

¹³ *ShayaraBano v. Union of India*, (2017) 9 SCC 1.

illegal and unconstitutional and holding it as such was a landmark in upholding the principle that personal laws cannot derogate from the basic rights, most notably gender equality.”

Even after such judicial overreach, the larger codification of a uniform civil code continues to be a long-standing legislative challenge. Its critics fear that in the name of equality, the enforcement of a UCC would shut out religious minorities and dilute their unique legal traditions. But its proponents believe that equality before the law cannot be left to religious interpretation and that a UCC must be enacted into law to usher in the constitutional vision of non-discrimination.

Articles 25-28: Freedom of Religion

While Article 14 guarantees equality and non-discrimination, Articles 25-28¹⁴ Guarantee religious freedom by giving individuals and communities the right to practice and spread their religion. “These rights are not absolute, though, and are left for reasonable restrictions in the interest of the maintenance of public order, morality, and health.”

Article 25: Freedom of Conscience and Religion

Article 25(1) states that “*all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion.*” Article 25(1) has been interpreted in an extended manner by the courts in cases relating to issues of personal laws, temple entry, religious conversions, and religious rituals. Article 25(2), on the other hand, enacts that this right shall be subject to the right of the State to regulate secular interests of a religious practice.

The Supreme Court, in “*State of Bombay v. Narasu Appa Mali (1951)*”¹⁵ decided that personal laws were outside the meaning of ‘laws’ in Article 13, and therefore could not be challenged based on violating fundamental rights.” This ruling effectively drew a line of demarcation between personal laws and other statutes, safeguarding the former against judicial scrutiny under Article 14. But this interpretation has been criticized as entrenching gender discrimination, as it has allowed patriarchal tradition to persist behind the veil of religious freedom.

With time, the court has formulated the doctrine of essential religious practices.¹⁶ that separates core religious beliefs (which fall under Article 25) and the secular elements of

¹⁴ India Const. art 25.

¹⁵ *The State of Bombay v. Narasu Appa Mali*, AIR 1952 SC 84.

¹⁶ *Durgah Committee, Ajmer v. Syed Hussain Ali*, AIR 1961 SC 1402.

religion (which can be legislated upon by the State). The doctrine has been applied in cases such as *Shirur Mutt* (1954) and *Sabarimala* (2018) in deciding whether a particular religious practice can be given protection under the constitution. The *Sabarimala* judgment permitting women's entry into the temple despite religious protests brought to the forefront the struggle between religious liberty and gender equality, further accelerating the debate surrounding the passage of UCC.

Article 26: Religious Denominations and Autonomy

Article 26 provides religious denominations autonomy to form and manage religious affairs and institutions without interference by the State. The courts have, however, construed that autonomy not to include social or temporal affairs, e.g., marriage, divorce, and succession, which are matters of civil law.

For instance, in *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta (2004)*¹⁷ The Supreme Court ruled that religious groups cannot have an absolute right of autonomy in the interest of the broader public. This said holding reinforces the contention that personal laws, as religion-based, cannot be outside the ambit of constitutional scrutiny.

Legislative and Statutory Developments Related to UCC

UCC in Indian Legislation

The debate on the Uniform Civil Code (UCC) has been going on ever since the independence of India. While it finds mention in Article 44, its applicability has remained deeply contentious because of the coming together of constitutional, political, and religious factors. Over the decades, the UCC debate has been shaped by different legislative and statutory developments, ranging from judicial pronouncements and committee reports to piecemeal reform of personal laws.

There is, however, no cohesive, overarching legal framework governing civil matters, even though India has managed to introduce codified civil laws as the Hindu Marriage Act, 1955, and the Muslim Women (Protection of Rights on Marriage) Act, 2019. UCC is an area where personal laws and constitutional morality interests; hence, legislative growth is complex and often piecemeal and not epoch-making. For UCC is more of a somewhat forced evolution of laws rather than a revolution.

¹⁷*Commissioner of Police v. Acharya Jagdishwarananda Avadhuta*, (2004) 12 SCC 770.

The following sections discuss the past and present legislative efforts, law commission reports and government schemes that have worked to implement a Uniform Civil Law regime in India.

Early Legislative Debates

The idea of a Uniform Civil Code was widely discussed in the Constituent Assembly Constituting the Indian Constitution. The central dispute centred on the clash between secular rulership and religious liberty.

Legal stalwarts such as “Dr B R Ambedkar and K M Munshi¹⁸” also backed UCC to secure equality and national integration, arguing that common laws were expedient for a secular and progressive society. However, due to the opposition of religious groups, Article 44 was placed under the Framework Directive Principles of State Policy (DPSP) rather than a fundamental right.” This meant that UCC was a guiding principle but not an obligatory one, reducing its implementation to the whims of upholding governments.

If this was not written as a mandatory provision, I believe the debates of the Constituent Assembly themselves set an important precedent—those personal laws can no longer be beyond the pale of constitutional morality. This was reflected later in judicial activism as well as legislative action for reform on personal laws.

Legislative Reforms in Personal Laws: A Fragmented Approach

Despite this, there has never been a comprehensive UCC, but successive governments have taken piecemeal steps through reforms to personal laws to end gender discrimination and usher in uniformity. The groundwork for a future codified UCC has often been the subject of some pushback, but it is in place today due to these types of UCC reform.

The Hindu Code Bills and the Codification of Hindu Personal Laws

“In the 1950s, there was a significant push for legal reform in civil law, particularly through the codification of Hindu personal laws, such as the Hindu Code Bills. Dr. B.R. Ambedkar fought for the reforms that would ensure gender equality and rationalize laws about marriage, divorce, inheritance, and adoption among Hindus.”

¹⁸International Legal & Ethical Datasets University (ILEDU). (2023), “*Legal research on Uniform Civil Code*”, Retrieved from <https://book.iledu.in/wp-content/uploads/2023/09/28.pdf>

This codification resulted in the enactment of laws such as the Hindu Marriage Act, 1955 (which regulated marriage and divorce)¹⁹The Hindu Succession Act, 1956 (ensured women's equal inheritance rights)²⁰, "The Hindu Adoption and Maintenance Act, 1956 and The Hindu Minority and Guardianship Act, 1956 (regulated guardianship of minors)."

Such reforms were a giant step towards legal uniformity, but only within one specific religious community, while Muslim personal law, Christian personal law and Parsi personal law remained largely unchanged.

Muslim Personal Law Reforms and the Shah Bano Controversy

Unlike Hindu "personal laws, Muslim personal laws remained largely unchanged after independence due to a fear of provoking religious freedom. Legal challenges did begin, however, particularly in the areas of women's rights within marriage, maintenance, and divorce."

"The history of UCC debate has landmark moments — one being the Shah Bano case (1985), where the apex court ruled that a Muslim woman was entitled to maintenance under section 125 of the criminal procedure code (CrPC) even post-divorce. The decision was celebrated as a milestone in the pursuit of gender equality, although it faced opposition from religious groups with strong Muslim beliefs."

In response to this, the Rajiv Gandhi government²¹ enacted the "Muslim Women (Protection of Rights on Divorce) Act, 1986, which virtually overrode the apex court's verdict and reinstated the superiority of the Sharia-based laws of divorce." This move was widely criticized as a political surrender, but it also highlighted the complexity of adopting UCC within a religiously pluralist nation.

¹⁹**Government of India. (1955).***The Hind Marriage Act, No. 25 of 1955.*

²⁰**Government of India. (1956).***The Hindu Succession Act, No. 30 of 1956.*

²¹"*Supreme Court Judgements for Empowerment of Muslim Women: From Shah Bano to Noor Saba Khatoon*", *India Today* (10 July 2024) <https://www.indiatoday.in/india/story/supreme-court-india-judgements-for-empowerment-muslim-women-shah-bano-rajiv-gandhi-noor-saba-khatoon-2564792-2024-07-10>