

CONSTITUTIONAL CONSTRAINTS ON A MANDATORY UNIFORM CIVIL CODE: A BASIC STRUCTURE ANALYSIS

AUTHORS – ARCHANA KUMARI* & DR. TAPAN KUMAR CHANDOLA**

* LLM (CONSTITUTIONAL LAW), AMITY LAW SCHOOL, AMITY UNIVERSITY UTTAR PRADESH, LUCKNOW CAMPUS

** ASSISTANT PROFESSOR AT AMITY LAW SCHOOL, AMITY UNIVERSITY UTTAR PRADESH, LUCKNOW CAMPUS

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ABSTRACT

The discussion about Uniform Civil Code in India highlights the complexity of post-colonial constitutional law, especially when we see how Article 44 of the Directive Principles encourages the State to work towards a uniform civil code for all citizens. The main aim is to replace the different religion-based personal laws which currently govern marriage, divorce, succession, adoption, and maintenance. But, when the government tries to bring legal uniformity, it often clashes with the fundamental rights given in Part III of the Constitution, like the freedom of religion and the right to preserve one's own culture. This report studies in detail the constitutional barriers that stop the adoption of a compulsory Uniform Civil Code, focusing mainly on the Basic Structure Doctrine. It looks at the debates in the Constituent Assembly, important Supreme Court cases, and new laws like the Uttarakhand Uniform Civil Code Act, 2024, which show the conflict between having one law for all and keeping legal diversity. The report finds that forcing a uniform code without proper agreement goes against the main features of the Indian Constitution. It also discusses the Essential Religious Practices doctrine and special rules like the Sixth Schedule and Article 371, which stop the full application of a single law everywhere. In the end, the study suggests a 'Constitutional Threshold Model' and recommends making an optional civil code available, because gender justice and equality can be better achieved by checking and improving current personal laws as per constitutional values.

Keywords: Uniform Civil Code, Basic Structure Doctrine, Legal Pluralism, Secularism, Constitutional Morality

INTRODUCTION AND RESEARCH PROBLEM

India's socio-legal system is shaped by deep religious, linguistic, ethnic, and cultural diversity. To govern this diverse society, the legal system has allowed 'normative heterogeneity',¹⁴² letting communities follow their own personal laws in areas like family, marriage, and succession. Legal pluralism was officially recognised in the

colonial era and traces back to Warren Hastings' regulation of 1772. Hastings' regulation required marriage, caste, and religious practices to follow the religious texts of Hindus and Muslims. This colonial legacy became part of the post-independence constitutional framework, leading to a complex legal system. This stands in contrast to Article 44 of the Directive Principles of State Policy (DPSP), which

¹⁴² Sally Engle Merry, "Legal Pluralism" 22 *Law & Soc'y Rev.* 869, 872 (1988).

says the State should work to create a Uniform Civil Code (UCC) throughout India.

The central research problem concerns the tension between Article 44's non-justiciable directive and the justiciable Fundamental Rights in Part III of the Constitution of India.¹⁴³ A mandatory, top-down Uniform Civil Code may encroach on the right to freely profess, practice, and propagate religion and risks violating the rights of religious denominations to manage their religious affairs, as well as minority groups' fundamental rights to conserve their language, script, or culture.¹⁴⁴ ¹⁴⁵ This legal dilemma deepens with recent political momentum behind state-level uniform codes, most notably the Uttarakhand Uniform Civil Code Act of 2024, which has raised serious concerns about federalism, tribal autonomy, and the right to privacy under Article 21.¹⁴⁶

The main legal question is whether making a Uniform Civil Code compulsory would break the Basic Structure of the Constitution. The Basic Structure Doctrine is important because it protects the main identity of the Constitution from changes by the majority. This doctrine says that things like secularism, federalism, rule of law, and the balance between Fundamental Rights and Directive Principles are essential parts of the Constitution. In India, secularism means giving equal respect to all religions and allowing minorities to keep their own identity. If the government tries to put all personal laws under one law, it can go against these important principles. So, the research problem is to find out how far the State can go in making a Uniform Civil Code compulsory without damaging the pluralistic nature of India.

Research Objectives

To solve the constitutional problem, this study has five main objectives.

First, critically analyse the historical and textual framework of Article 44 alongside the Fundamental Rights guaranteeing religious and cultural freedom.¹⁴⁷ Next, examine the Constituent Assembly Debates to understand the framers' intent regarding whether the UCC should be voluntary or mandatory.¹⁴⁸

Second, to check if a compulsory Uniform Civil Code is constitutional by using the Basic Structure Doctrine. This involves looking at how secularism, legal pluralism, and the balance between Fundamental Rights and Directive Principles put limits on making one law for everyone.

Third, examine the judiciary's role as arbiter of constitutional morality. Consider how it harmonises conflicts between gender justice, patriarchal personal laws, and the Essential Religious Practices (ERP) test.¹⁴⁹ Also assess how the Supreme Court's theological interpretation impacts a UCC's feasibility.¹⁵⁰

Fourth, this study assesses the structural and constitutional implications of the 2024 Uttarakhand Uniform Civil Code.¹⁵¹ It examines exemptions for tribal communities and mandates on live-in relationships to evaluate compliance with asymmetric federalism and the right to privacy.¹⁵²

Fifth, to think of and suggest practical and constitutional alternatives to a compulsory Uniform Civil Code. The research wants to make models that help achieve gender equality and remove unfair practices, but at the same time protect the country's cultural and legal diversity.

Research Questions

Guided by the defined objectives, this report systematically investigates the following analytical research questions:

¹⁴³ M.P. Singh, *The Statics and the Dynamics of the Fundamental Rights and the Directive Principles – A Human Rights Perspective* 5 SCC (Jour) 1 (2003).

¹⁴⁴ The Constitution of India, art. 25(1).

¹⁴⁵ The Constitution of India, art. 26.

¹⁴⁶ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024).

¹⁴⁷ Constituent Assembly Debates, vol. VII, 540 (1948).

¹⁴⁸ *Ibid.*

¹⁴⁹ Faizan Mustafa and Jagtshwar Singh Sohi, "Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy" 2017 *BYU L. Rev.* 915, 931 (2018).

¹⁵⁰ *Ibid.*

¹⁵¹ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024).

¹⁵² The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024), s. 2.

1. Does the mandatory and universal implementation of a Uniform Civil Code abrogate the essential features of the Indian Constitution, specifically the principles of secularism and the judicially mandated harmonious balance between Fundamental Rights and Directive Principles of State Policy?
2. To what extent do the robust constitutional protections afforded to tribal and customary laws under the Fifth and Sixth Schedules, as well as the special provisions of Article 371, serve as insurmountable structural constraints against a nationwide, universally applicable Uniform Civil Code?
3. How does the judicial application of the Essential Religious Practices (ERP) doctrine complicate, and potentially restrict, the State's constitutional authority to supersede religious personal laws with a uniform civil statute?
4. Do the specific statutory provisions of the Uttarakhand Uniform Civil Code, 2024, particularly those concerning the mandatory registration of live-in relationships and the categorical exemption of Scheduled Tribes, withstand the rigorous scrutiny of constitutional morality, the right to equality, and the right to privacy?
5. Can the competing imperatives of gender justice and cultural pluralism be effectively harmonised through alternative jurisprudential mechanisms, such as a Constitutional Threshold Model or an Optional Civil Code, without necessitating mandatory legislative uniformity?

Research Hypotheses

This legal study is based on three main ideas:

Hypothesis 1: Imposing a mandatory Uniform Civil Code without broad consensus from minority and tribal communities directly infringes the Basic Structure of the

Constitution.¹⁵³ This imposition undermines India's pluralistic secularism and the right to conserve culture, disrupting the balance between Part III and Part IV of the Constitution.¹⁵⁴

Hypothesis 2: The absolute legislative uniformity envisioned by the proponents of a mandatory UCC is structurally and fundamentally incompatible with India's model of asymmetric federalism.¹⁵⁵ It is hypothesised that the constitutional immunities and administrative autonomy granted to customary laws in designated tribal regions render a truly "uniform" nationwide code legally impossible without fracturing the federal basic structure.¹⁵⁶

Hypothesis 3: Gender justice, equality before the law, and the eradication of patriarchal practices can be optimally and constitutionally achieved through a "Constitutional Threshold Model." It is hypothesised that progressively reforming existing personal laws and subjecting them to rigorous fundamental rights scrutiny will yield superior equitable outcomes compared to the enactment of a homogenising, mandatory civil code that triggers existential cultural anxieties.

Research Methodology

This comprehensive report employs a purely doctrinal legal research methodology, relying heavily on qualitative, interpretative, and analytical approaches to deconstruct constitutional texts, jurisprudential developments, and academic scholarship.¹⁵⁷

The research is fundamentally analytical, aiming to extract second and third-order insights from authoritative primary legal sources. These primary sources include the Constituent Assembly Debates, the bare text of the Constitution of India, and landmark judgments of the Supreme Court of India dealing with personal laws, the Basic Structure Doctrine, and the right to privacy.¹⁵⁸

¹⁵³ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹⁵⁴ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

¹⁵⁵ M. Govinda Rao and N. Singh, *Asymmetric Federalism in India 3* (UC Santa Cruz International Economics Working Paper No. 04-08, 2004).

¹⁵⁶ The Constitution of India, art. 371A.

¹⁵⁷ Upendra Baxi, "On how not to judge the judges" 25 *JILJ* 211, 215 (1983).

¹⁵⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

Secondary sources form the theoretical backbone of the literature review and conceptual analysis. These include extensive reports from the Law Commission of India—specifically the pivotal 21st Law Commission Consultation Paper of 2018 on the Reform of Family Law. Additionally, peer-reviewed legal journal articles, scholarly treatises on legal pluralism, and authoritative legal commentaries on constitutional morality are synthesised to provide a robust theoretical framework.

Literature Review

The academic and jurisprudential discourse surrounding the Uniform Civil Code and the broader ecosystem of personal laws in India is characterised by a profound ideological and theoretical divide. This schism is primarily observed between the proponents of "constitutional monism" and the advocates of "legal pluralism". Constitutional monism insists on the necessity of a singular, unified legal system applicable equally to all citizens within the territory of the State. Scholars advocating for this approach argue that the persistence of disparate personal laws inherently violates the equality provisions of Articles 14 and 15 of the Constitution.¹⁵⁹ Furthermore, they argue that legal pluralism systematically perpetuates patriarchal structures that disenfranchise women.¹⁶⁰ From this perspective, the directive in Article 44 is an unfulfilled constitutional promise required to achieve true secularism and national integration.¹⁶¹

Conversely, the doctrine of legal pluralism, as articulated globally by scholars such as John Griffiths and Sally E. Merry, provides a fundamentally different analytical lens. Griffiths distinguishes between a "social science" view of legal pluralism and a "juristic" view, which examines the formal interaction between state law and indigenous customary law. Merry's framework of "The New Legal Pluralism" affirms

that plural normative orders subsist in all complex societies, entirely independent of state sanction. When applied to the Indian context, scholars argue that legal pluralism is not a colonial relic to be eradicated, but a living, breathing reality of the Indian state's socio-legal architecture. W.F. Menski, in his authoritative work on modern Indian family law, traces how the preservation of normative heterogeneity is deeply embedded in the nation's legal consciousness. Menski posits that the total eradication of personal laws risks an authoritarian homogenization that destroys India's diverse social fabric.

M.P. Singh further bolsters this view, arguing that legal pluralism is a natural concomitant of social pluralism. Singh advances the constitutional argument that while the Directive Principles are fundamental to governance, they must be harmonised with Fundamental Rights. Therefore, a coercive UCC might breach the basic structure if it violently annihilates minority cultural identities. The academic literature also extensively analyses the sociological reality of alternative dispute resolution mechanisms, such as tribal councils in the North East, which function effectively within the broader democratic state's commitment to protecting religious freedom.¹⁶²

A pivotal intervention in this literature was provided by the 21st Law Commission of India through its comprehensive 2018 Consultation Paper on the Reform of Family Law. After years of exhaustive research, the Commission concluded that a Uniform Civil Code is "neither necessary nor desirable at this stage". Instead of advocating for a blanket mandatory code, the Commission recommended the progressive amendment of discriminatory provisions within existing personal laws. The literature thus reveals a shifting consensus toward a nuanced middle ground—a "Constitutional Threshold Model."¹⁶³ This model posits that legal pluralism should be retained, but it must be rigidly and

¹⁵⁹ The Constitution of India, art. 14.

¹⁶⁰ The Constitution of India, art. 15.

¹⁶¹ Constituent Assembly Debates, vol. VII, 547 (1948).

¹⁶² Ethnographic study of Sharia courts, *see generally* 10 *Oxford J. Legal Stud.* 254 (2012).

¹⁶³ "Uniformity in a Plural Nation" *The Hindu College Gazette* (Sept. 26, 2025).

consistently tested against the touchstone of constitutional morality.

Research & Analysis

The Historical Underpinnings and Constituent Assembly Debates

To accurately discern the constitutional constraints placed upon a mandatory Uniform Civil Code, one must systematically examine the original intent of the constitutional framers.¹⁶⁴ During the Constituent Assembly Debates, Draft Article 35—which would eventually be enshrined as Article 44—was the subject of intense, polarising, and deeply philosophical discourse. The primary opposition to the imposition of a uniform code emanated from Muslim members of the Assembly, who perceived the provision as an existential threat to their religious freedom. They argued with profound intensity that personal laws were not merely civil contracts but were inextricably intertwined with their theological identity and daily way of life.

Conversely, proponents of the code, notably K.M. Munshi, vigorously argued for the separation of religion from the secular, mundane aspects of life, such as marriage, divorce, and inheritance. Munshi posited that a uniform code was absolutely essential for the promotion of national integration and the empowerment of women. Dr B.R. Ambedkar adopted a highly pragmatic and harmonising stance that heavily informs modern constitutional analysis. While Ambedkar steadfastly defended the sovereign power of the State to legislate on matters of personal law, he suggested that the initial implementation of any such civil code could be "purely voluntary".

This debate resulted in a deliberate constitutional compromise.¹⁶⁵ By placing the mandate for a Uniform Civil Code within Part IV (Directive Principles of State Policy) rather than Part III (Fundamental Rights), the framers structurally acknowledged that Indian society

was not yet prepared for absolute legal uniformity. This placement established a permanent constitutional constraint against hasty, majoritarian imposition.

The Basic Structure Doctrine: Shielding Pluralism and Secularism

The most formidable and legally binding constraint against the enactment of a mandatory Uniform Civil Code is the Basic Structure Doctrine.¹⁶⁶ Formulated by the Supreme Court in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), the doctrine postulates an implied limitation on Parliament's constituent power. Parliament cannot use its amending power under Article 368 to alter, damage, or destroy the fundamental, essential features of the Constitution. The Supreme Court has identified several key components of this basic structure, including secularism, federalism, the rule of law, and the harmonious balance between Fundamental Rights (Part III) and Directive Principles (Part IV).¹⁶⁷

Secularism in India diverges significantly from the strict Western concept of *laïcité*.¹⁶⁸ As comprehensively elucidated in *S.R. Bommai v. Union of India* (1994), Indian secularism embodies the principle of equal treatment, respect, and positive accommodation of all religions by the State. This unique brand of secularism structurally accommodates religious identities, as evidenced by the constitutional protection of minority rights under Articles 25, 26, 29, and 30.¹⁶⁹ A coercive code, perceived as imposing majoritarian cultural norms under the guise of uniformity, could be struck down as an unconstitutional assault on the pluralistic, secular fabric of the Republic.¹⁷⁰

Furthermore, the basic structure demands a delicate, inviolable equilibrium between

¹⁶⁴ Constituent Assembly Debates, vol. VII, 540 (1948).

¹⁶⁵ The Constitution of India, art. 37.

¹⁶⁶ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹⁶⁷ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

¹⁶⁸ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

¹⁶⁹ The Constitution of India, arts. 25, 26, 29, 30.

¹⁷⁰ *M. Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

Directive Principles and Fundamental Rights.¹⁷¹ In *Pathumma v. State of Kerala* (1978), the Supreme Court highlighted that DPSPs play an important role in fixing socio-economic goals, and are integral to the governance framework.¹⁷² In the seminal case of *Minerva Mills Ltd. v. Union of India* (1980), the Court explicitly held that Parts III and IV are like two wheels of a chariot, and to give absolute primacy to one over the other would disturb the harmony of the Constitution¹⁷³. This harmony and balance are themselves essential features of the basic structure. Consequently, the State's legislative pursuit of Article 44 cannot legitimately extinguish or fatally abridge the core guarantees of Article 25 or Article 29.

The Fundamental Rights Framework: Article 44 vs Articles 25, 26, and 29

The operational tension regarding the UCC lies in the textual dichotomy between the State's directive to secure uniformity and the citizen's fundamental rights.¹⁷⁴ Article 25 guarantees to every individual the right to freely profess, practice, and propagate religion.¹⁷⁵ Article 26 grants religious denominations the fundamental right to manage their own affairs in matters of religion.¹⁷⁶ Opponents of the UCC argue that personal laws governing marriage, succession, and divorce are deeply religious affairs regulated by divine texts, and thus fall squarely within the protective ambit of Articles 25 and 26.¹⁷⁷

However, Article 25(2)(a) explicitly allows the State to regulate or restrict any economic, financial, political, or other secular activity associated with religious practice.¹⁷⁸ Furthermore, Article 25(2)(b) permits the State to enact laws providing for social welfare and reform.¹⁷⁹ Proponents of the UCC leverage these clauses to argue that personal laws are secular

activities associated with religion, and thus the State possesses the unquestionable constitutional authority to reform them.¹⁸⁰

Beyond religious freedom, the debate heavily implicates Article 29(1), which protects the fundamental right of any section of citizens residing in India to conserve their distinct language, script, or culture.¹⁸¹ Jurisprudential interpretation and academic scholarship assert that a community's customary legal system is often an inextricable component of its cultural identity.¹⁸² If a mandatory UCC forcefully eradicates these traditional, customary legal systems, it strikes at the heart of the fundamental right to culture under Article 29.

The Essential Religious Practices (ERP) Doctrine: Judicial Clergy and Personal Law

A critical mechanism through which the Indian judiciary moderates the conflict between secular state action and religious freedom is the "Essential Religious Practices" (ERP) test. First formulated in the *Shirur Mutt* case (1954), the doctrine asserts that Article 25 protects only those practices that are "essential and integral" to a religion.¹⁸³ The determination of what is essential is made by the courts, based on an examination of religious texts and tenets. In *Tilkayat Shri Govindlaji Maharaj v. State of Rajasthan*, the Court ruled that purely secular practices are not protected under Article 26 simply because they are clothed with a religious form.¹⁸⁴ Similarly, in *Commissioner of Police v. Acharya Jagadisharananda Avadhuta*, the Court held that the Tandava dance was not an essential practice of the Ananda Marga faith, demonstrating that the absence of the practice must fundamentally alter the religion to be considered essential.¹⁸⁵

¹⁷¹ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

¹⁷² *Pathumma v. State of Kerala*, (1978) 2 SCC 1.

¹⁷³ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

¹⁷⁴ The Constitution of India, art. 44.

¹⁷⁵ The Constitution of India, art. 25.

¹⁷⁶ The Constitution of India, art. 26.

¹⁷⁷ Constituent Assembly Debates, vol. VII, 540 (1948).

¹⁷⁸ The Constitution of India, art. 25(2)(a).

¹⁷⁹ The Constitution of India, art. 25(2)(b).

¹⁸⁰ Constituent Assembly Debates, vol. VII, 547 (1948).

¹⁸¹ The Constitution of India, art. 29.

¹⁸² Keith Richotte, Jr., "Legal Pluralism and Tribal Constitutions" 36 *William Mitchell L. Rev.* 44, 48 (2010).

¹⁸³ *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

¹⁸⁴ *Tilkayat Shri Govindlaji Maharaj v. State of Rajasthan*, AIR 1963 SC 1638.

¹⁸⁵ *Commissioner of Police v. Acharya Jagadisharananda Avadhuta*, (2004) 12 SCC 770

This doctrine operates as a double-edged sword for the implementation of a UCC.¹⁸⁶ On one hand, the ERP test enables the State to reform personal laws by severing secular activities from core dogmas. For instance, in *Shayara Bano v. Union of India* (2017), the Court invalidated *Talaq-e-Biddat* because it was merely permitted and not a mandatory, essential tenet of the Hanafi School¹⁸⁷. On the other hand, the ERP test heavily constrains the scope of a mandatory Uniform Civil Code. If a specific personal law provision is determined by the Supreme Court to be an "essential" tenet of a faith, its abrogation by a uniform statutory code would directly violate Article 25.¹⁸⁸

Structural Constraints: Asymmetric Federalism and Tribal Autonomy

The geographical and demographic diversity of the Indian subcontinent has necessitated the adoption of an asymmetric federal model. This model embeds specific constitutional constraints against legal uniformity directly into the text of the Constitution. Article 371A guarantees that no Act of Parliament concerning Naga customary law and procedure shall apply to the State of Nagaland unless the State Legislative Assembly so decides.¹⁸⁹ A similar ironclad protection is extended to the Mizos under Article 371G.¹⁹⁰

Furthermore, the Sixth Schedule of the Constitution grants significant autonomy to the tribal areas of Assam, Meghalaya, Tripura, and Mizoram, empowering local councils to administer justice in accordance with deeply entrenched customary laws.¹⁹¹ Imposing a mandatory Uniform Civil Code across these constitutionally protected territories would require severe constitutional amendments. Stripping away these protections would fundamentally alter the asymmetric federal

structure of India, which has been recognised as a facet of the basic structure.¹⁹² Recognising this insurmountable constitutional constraint, proponents of the UCC are forced into a logical paradox: to enact a "uniform" code, they must explicitly exempt significant portions of the population.

The Uttarakhand UCC (2024): A Constitutional Critique

The Uttarakhand Uniform Civil Code Act, 2024, represents the first independent post-colonial attempt by an Indian state to operationalise the directive of Article 44.¹⁹³ Passed by the legislative assembly in February 2024, the Act seeks to consolidate laws regarding marriage, divorce, and succession. While the Act succeeds in standardising the minimum age for marriage and grounds for divorce, its structural compromises reveal the profound constitutional challenges inherent in drafting a UCC.

Firstly, to survive inevitable political challenges regarding tribal autonomy, Section 2 of the Uttarakhand UCC explicitly excludes Scheduled Tribes from its purview.¹⁹⁴ This exclusion fatally undermines the core objective of "universal applicability" and creates a fragmented legal landscape within the state itself. Secondly, the Act introduces highly controversial provisions mandating the compulsory registration of live-in relationships.¹⁹⁵ The law requires partners to submit declarations, allows registrars to conduct inquiries, and imposes criminal sanctions for non-compliance. Rigorous doctrinal analysis suggests that this mechanism represents an egregious violation of the fundamental right to privacy.¹⁹⁶ The Supreme Court, in *K.S. Puttaswamy v. Union of India*, recognised privacy as an intrinsic part of the right to life under Article 21. By empowering the State to conduct invasive inquiries into intimate relationships, the Act transforms a civil

¹⁸⁶ Faizan Mustafa and Jagtshwar Singh Sohi, "Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy" 2017 *BYU L. Rev.* 915, 931 (2018).

¹⁸⁷ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

¹⁸⁸ *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

¹⁸⁹ The Constitution of India, art. 371A.

¹⁹⁰ The Constitution of India, art. 371G.

¹⁹¹ The Constitution of India, Sixth Schedule.

¹⁹² *NCT of Delhi v. Union of India*, (2023) 9 SCC 1.

¹⁹³ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024).

¹⁹⁴ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024), s. 2.

¹⁹⁵ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024), s. 3.

¹⁹⁶ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

code designed for equality into an instrument of state surveillance.

Constitutional Morality vs Public Morality: The Judicial Path to Gender Justice

The most compelling argument for a mandatory UCC is rooted in the urgent pursuit of gender justice.¹⁹⁷ Various personal laws inherently violate Articles 14 and 15 by sanctioning deeply patriarchal practices, such as unequal inheritance shares for daughters and unilateral divorce mechanisms.¹⁹⁸ The Supreme Court has proactively championed women's rights in various contexts.¹⁹⁹ In *Lata Singh v. State of UP*, the Court allowed an adult woman the right to marry or live with anyone of her choice, ordering police action against those committing violence against inter-religious couples.²⁰⁰

However, resolving this conflict between gender justice and religious freedom does not require the wholesale destruction of legal pluralism. The Indian judiciary has increasingly adopted the doctrine of "Constitutional Morality."²⁰¹ Constitutional morality requires that the fundamental values of the Constitution supersede transient public or religious morality. Through transformative constitutionalism, the Supreme Court has demonstrated that it is entirely possible to strike down specific discriminatory practices without abrogating the entire corpus of the relevant personal law.²⁰² Therefore, equality can be achieved through internal reform and judicial review, proving that absolute legislative uniformity is not the only vehicle for justice.

Suggestions and Recommendations

The exhaustive analysis of constitutional constraints reveals that a heavy-handed, mandatory Uniform Civil Code is highly likely to fracture the basic structure of the

Constitution.²⁰³ To successfully harmonise the absolute imperative of gender justice with the constitutional mandate of pluralism, the following recommendations are proposed:

1. Adoption of a "Constitutional Threshold Model."

Rather than enacting a homogenising civil code, the State should formally adopt a "Constitutional Threshold Model."²⁰⁴ Under this framework, diverse personal laws are permitted to coexist but are strictly assessed against Part III of the Constitution. Any specific provision that is found to violate Articles 14, 15, or 21 must be systematically struck down by the courts or legislatively amended.²⁰⁵

2. Expansion and Refinement of an Optional Uniform Civil Code

The legislature should focus on expanding an "Optional Civil Code."²⁰⁶ A comprehensive optional UCC encompassing succession, adoption, maintenance, and divorce should be drafted and made universally available.²⁰⁷ Individual citizens could exercise their fundamental right to choose to be governed by this modern code. This voluntary approach circumvents Basic Structure challenges related to religious freedom.

3. Piecemeal and Internal Reform of Existing Personal Laws

Aligning with the recommendations of the 21st Law Commission of India, the State should prioritise the piecemeal, systematic reform of existing personal laws. The government should work alongside community leaders to target and remove ambiguities and discriminatory clauses.

4. Protection of Tribal Autonomy and Bottom-Up Codification

Any legislative initiative toward civil law reform must explicitly respect the asymmetric

¹⁹⁷ The Constitution of India, art. 14.

¹⁹⁸ The Constitution of India, art. 15.

¹⁹⁹ *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531.

²⁰⁰ *Lata Singh v. State of U.P.*, (2006) 5 SCC 475.

²⁰¹ *Narvej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁰² *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

²⁰³ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

²⁰⁴ "Uniformity in a Plural Nation" *The Hindu College Gazette* (Sept. 26, 2025).

²⁰⁵ The Constitution of India, art. 13.

²⁰⁶ Constituent Assembly Debates, vol. VII, 540 (1948).

²⁰⁷ The Special Marriage Act, 1954 (Act 43 of 1954).

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federalism embedded in Article 371 and the Sixth Schedule.²⁰⁸ Customary laws should be integrated into the broader legal framework through decentralised, bottom-up codification processes led by the indigenous communities themselves.

5. Removal of Arbitrary State Surveillance Mechanisms

Legislatures drafting state-level uniform codes must repeal invasive provisions, such as the mandatory registration and criminalisation of live-in relationships.²⁰⁹ Civil codes must focus strictly on conferring civil rights rather than mutating into instruments of state surveillance.²¹⁰

Conclusion

The protracted pursuit of a Uniform Civil Code in India sits at the turbulent intersection of legal uniformity, gender justice, and cultural pluralism. This doctrinal analysis establishes that the mandatory, non-consensual imposition of a UCC faces insurmountable constitutional constraints. The Basic Structure Doctrine, with its uncompromising defence of secular pluralism, the harmonious balance between fundamental rights and directive principles, and the federal protection of tribal autonomy, precludes the outright eradication of personal laws. The essential features of the Indian Constitution demand that diversity be governed by justice and human dignity, not forcefully homogenised. Ultimately, the realisation of constitutional ideals does not require a monistic legal monolith. By actively embracing a Constitutional Threshold Model and progressively reforming discriminatory intra-community laws, the Indian Republic can successfully achieve equality while honouring the pluralistic ethos that forms the indestructible bedrock of its Constitution.

²⁰⁸ The Constitution of India, art. 371.

²⁰⁹ The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024), s. 3.

²¹⁰ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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