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# Uniform Civil Code's Constitutional Validity: Secularism vs. Religious Freedom

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## ABSTRACT

*The Indian Uniform Civil Code aims at providing a set of common laws governing personal matters like marriage, divorce, inheritance, and adoption pertaining to its citizens irrespective of their religion. This legal development derives from Article 44 of the Indian Constitution. Its goal is to promote national integration and equality by taking the place of various personal laws based on religion. Its advocates see the UCC as a positive action to promote secularism, highlight gender equality, and address discriminatory traditional practices entailed in the religious laws. On the other hand, opponents see the UCC as a violation of the religious freedom and cultural identity of people and fear that the UCC will impose the cultural practices of the majority upon the minority people. Recently, Uttarakhand passed a bill to implement UCC that institutes uniform personal laws work with live-in relationship and registration, raising the topic of the rights of minorities, and positioning equality with freedom of religion. A number of national challenges pose barriers to the implementation of UCC such as constitutional conflicts, differing personal laws, socio-cultural resistance, and political elements. Comparative studies with secularism constructs in France and Turkey and international structures, including the European Convention on Human Rights, can provide opportunities for discussions regarding balancing the tension between the freedom of religion with a secularist agenda. Civil society and religious based organization, play a pivotal role in influencing public opinion and policy agendas. As the UCC may influence national identity and social cohesion, collective decisions should be made, ensuring that the UCC contributions to legitimate progress in Indian society while considering their positionality.*

**Keywords:** Uniform civil code, Personal Laws, Secularism

## I. INTRODUCTION TO UNIFORM CIVIL CODE (UCC)

The Uniform Civil Code (UCC), a universal legal framework, is intended to unify personal laws governing marriage, divorce, inheritance, adoption, and maintenance across all religions, with all citizens being treated equally. India's personal laws are today based on personal, family, and community agreements, resulting in different legal standards for different

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communities. As a result, the UCC seeks to replace those laws with one personal law that will equally apply to everyone, regardless of religion. The UCC is a remedy based on Article 44 of the Constitution of India, which states that the State shall endeavor to secure for the citizens of the country a uniform civil code throughout the territory of India. This directive principle encapsulates the dreams of the framers of the Constitution in seeking national integration and equality. However, the UCC is still being debated largely due to India's immense diversity in religion and culture.

Supporters of the UCC assert that it is vital for maintaining the values of secularism and gender equality. They believe that uniform laws would abolish discrimination built into certain religious personal laws that especially harm women's rights. For example, polygamy and unilateral divorce (triple talaq) in some communities have been considered violations of women's rights. A uniform code is a movement towards equal rights for women across all religions. On the other hand, opponents view it as a violation of freedom of religion and cultural identity. They suggest that personal laws, which they argue are part of a religious practice, would be violated by a uniform code. Minority communities, in particular, are concerned that the UCC will impose the cultural practices of the majority on them and erode their tradition and customs.

The debate surrounding the Uniform Civil Code (UCC) has been revived over the past several years, with some states beginning to show movement toward implementing it. In February 2024, Uttarakhand became the first state in India to pass a UCC bill, a milestone act that created uniform personal laws governing every community in the state. The law establishes uniform laws that govern marriage, divorce, adoption, and inheritance, and establishes that live-in relationships likewise require licenses<sup>2</sup>. Proponents of the UCC celebrate this as a step toward equitable circumstances; opponents characterize it as discrimination against minority communities and the imposition of cultural norms of the majority community onto all citizens. The UCC is therefore an exceptionally complicated and sensitive issue that raises questions of the balance between equality and secularism and the protection of religious freedom and cultural diversity. For India, the question of how to move forward on this difficult issue requires discussion and respect for the various perspectives and concerns voiced by the various communities engaged in this important discussion.

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<sup>2</sup> What is Uniform Civil Code?, Bus. Standard (Aug. 28, 2023, 1:00 PM), <https://www.business-standard.com/about/what-is-uniform-civil-code>

## II. CONSTITUTIONAL FOUNDATIONS OF UCC

- **Article 44: Directive principles and the UCC**

Per Article 44 of the Indian Constitution, which forms one of the Directive Principles of State Policy (DPSP), it is stated, "The State shall Endeavour to secure for the citizens of India a uniform civil code throughout the territory of India." The provisions foresee the introduction of a set of common civil laws applicable in personal matters (marriage, divorce, inheritance, and adoption, etc.) with the view of applying to all persons for all intents and purposes, without regard whatsoever to the religion of a person. This is aimed at promoting the national integration of its peoples and equality before the laws of the land.

### **Judicial views**

Mohd. Ahmed Khan v. Shah Bano Begum (1985): The Supreme Court discussed the need for a UCC primarily to do justice to women of all religions. It also stated that a common civil code will assist in national integration.<sup>3</sup> Sarla Mudgal v. Union of India (1995)<sup>4</sup> A UCC is necessary due to the conflicting personal laws that are inconsistent with the norms of national unity. John Vallamattom v. Union of India (2003): The Supreme Court struck down Section 118 of the Indian Succession Act, which was discriminatory against Christians, and reaffirmed the need for a UCC to eliminate inequality. All of these judgments highlight the consistent position of the courts in advocating or asserting the need for a UCC to ensure principles of equality and secularism as set out in the Constitution.

- **Article 25: Freedom of Religion and Its Boundaries**

Article 25 of the Constitution guarantees every person in India the freedom of conscience as well as the right to practice religion freely, profess religion in public and propagate religion. However, it does not concern the above rights and freedom, as they are limited in cases of public order, morality and health, and any other permissible restrictions set forth by Part III- Fundamental Rights of the Constitution. Thus, there is some kind of right to freedom of religion, but it isn't absolute, and it can be restricted on the grounds of the general welfare of society. The Supreme Court has played a major role in demarcating the limits for the freedom of religion. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954), the Court differentiated between what is essential in the practice of religion (which is given the protection of Article 25) and what are secular

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<sup>3</sup> Legal Service India, Analysis: Uniform Civil Code - Article 44, <https://www.legalserviceindia.com/legal/article-10757-analysis-uniform-civil-code-article-44.html?utm>

<sup>4</sup> Sarla Mudgal v. Union of India, (1995) 3 SCC 635

activities that can be regulated by the State. This essential practice doctrine has since been invoked to resolve the essential practice puzzle governing which religious practices would receive constitutional protection.<sup>5</sup>

According to *Shayara Bano v. Union of India* (2017), the Supreme Court states that instant triple talaq (talaq-e-biddat) is unconstitutional, nor is said practice an, "essential part of Islamic faith", nor does it find a place consistent with fundamental rights of women of the religion. This ruling affirmed that religious practices must not abridge individual rights and must conform to the constitutional values.<sup>6</sup>

### III. INTERACTION OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The Constitution of India allows for interaction among Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). Fundamental Rights (FRs) have legal recognition, which allows the courts to enforce them. While Directive Principles of State Policy (DPSPs) are meant to guide the State in its drive towards social and economic democracy, they are not legally enforceable. The courts nevertheless often make interpretations of Parts III and IV as both being inter-related and inter-dependent.

In *Kesavananda Bharati v. State of Kerala* (1973) the Supreme Court of India recognised a "basic structure" of the Constitution which cannot be altered or amended. The Court also pointed out the need to reconcile FRs and DPSPs and that both FRs and DPSPs are constituent elements of the Constitution's basic structure<sup>7</sup>. Further, in *Minerva Mills Ltd. v. Union of India* (1980), the Supreme Court said that "to prefer one to the exclusion of the other would be to upset the harmony of the Constitution". The SC noted that FRs and DPSPs together comprise the heart of the Constitution for "they are its commitment to social revolution and its conscience".<sup>8</sup> These Supreme Court judgments require the judiciary to interpret the Constitution in a way that FRs are informed by, and inclusively enriched by, DPSPs.

### IV. ABOLITION OF UNTOUCHABILITY AND SOCIAL REFORMS

Article 17 of the Indian Constitution: This article abolishes untouchability and makes any practice of untouchability unconstitutional. It states that "Untouchability" is abolished and its practice in any form is prohibited. Enforcement of any disability upon account of "Untouchability" will be said to have committed an offence and punishable in accordance with

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<sup>5</sup> *Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

<sup>6</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>7</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461

<sup>8</sup> *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

law.<sup>9</sup>This proves to be the basis for legislation against discrimination that are caste based.

**Legislative Measures:** In order to give effect to Article 17, the Indian Parliament enacted the Untouchability (Offences) Act, 1955, which was repealed and amended as the Protection of Civil Rights Act, 1976. This Act makes punishable the practice of 'untouchability', to abolish 'disabilities' on account of caste based discrimination. Article 30(1) of the Indian Constitution: Article 30(1) of the Indian Constitution provides that religious and linguistic minorities have a right to establish and administer educational institutions of their choice. It enables minorities to carry their culture and religion through education. **State Aid to Minority Institutions:** While Article 30(1) affords the right to establish institutions, it also envisages and allows, minority institutions to also receive state aid discrimination-free. The Supreme Court of India has ruled that minority institutions have a right to assistance from the state, and assistance cannot be denied only because the institution is administered by a minority.<sup>10</sup>

## **V. SECULARISM IN THE INDIAN CONTEXT**

Secularism in India has developed as a unique phenomenon shaped by the multi religious context and historical experiences in the country. Unlike the West, which conceives secularism as state-religion separation, Indian secularism is the concept of Sarva Dharma Sambhava, or the equal respect for all religions. The authors of the Indian Constitution recognized India's pluralism, and were deliberate to incorporate secularism principles into the constitutional framework. While 'secularism' is never mentioned in the Constitution, secularism values and principles can be found in the constitutional provisions.

The Articles 25, 26, 27, and 28 guarantee freedom of religion, freedom of conscience, and management of religious affairs by individuals, all in a manner that best illustrates the deliberate intention of the state to remain religiously neutral. The term 'secularism' was introduced in, and explicitly mentioned in, the Preamble section of the Constitution in 1976, through the 42nd amendment, during the Emergency, as a way to reaffirm the commitment of the state towards secularism, socialism, and the unity and integrity of the state. The commitment to secularism that the Indian Constitution has espoused is a strong one, and the state does retain some autonomy for intervention in religious matters, however, secular practice in India has been utilizing a fairly complex interplay with secularism, especially in light of the porous boundaries between politics and religion. The development of secularism in India has

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<sup>9</sup> Human Rights Watch, Broken People: Caste Violence Against India's "Untouchables", <https://www.hrw.org/reports/1999/india>

<sup>10</sup> JURIST, India Top Court Clarifies Test for Classifying Minority Institutions Under Constitutional Equality Provision,

featured a balancing act, vacillating between a respect for religious diversity and the constitutional obligations. The state is not supposed to be oblivious to religion, it is simply obligated to protect religious freedoms, and prevent discrimination or privilege to any one religion.

## **VI. LANDMARK JUDGMENTS ADVOCATING FOR UCC**

The Indian judiciary has been an advocate for implementing a Uniform Civil Code (UCC) on the basis of national integration, gender equality and social justice. In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), the Supreme Court addressed the issue of maintenance for a divorced Muslim woman under Section 125 of the Criminal Procedure Code. The Court ruled that "the provisions of Section 125, Cr.P.C<sup>11</sup>. ... apply to all citizens and therefore do not exclude a divorced Muslim woman," thus Section 125 would take precedence over personal laws (including Muslim personal laws) and would entitle a divorced Muslim woman to maintenance even after the iddat period. The Court determined the need for a UCC since there were differences between Muslim personal laws and other personal laws as to what is "equal" under their personal laws and what is "equal" under Section 125.<sup>12</sup>

In *Sarla Mudgal v. Union of India* (1995), the Supreme Court addressed the issue of a Hindu man converting to Islam in order to marry another woman without dissolving his first marriage.<sup>13</sup> The Court ruled that under Hindu law, the man's first marriage was valid and that the second marriage was void because it violated Section 494<sup>14</sup> of the Indian Penal Code which prohibits bigamy. This case highlighted the type of conflicts that may arise when multiple personal laws coincide and further demonstrated the need for a UCC in order to settle these types of issues and protect the sanctity of marriage.

In the matter of *John Vallamattom v. Union of India* (2003),<sup>15</sup> the Supreme Court of India examined the constitutionality of Section 118 of the Indian Succession Act, which sought to regulate and restrict the ability of Christians to make testamentary dispositions of property for purposes of religion and charitable purposes. The Court held the Section was unconstitutional on the grounds of violation of Articles 14 and 15 of the Constitution as the Section discriminated against a section of the population based on their religious beliefs. This judgment also fortified the arguments in support of a UCC Jewish practices and personal laws were given

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<sup>11</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945

<sup>12</sup> Criminal Procedure Code, 1973, u/s 125

<sup>13</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

<sup>14</sup> Indian Penal Code, 1860, u/s 494

<sup>15</sup> *John Vallamattom v. Union of India*, AIR 2003 SC 2902

greater weight ignoring the principles of equality and non-discrimination enshrined in the Constitution.

## **VII. CRITIQUES AND LIMITATIONS OF JUDICIAL APPROACHES**

While the judiciary has championed the need for UCC, many argue against implementation for reasons, including that a uniform code might violate the right to religious freedom under Article 25 of Constitution, and possibly imposing this on minority people who arguably may see this as a violation of their freedom of religious and may alienate those communities, as well as issues around loss of cultural pluralism, and imposing a single legal system that applies to everyone that doesn't reflect India's plural fabric. In addition, the judiciary can advocate for UCC but resistance from religious communities reflects opposing values between secularism and protecting religious freedoms in a diverse country like India.

Further, enacting do UCC can have practical implications, in terms of the need for many consultations with many religious communities to ensure their beliefs and practices are respected. And while there is no consensus the political world, for now, look very challenges for the future of UCC. So while the judiciary played important role in advocating for UCC to promote equality and secularism, critiques and limits have shown that there are complex issues of protecting religious freedoms or and protecting cultural diversity within what the Constitution mandates.

## **VIII. INDIA'S JUDICIAL PERSPECTIVE: ADVOCATING FOR A UNIFORM CIVIL CODE**

India's judiciary has been a champion of the need for a Uniform Civil Code. For example in *Sarla Mudgal v. Union of India*, the Supreme Court dealt with the issue of bigamy and conflict of personal laws.<sup>16</sup> The Court stated that, "when more than 80% of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any more, the introduction of 'uniform civil code' for all citizens in the territory of India." The statement is indicative of the support of the judiciary to a non-religious framework of law.

In *John Vallamattom v. Union of India*, the Supreme Court judged there is no essential connection between religion and personal law in a civilized state.<sup>17</sup> It stated that the matters of marriage and succession are secular matters that should not be considered by religious law. These judgments highlight the judiciary's awareness of the need for a Uniform Civil Code for

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<sup>16</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

<sup>17</sup> *John Vallamattom v. Union of India*, AIR 2003 SC 2902.



the advancement of equality and secularism.

## **IX. GOA'S UNIFORM CIVIL CODE: A DOMESTIC EXAMPLE OF LEGAL UNIFORMITY**

In India, Goa exemplifies a situation in which there is a Uniform Civil Code for everyone, regardless of religion. Goa's so-called Uniform Civil Code is derived from the Portuguese Civil Code, and concerns personal matters such as marriage, divorce, and succession. The Supreme Court upheld Goa's civil code in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, describing it as follows: "the Civil Code is an Indian law and domiciles of Goa, for all intent and purposes, are Indian citizens." Goa is, therefore, a clear example of the possibility of implementing a Uniform Civil Code in a multi-religious society like that of India.

## **X. ROLE OF CIVIL SOCIETY AND RELIGIOUS ORGANIZATIONS**

Civil society and religious organizations have played key roles in the UCC debates and discussion and influenced public perceptions and public policy. Civil society organizations often have a dual function of being intermediaries between the state and the people, raising concerns and aspirations about personal laws. Religious organizations, in particular, have articulated fears during the UCC discussions that their religious autonomy and traditions may be compromised. They argue strongly that personal laws are essentially a tenet of their faith and their identity. Therefore, any forced homogenization would be a form of violating the freedom of religion.

Civil society groups, meanwhile, have been vocal advocates of the UCC, emphasizing how it can advance gender equality and social justice. For example, women's rights organizations have pointed to how certain personal laws disproportionately restrict women and that a uniform code may empower women's equal rights, regardless of religion. The role of civil society and religious organizations in the context of UCC illustrates the level of complexity involved in implementing a UCC (or any statute) in a diverse society. Their voices are essential to ensure any changes are inclusive, respect cultural diversity, and comply with the Constitution.

## **XI. POTENTIAL IMPACT ON NATIONAL INTEGRATION AND SOCIAL COHESION**

The implementation of a Uniform Civil Code has important implications for national integration and social cohesion in India. The advocates of a UCC, believe that a stronger sense of unity among users will be built through a common legal framework applicable to all people in the state not differentiated by religion thus further enhancing the secular character of the state. Similarly, with a UCC in place, legal ambiguities and clashes due to the existence of multiple personal laws would be reduced to create more legal clarity and predictability. This

again would have a huge impact on the degree to which the civil population trusts its legal system and the extent of adherence to the rule of law.

Critics of a UCC warn that the implementation of a UCC through force without adequate consensus formation due to credible dissent by minority community members may increase tensions between communities and lead to an isolation of minority communities. Critics of a UCC do recognise the value of contemporary law reform as one of a voluntary unifying approach to improving human rights whilst still allowing for the continuance of cultural and religious differences. The judiciary has highlighted some of these issues and noted that the intention of UCC is positive but must be implemented slowly and cautiously to ensure the multitude of perspectives in India is maintained. As such, the integration of UCC into India's legal framework should be with the full understanding and acknowledgment of the discussions with the communities involved so that the UCC is a positive contribution to social cohesion and national integration.

## **XII. CONSTITUTIONAL AND LEGAL CHALLENGES IN IMPLEMENTING UCC IN INDIA**

The question of instituting a Uniform Civil Code (UCC) has been extensively debated and discussed since the promulgation of the Constitution of India. Article 44 of the Directive Principles of State Policy promotes the establishment of a Uniform Civil Code that respects the values of national integration and equality, but it is evident that there are many constitutional and legal hurdles to realising that goal. This paper intends to explore these hurdles and to analyse the relationship between secularism, freedom of religion, and the rationale for implementing uniformity in civil laws.

### **Constitutional Dichotomy: Article 44 vs. Article 25**

Perhaps the most significant constitutional issue in realizing the UCC exists with the inconsistency of Article 44 which calls on the State to strive to achieve a uniform civil code, and Article 25, which vests in individuals the freedom of conscience and the right to freely profess, practice, and propagate religion. This contrast creates a legal dilemma in that, on the one hand, the state is encouraged to unify civil law, and on the other hand, it must maintain the individual's rights to his/her religion. Personal laws are considered to be governed by religious, and personal laws typically govern marriage, divorce, inheritance and adoption. Any uniformity to be legislated could be seen as interference and violation to an individual's religious rights.

While some may argue that the UCC may infringe on the fundamental right to freedom of religion under Article 25 of the Constitution, others have expressed that the UCC may also run

afoul of the rights of minority communities to maintain and develop their distinct culture/constraint of Article 29 of the Indian Constitution. The reality is that enforcing the Uniform Civil Code may limit or hinder the practice of personal law and customs of each community in India.<sup>18</sup>

### **XIII. DIVERSITY OF PERSONAL LAWS AND CULTURAL PRACTICES**

India is a pluralistic society with many religions that have their own personal laws concerning civil issues, such as marriage, divorce, inheritance and adoption. Hindus, Muslims, Christians and Parsis have separate laws governing marriage and divorce, inheritance, and adoption. As such, personal laws are not laws per se but related to religious beliefs and practices. To implement a uniform code requires reconciliation of these personal laws which is a tough challenge. Moreover, the challenge is to develop a code that preserves the essence of the various religions, while providing uniformity and equality. Further, some practices in one religion will be in another religion, this leads to conflict and resistance. One of the main challenges to implementing a UCC is India's cultural and religious diversity. India is home to many religious communities, each with their own personal laws, such as marriage, divorce, inheritance and adoption. These personal laws are intertwined with their religious beliefs and cultural practices.<sup>19</sup>

### **XIV. POLITICAL AND LEGISLATIVE HURDLES**

The political environment in India has a significant impact on the conversation around the UCC. Political parties frequently walk a fine line on this issue, as they assume backlash from minority communities who perceive the UCC as an encroachment on their religious traditions. Both the risk of alienating minority voters, and the lack of any political agreement regarding the UCC's desirability have contributed to a hesitance to propose meaningful legislation regarding the UCC. The Law Commission of India also weighed in on the matter in their 2018 report recommending that a UCC is neither needed, nor wanted at this time, and instead advocated for the codification and reform of various personal laws to ensure gender justice. This reflects the difficulty in creating a uniform code for a diverse society. The implementation of any UCC in India would lead to protests and unrest. As noted above, the debates a few years ago about personal laws led to protests, and followed along these lines. Minority communities (notably Muslim communities) view the UCC as an attempt of the majority to impose its legal

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<sup>18</sup> Aryan Harshraj, Legal Challenges and Implications of the Uniform Civil Code Debate, Naya Legal, <https://www.nayalegal.com/legal-challenges-and-implications-of-the-uniform-civil-code-debate>

<sup>19</sup> Uma Shankar Mishra, The Uniform Civil Code Prospects And Challenges In India, White Black Legal, <https://www.whiteblacklegal.co.in>

framework onto them.<sup>20</sup>

## **XV. SOCIO-CULTURAL RESISTANCE AND IDENTITY POLITICS**

Personal laws are more than measures of state; they are representations of their distinctive cultural and religious identities. When an attempt is made to change this law, there will always be pushback from the communities, claiming it is an encroachment on their cultural rights. Identity politics exaggerates these tensions since political actors use the community's religious and cultural sentiments to cement vote banks. The want for cultural uniqueness and the preservation of religious distinctiveness resonate with the push-back against the UCC. Communities fear a uniform code would ignore their cultural complexities of theirs and force a singular legal code. Some fear the possibility that the UCC would mean a 'Hinduised' code was being imposed on all communities. Implementing the UCC will infringe upon the employment of personal laws and customs as practiced in India by the various communities<sup>21</sup>.

## **XVI. PRACTICAL CHALLENGES IN DRAFTING AND IMPLEMENTATION**

Creating a UCC that includes the many different communities that we can find in India is a tremendous undertaking. It must be inclusive, covering all aspects of civil law, and at the same time, it must take into account the many different culturally salient practices available in India. Furthermore, then code must be supported by an effective administrative body in order for this system to be uniformly applied in every part of India. In addition, there is the complexity of training and educating legal professionals and the public and establishing a process for these forms of reconciliations, mediations, and appeals.

## **XVII. CONCLUSION: SUMMARIZING KEY FINDINGS**

The Uniform Civil Code has been a significant topic of discussion in India, mainly because of its impact on secularism and freedom of religion. The Indian Constitution, specifically, anticipates UCC in Article 44 to uphold national integration and equality. Additionally, Articles 25 and 26 provides for the freedom of religion, producing a complex relationship between uniformity and religious diversity. For example, in the landmark case of *Sarla Mudgal v. Union of India*, the Supreme Court addressed the subject of a Hindu man converting to Islam in order to marry again without formally ending his first marriage. The Court ruled that these conversions, to the extent that they could result in bigamy, were not valid and that a UCC was

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<sup>20</sup> Amit Sharma, *Critical Analysis of the Uniform Civil Code in India*, Juris Hour

<sup>21</sup> Aryan Harshraj, *Legal Challenges and Implications of the Uniform Civil Code Debate* (Jiwaji University, Gwalior) <https://www.nayalegal.com>

necessary to protect individuals from personal laws.<sup>22</sup>

In the same fashion, the Supreme Court ruled in *Shah Bano Begum v. Union of India* that a Muslim woman was entitled to maintenance under Section 125 of the Criminal Procedures Code, regardless of her personal laws. Both cases highlight the intersection of personal laws that have a conflict with the right to equality and calls for the UCC. These cases illustrate the important role of the judiciary forcefully advocating for some degree of UCC to ensure access to equality and prevent being taken advantage of in the name of religious freedom. The enactment of UCC, however, continues to further stir intense debate, balancing constitutional frameworks with the protection of religious freedoms.<sup>23</sup>

### **Final Reflections on UCC's Constitutional Validity**

The constitutional validity of the UCC depends on being consistent with the basic tenets of equality and secularism embedded in the Constitution. Article 44 says that the state shall try to secure a UCC. Articles 25 and 26 grant rights to individuals and groups in the form of religious freedoms and therefore create a constitutional conflict. In *Sarla Mudgal v. Union of India*, the Supreme Court stated: "There is no justification whatsoever that we should keep it in abeyance, any further, the introduction of 'uniform civil code' for all citizens in the territory of India."<sup>24</sup> This statement reinforces its place that a UCC is an important step towards national integration and equality. The UCC, however, must be carefully enshrined in law to ensure that it does not encumber or infringe the freedoms of people based on religious belief. The fight will be about the actual construction of a code that meets constitutional values, while maintaining the cultural and religious diversity of India fundamentally intact. The judiciary has played its role in helping interpret the Constitution throughout these competing interests, but ultimately creating a UCC is a legislative job given the imposed complexities found within a socio-political landscape such as this.

### **Future Prospects for Legal Uniformity in India**

The future of legal uniformity in India through the implementation of the Uniform Civil Code (UCC) has been the focus of tremendous debate and study. The UCC envisions a national sameness, when all the different personal laws applicable to marriages, divorces, and inheritance matter that apply to a wide variety of religious communities will be replaced with a single rules that will be equally applicable to all citizens, apart from where the law has

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<sup>22</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

<sup>23</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

<sup>24</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

permitted religious institutions to function free from regulation, and ultimately promote equality and national integration. One of the first major steps in that direction will soon be taken in the State of Uttarakhand when it passed the Uniform Civil Code Bill earlier in February of 2024. The Uniform Civil Code Bill establishes consistency of personal laws across all religions within the state, taking a position on elements of polygamy and minimum marriage age, and addressing inheritance rights. Even though this is a positive step in many ways with respect to policy on gender equality and secularism, it has opened criticism with respect to interference with religious beliefs in the important life decisions associated with marriage and divorce laws...

Implementing the UCC as a national bill presents many challenges in India. The level of religious and cultural diversity in India means that standardizing any personal law, will require extremely sensitive and inclusive consultations. Further, throughout India's history, this measure has been stalled and met with resistance and has simply been a lack of political consensus and fear of marginalizing minority communities. Under the conditions and definitions of a liberal democracy, the judiciary has been a critical promoter of a UCC. In the paradigm case of *Sarla Mudgal v. Union of India*, the Supreme Court reiterated the need for a UCC as a condition of national integration and gender justice. The Court stated that "there is no justification whatsoever to keep in abeyance, any further the introduction of 'uniform civil code' for all citizens, in the territory of India."

Public opinion on the UCC remains contentious. While many advocate the need for uniform legal standards for equality and secularism often fear that uniformity will negate religious freedom and dismiss particularities of cultural identities and diversity. To mitigate misunderstandings and frame positive outcomes, democratic governance practices of engagement with dialogue are essential, particularly those involving affected constituencies, including potential stakeholders and communities and individuals (religious and otherwise), religious leaders and civil society organizations.

Regardless, the current directions under the auspices of the UCC offer opportunities for further incremental legal uniformity in India, not without considerable challenges. The UCC process will need to be phased with primary reforms in areas where there is already significant consensus -- including historical injustices relating to gender justice and child rights -- so there will be a broader acceptance of much needed UCC reforms. At the same time, constant public contact with people in states like Uttarakhand has been useful, and will need to continue to happen in the UCC process if the constitutional vision of a Uniform Civil Code, premised on equality, secularism, justice, and good governance, is to be achieved.