INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 4

2024

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Constitutional Mandate and Judicial Perspectives on the Uniform Civil Code in India

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ABSTRACT

The Uniform Civil Code (UCC) represents a cornerstone of India's constitutional vision, aiming to harmonize personal laws across religions to promote equality and secularism. Despite its foundation in Article 44 of the Constitution, the UCC has faced significant resistance due to its perceived threat to cultural and religious identity. This paper explores the constitutional mandate for a UCC, its necessity in addressing systemic inequalities, and the judicial interpretations that have called for its implementation. Through landmark cases such as Shah Bano, Sarla Mudgal, TMA Pai Foundation, and Shayara Bano, the judiciary has highlighted the incompatibility of discriminatory personal laws with constitutional ideals. This paper also examines the challenges to implementing a UCC, including social resistance, political reluctance, and concerns from minority communities. Finally, it proposes actionable pathways to overcome these obstacles and align India's legal framework with its constitutional promise of equality and justice.

I. INTRODUCTION

The Uniform Civil Code (UCC) is a long-standing yet contentious issue in India's legal and social discourse. Envisioned as a means to unify personal laws and ensure equality, the UCC finds its roots in Article 44 of the Directive Principles of State Policy[2]. It seeks to replace the fragmented personal law system with a common set of laws governing marriage, divorce, inheritance, and other civil matters for all citizens, regardless of religion.

India's current personal law framework, rooted in religious doctrines, has institutionalized gender inequalities and legal inconsistencies. For instance, polygamy, unequal inheritance rights, and unilateral divorce practices disproportionately disadvantage women. These disparities not only undermine gender justice but also contradict the constitutional values of secularism and equality under Articles 14 and 15.[3] The lack of a UCC continues to pose

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[2] India Const. art. 44.
[3] Id. art. 14, 15.

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challenges to social harmony and the realization of a truly secular state.

The implementation of a UCC is vital for promoting equality and secularism in a diverse society like India. It has the potential to harmonize personal laws, eliminate discriminatory practices, and foster national unity. However, the path to achieving this vision is fraught with challenges, including resistance from religious groups and political reluctance.[4] This paper explores the constitutional basis and judicial advocacy for a UCC while addressing the socio-political obstacles that hinder its implementation.

II. CONSTITUTIONAL FRAMEWORK

The Uniform Civil Code (UCC) derives its constitutional legitimacy from Article 44 of the Directive Principles of State Policy (DPSP) in the Indian Constitution. Article 44 states, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."[5] While the DPSPs are not enforceable by courts, they provide essential guidelines for governance and reflect the framers' vision of social and economic justice. The UCC, as a directive principle, underscores the importance of legal uniformity to achieve equality and secularism in India's diverse society.

Relevant Constitutional Articles

Several constitutional provisions lay the groundwork for the UCC by promoting equality, secularism, and justice:

- **Article 14**: This article guarantees equality before the law and equal protection of the laws within the territory of India. The existence of religion-based personal laws creates unequal legal standards for individuals based on their faith, directly contradicting the principles of Article 14.[6] For example, Muslim women's inheritance rights differ significantly from those of Hindu or Christian women, leading to disparities in access to justice.
- **Article 15**: This article prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Personal laws, particularly those governing marriage, divorce, and inheritance, often discriminate against women, perpetuating gender inequalities.[7] The

[4] See Shah Bano v. Union of India, (1985) 2 S.C.C. 556 (India); Sarla Mudgal v. Union of India, (1995) 3 S.C.C. 635 (India); Shayara Bano v. Union of India, (2017) 9 S.C.C. 1 (India).
[5] India Const. art. 44.
[6] Id. art. 14.
[7] Id. art. 15.

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enactment of a UCC would eliminate such disparities and ensure equal treatment of all citizens.

- **Article 25-28**: These articles collectively safeguard the right to religious freedom while emphasizing the importance of secular governance. Article 25 guarantees individuals the freedom to profess, practice, and propagate religion, but it also allows the State to regulate secular activities associated with religious practices.[8] The UCC aims to reform civil laws without infringing on core religious practices, thereby striking a balance between individual rights and constitutional ideals.
- **Article 44**: While non-justiciable, this article emphasizes the State's responsibility to implement a UCC as a means of fostering national integration and equality.[9] The framers of the Constitution intended Article 44 to be a progressive tool for legal reform, ensuring that personal laws do not undermine the secular character of the State.

Secularism and Indian Law

Secularism is one of the foundational principles of the Indian Constitution, explicitly enshrined in its Preamble. Unlike the Western concept of secularism, which emphasizes a strict separation of church and state, Indian secularism advocates equal respect for all religions while maintaining state neutrality. This model acknowledges India's cultural and religious diversity while ensuring that laws governing civil matters are just and equitable.

Personal laws, however, challenge this principle by creating a legal framework that varies across religious communities. For instance, Muslim personal law permits polygamy and unilateral divorce, while Hindu personal law has been reformed to prohibit such practices. This inconsistency undermines the constitutional promise of secularism, as it allows religious doctrines to dictate civil rights.

Judicial interpretations of secularism have further reinforced the need for a UCC. In *S.R. Bommai v. Union of India* (1994)[10], the Supreme Court emphasized that secularism is a basic feature of the Constitution, and the State must remain neutral in matters of religion. The fragmented personal law system, by intertwining religion with civil rights, contradicts this neutrality. A UCC would help separate religion from law in civil matters, strengthening the secular character of the State.

[8] Id. art. 25-28.
[9] Id. art. 44.
[10] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

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Historical Context and Constituent Assembly Debates

The inclusion of Article 44 in the Constitution was a subject of extensive debate in the Constituent Assembly. Members like Dr. B.R. Ambedkar advocated for a UCC as a means of ensuring gender equality and social justice. Ambedkar argued that personal laws often perpetuate patriarchy and inequality, and a uniform code would serve as a progressive step toward modernization and nation-building.

However, opposition to the UCC in the Assembly centered on concerns about religious freedom and cultural identity. Members representing minority communities feared that a UCC would erode their religious autonomy and impose a homogenized legal system. As a compromise, Article 44 was placed in the DPSPs, reflecting its importance while acknowledging the political sensitivities of the time.

The UCC and Gender Justice

The absence of a UCC disproportionately affects women, who often face discrimination under personal laws. For instance:

- Muslim women are subject to unequal inheritance laws and historically faced practices like *triple talaq*.
- Hindu women, despite the Hindu Succession (Amendment) Act, 2005[11], continue to encounter societal pressures that limit their access to inherited property.
- Christian personal law previously required women to meet higher thresholds for divorce than men, reflecting inherent gender biases.

A UCC would provide a unified legal framework that ensures equal rights for all citizens, regardless of gender or religion. By addressing these disparities, the UCC would uphold the constitutional mandate for equality and justice.

Constitutional Challenges and the Role of the Judiciary

Implementing a UCC raises constitutional questions about balancing religious freedom with the principles of equality and secularism. Article 25 protects religious practices, but the judiciary has clarified that this protection does not extend to practices that violate fundamental rights. For example, in *Shayara Bano v. Union of India* (2017)[12], the Supreme Court held that practices like *triple talaq*, which undermine gender equality, cannot be justified under the guise of religious freedom.

[11] Hindu Succession (Amendment) Act, No. 39 of 2005, India Code (2005).
[12] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

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Similarly, in *Sarla Mudgal v. Union of India* (1995)[13], the Court highlighted the contradictions between personal laws and constitutional principles, urging the legislature to enact a UCC. These judgments underscore the judiciary's role in interpreting the Constitution to prioritize equality and justice while respecting religious diversity.

III. JUDICIAL PERSPECTIVES

The judiciary has played a pivotal role in advancing the discourse on the Uniform Civil Code (UCC) by highlighting the contradictions between personal laws and constitutional principles. Through landmark judgments, the courts have underscored the need for a unified legal framework that ensures equality, secularism, and gender justice. These cases not only expose the limitations of religion-based personal laws but also emphasize the urgency of legislative action to implement a UCC.

- **Landmark Cases Advocating for a UCC**

Shah Bano v. Union of India (1985)[14]

The *Shah Bano* case became a watershed moment in the UCC debate. Shah Bano, a 62-year-old Muslim woman, sought maintenance under Section 125 of the Criminal Procedure Code (Cr.P.C.) after being divorced by her husband through *talaq-e-biddat* (triple talaq). The Supreme Court ruled in her favor, holding that Section 125, a secular provision, overrides personal law in matters of maintenance. The Court highlighted the injustice faced by Muslim women under personal law and urged the legislature to implement a UCC to ensure gender justice.

However, the ruling sparked political and religious backlash, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which curtailed the applicability of Section 125 to Muslim women. Despite the legislative rollback, the judgment remains a cornerstone in judicial advocacy for a UCC.

Sarla Mudgal v. Union of India (1995)[15]

In *Sarla Mudgal*, the Supreme Court addressed the issue of Hindu men converting to Islam solely to practice polygamy, circumventing the Hindu Marriage Act, 1955, which prohibits polygamy. The Court held that such conversions for ulterior motives violated the spirit of secularism and equality. It reiterated the necessity of a UCC to prevent misuse of personal laws and ensure consistency across communities.

[13] *Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).
[14] **1985 (1) SCALE 767**
[15] 1995 AIR 1531

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Justice Kuldip Singh's observations in the case emphasized that the lack of a UCC contributes to legal fragmentation and hinders national integration. The judgment strongly advocated for legislative action to bring about uniformity in civil laws.

TMA Pai Foundation v. State of Karnataka (2002)[16]

Although primarily dealing with minority rights in education, the *TMA Pai Foundation* judgment reinforced the principle that constitutional provisions must prevail over religious practices in matters of public interest. The Court's interpretation of Article 29 highlighted the balance between individual rights and collective cultural identity, indirectly supporting the need for uniform laws in civil matters. While not directly related to the UCC, the case is significant for its emphasis on constitutional supremacy.

Shayara Bano v. Union of India (2017)[17]

The *Shayara Bano* case marked a historic moment in the fight against gender injustice in personal laws. The petitioner, Shayara Bano, challenged the constitutionality of *talaq-e-biddat* (instant triple talaq), a practice that allowed Muslim men to unilaterally divorce their wives. The Supreme Court declared the practice unconstitutional, holding that it violated the fundamental rights to equality and dignity under Articles 14 and 21. The judgment emphasized that personal laws cannot contravene constitutional principles. The Court also highlighted the State's duty to reform personal laws in line with the Constitution, reinforcing the need for a UCC to eliminate discriminatory practices.

- **Judicial Advocacy for Gender Justice and Secularism**

The judiciary has consistently emphasized that personal laws must align with constitutional values. In *Jorden Diengdeh v. S.S. Chopra* (1985)[18], the Supreme Court lamented the lack of uniformity in marriage and divorce laws, advocating for a common code to address inconsistencies. Similarly, in *John Vallamattom v. Union of India* (2003)[19], the Court declared Section 118 of the Indian Succession Act, 1925, unconstitutional for discriminating against Christians in matters of charitable bequests. These cases reflect the judiciary's proactive stance in promoting secular and gender-just laws.

While the judiciary has played a critical role in highlighting the contradictions in personal laws, it has also acknowledged the limitations of judicial intervention. The courts have repeatedly

[16] (2002) **8 SCC 481**
[17] **[2017] 9 S.C.R. 797**
[18] 1985 AIR 935
[19] AIR **2003** SUPREME COURT 2902

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urged the legislature to take decisive steps toward implementing a UCC, recognizing that such reform requires political will and social consensus.

- **Balancing Religious Freedom and Gender Justice**

The judiciary's approach to the UCC underscores a delicate balance between protecting religious freedom and ensuring gender justice. While Articles 25-28 guarantee the right to religious freedom, the courts have clarified that these rights are subject to public order, morality, and the fundamental rights enshrined in the Constitution. For instance, in *Shayara Bano*, the Court held that practices like triple talaq, which violate gender equality, cannot be justified under the guise of religious freedom.

This balance is further reflected in the courts' interpretation of secularism. Unlike Western secularism, which entails strict separation of church and state, Indian secularism emphasizes equal respect for all religions. The judiciary has argued that a UCC would not infringe on core religious practices but would ensure that civil laws governing marriage, divorce, inheritance, and maintenance are equitable and just.

Judicial perspectives on the UCC provide a compelling case for its implementation. Landmark judgments such as *Shah Bano*, *Sarla Mudgal*, and *Shayara Bano* demonstrate the judiciary's commitment to upholding constitutional principles of equality and secularism. These cases expose the inherent inequalities in personal laws and highlight the need for a unified legal framework to address systemic injustices.

However, the judiciary has also acknowledged its limitations, emphasizing that the enactment of a UCC requires legislative action and societal consensus. By balancing religious freedom with gender justice, the courts have laid a strong foundation for future reforms, reinforcing the constitutional vision of a just and equal society.

IV. CHALLENGES TO IMPLEMENTATION

The implementation of a Uniform Civil Code (UCC) in India, though constitutionally mandated under Article 44, faces numerous challenges. These challenges arise from the country's diverse socio-cultural fabric, political complexities, and concerns over religious freedom. This section examines the key obstacles to the adoption of a UCC, which include social resistance, political reluctance, concerns over cultural and religious erosion, and practical difficulties in drafting and enforcing such a code.

Social Resistance

India's pluralistic society is characterized by deep-rooted cultural and religious diversity.

Personal laws, which govern civil matters such as marriage, inheritance, and maintenance, are seen by many communities as intrinsic to their religious identity. The idea of a UCC is often perceived as an imposition of majority norms on minority communities, particularly Muslims, who fear that such a code might erode their religious autonomy.

This resistance is compounded by historical factors. During the colonial era, personal laws were codified to allow communities the freedom to regulate their civil affairs according to religious customs. The perception that the UCC undermines this autonomy has led to widespread opposition from minority groups, who view it as a threat to their cultural distinctiveness.

Political Reluctance

The UCC has been a politically sensitive issue, with successive governments hesitant to pursue its implementation due to its polarizing nature. Political parties often avoid addressing the UCC for fear of alienating specific vote banks, particularly minority communities. The politicization of the UCC has also led to its portrayal as a communal issue rather than a matter of gender justice and equality, further complicating efforts to build consensus.

Additionally, the absence of bipartisan support has stalled progress on the UCC. While some political parties advocate for it as a constitutional necessity, others oppose it, framing the UCC as an attack on religious freedoms. This lack of political will has significantly delayed any substantial legislative efforts toward the realization of a uniform code.

Concerns Over Cultural and Religious Erosion

One of the most significant challenges to the UCC is the fear among minority and even some majority communities that it would homogenize diverse cultural practices. Religious communities often view personal laws as an extension of their faith, and any attempt to reform or replace these laws is seen as an encroachment on their religious freedom.

For example, Muslim personal law permits practices like polygamy and specific inheritance rules, which are integral to Islamic jurisprudence. Similarly, tribal communities with their unique customs and traditions may view the UCC as a threat to their cultural autonomy. These fears of cultural erosion, whether valid or exaggerated, have created substantial resistance to the idea of a common legal framework.

Practical Challenges in Drafting and Enforcing a UCC

Drafting a UCC that respects India's cultural diversity while ensuring gender justice and equality is an intricate task. The diverse legal traditions, customs, and practices across religious

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and regional groups make it difficult to formulate a single code that is acceptable to all. For instance:

- Hindu law has undergone significant reforms, such as the Hindu Succession (Amendment) Act, 2005, granting daughters equal inheritance rights, while similar reforms are lacking in other personal law systems.
- Muslim personal law, based on Sharia principles, includes provisions like polygamy and unilateral divorce, which would conflict with a gender-just UCC.
- Tribal communities often follow customary laws that differ significantly from codified laws.

Enforcement of a UCC also poses challenges. Ensuring compliance among diverse communities, particularly in rural and marginalized areas, would require extensive public education and legal awareness campaigns. Additionally, the judiciary would need to balance religious freedoms with constitutional principles, which could lead to protracted legal battles and social unrest.

Lack of Public Awareness and Misconceptions

Public misconceptions about the UCC further hinder its implementation. Many citizens, particularly in minority communities, view the UCC as an attack on their religious identity rather than a means of ensuring equality and justice. These fears are often fueled by political rhetoric and a lack of awareness about the constitutional intent behind the UCC.

Efforts to educate the public on the benefits of a UCC, particularly its role in promoting gender justice and eliminating discriminatory practices, have been inadequate. Without widespread public understanding and support, implementing a UCC remains a distant goal.

The challenges to implementing a Uniform Civil Code are deeply rooted in India's socio-cultural diversity, political complexities, and concerns over religious freedom. While the UCC promises to uphold the constitutional ideals of equality, secularism, and non-discrimination, its path is fraught with resistance from various quarters.

Addressing these challenges requires a sensitive and inclusive approach. Dialogue with religious and community leaders, public awareness campaigns, and phased implementation could help mitigate fears and build consensus. Political will and judicial support will also play a crucial role in overcoming these obstacles. Despite these challenges, the UCC remains an essential step toward realizing the constitutional vision of a just and equal society.

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V. Conclusion

The Uniform Civil Code (UCC) is a transformative step toward realizing the constitutional ideals of equality, secularism, and justice. Rooted in Article 44 of the Directive Principles of State Policy, it seeks to harmonize India's diverse personal laws into a single, equitable framework. By addressing systemic inequalities in personal laws, particularly those affecting women, the UCC aims to promote gender justice and foster national integration.

While the judiciary has consistently advocated for the UCC through landmark cases like *Shah Bano*, *Sarla Mudgal*, and *Shayara Bano*, its implementation faces challenges such as social resistance, political reluctance, and concerns about cultural erosion. Overcoming these obstacles will require public education, inclusive dialogue, and a phased approach to reform.

Ultimately, the UCC is not just a constitutional mandate but a moral imperative to build a society where all citizens, irrespective of religion or gender, are treated with fairness and dignity. Its implementation is essential for strengthening India's secular fabric and ensuring justice for all.

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