

REVISITING THE UNIFORM CIVIL CODE DEBATE IN INDIA: A CONSTITUTIONAL ANALYSIS OF GENDER JUSTICE VS RELIGIOUS FREEDOM

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Abstract

The question of implementing a Uniform Civil Code (UCC) in India has remained one of the most persistent and complex constitutional debates since independence. At its core, the issue reflects a normative conflict between two foundational values of the Indian Constitution—gender justice, which is rooted in equality and dignity, and religious freedom, which protects the autonomy of individuals and communities to follow their personal laws. While Article 44 of the Constitution envisions the establishment of a UCC, its placement within the Directive Principles indicates its aspirational nature rather than enforceability. This paper undertakes a comprehensive constitutional analysis of the UCC debate by examining historical developments, judicial interpretations, and socio-legal realities. It argues that the challenge is not merely about legal uniformity but about reconciling competing constitutional commitments in a pluralistic democracy. The paper concludes that a calibrated and inclusive approach is necessary to harmonize gender justice with religious freedom without undermining India's diversity.

Keywords: Uniform Civil Code, Gender Equality, Freedom of Religion, Constitutional Law, Personal Law Regime, Secularism in India, Directive Principles of State Policy, Fundamental Rights, Constitutional Morality, Legal Reform.

Introduction

India's legal landscape is unique in that it accommodates multiple personal laws governing civil matters such as marriage, divorce, maintenance, adoption, and succession. These laws are derived from religious texts, customs, and traditions of various communities, including Hindus, Muslims, Christians, and Parsis. While this pluralistic framework reflects India's commitment to respecting diversity, it also creates

inconsistencies in the application of rights, particularly affecting women.

The concept of a Uniform Civil Code seeks to replace these religion-based personal laws with a common legal framework applicable to all citizens. The idea is often associated with the principles of equality, secularism, and national integration. However, the proposal has been met

with resistance, especially from minority communities, who perceive it as a threat to their cultural and religious identity.

The debate over the UCC is therefore not merely a legal question but a deeply contested socio-political issue. It raises critical questions about the nature of secularism in India, the extent of State intervention in personal matters, and the balance between individual rights and group rights. This paper seeks to explore these questions through a constitutional lens, focusing on whether the UCC can be implemented in a manner that advances gender justice without compromising religious freedom.

Historical Background and Constitutional Intent

The origins of the Uniform Civil Code debate can be traced back to the colonial period when the British administration adopted a policy of non-interference in religious personal laws while codifying other areas of law. This approach led to the formal recognition of separate personal laws for different communities.

During the framing of the Constitution, the issue of a UCC was extensively debated in the Constituent Assembly. Reformist leaders like Dr. B. R. Ambedkar strongly supported the idea, viewing it as essential for achieving social reform and gender equality. However, several members opposed it on the grounds that it would infringe upon religious freedom and disrupt social harmony.

Ambedkar clarified that the proposed UCC would not be imposed forcibly and that individuals could be given the choice to adopt it. Despite this assurance, the lack of consensus led to the inclusion of the UCC in the Directive Principles of State Policy rather than as a Fundamental Right. This decision reflects a pragmatic compromise, recognizing the desirability of a UCC while acknowledging the challenges of implementing it in a diverse society.

The historical context thus reveals that the framers of the Constitution intended the UCC to be a gradual reform measure, to be implemented when social conditions were conducive.

Constitutional Framework and the Core Conflict

The constitutional debate surrounding the UCC is rooted in the tension between Fundamental Rights and Directive Principles. Fundamental Rights, particularly Articles 14, 15, and

Guarantee equality before the law, prohibit discrimination, and ensure the right to life with dignity. These provisions form the basis of the argument that personal laws should be reformed to eliminate gender-based discrimination.

On the other hand, Articles 25 to 28 guarantee the freedom of religion, including the right to practice and propagate religious beliefs. These provisions are often invoked to defend the autonomy of personal laws, which are seen as integral to religious practice.

Article 44, which calls for the implementation of a UCC, is part of the Directive Principles and is therefore not enforceable by courts. However, the Supreme Court has consistently held that Directive Principles are fundamental in the governance of the country and should be harmonized with Fundamental Rights.

The core conflict lies in determining whether personal laws fall within the scope of religious freedom and, if so, to what extent they can be regulated by the State. The judiciary has attempted to resolve this conflict by distinguishing between essential religious practices and secular aspects of religion, with the latter being subject to State regulation.

Gender Justice and Personal Laws

The argument for a Uniform Civil Code is strongly anchored in the need to achieve gender justice. Personal laws in India have historically been shaped by patriarchal norms, often resulting in unequal rights for women. These inequalities manifest in various forms, such as discriminatory divorce practices, unequal inheritance rights, and limited access to maintenance.

For instance, certain personal laws have allowed practices that disadvantage women in

matters of marriage and divorce, while others have imposed restrictions on women's property rights. Although legislative reforms have been undertaken in some communities, significant disparities remain.

The existence of multiple personal laws creates a fragmented legal system where the rights of individuals depend on their religious affiliation. This undermines the principle of equality and raises concerns about the consistency of legal protections. A Uniform Civil Code is therefore seen as a means to establish a common standard of rights and ensure that all citizens, regardless of religion, are treated equally under the law.

However, it is important to note that gender justice can also be pursued through reforms within personal laws. The challenge lies in determining whether a uniform code is necessary or whether incremental reforms would be more effective.

Religious Freedom and Cultural Identity

Opposition to the Uniform Civil Code is primarily based on concerns about religious freedom and the preservation of cultural identity. Personal laws are often viewed as an expression of religious beliefs and practices, and any attempt to alter them is seen as an infringement on the right to freedom of religion.

In a multicultural society like India, where religion plays a central role in shaping social norms, the imposition of a uniform legal framework raises fears of cultural homogenization. Minority communities, in particular, are concerned that a UCC may reflect the values and practices of the majority, thereby eroding their distinct identity.

The Indian model of secularism differs from the Western model in that it does not advocate a strict separation between religion and the State. Instead, it allows for State intervention in religious matters to ensure social reform while also protecting religious diversity. The challenge, therefore, is to strike a balance between these competing objectives.

The debate over the UCC highlights the difficulty of achieving this balance, as it involves reconciling the rights of individuals with the rights of communities.

Judicial Approach and Landmark Cases

The judiciary has played a crucial role in advancing the discourse on the Uniform Civil Code by addressing conflicts between personal laws and fundamental rights. In the landmark case of:

I.Mohd. Ahmed Khan v. Shah Bano Begum (1985) AIR 1985 SC 945

Introduction and Background:

The case of Mohd. Ahmed Khan v. Shah Bano Begum is one of the most pivotal judgments in Indian constitutional and family law, particularly in the context of the Uniform Civil Code debate. It brought into sharp focus the conflict between personal laws and secular statutory provisions, while also highlighting issues of gender justice and the rights of divorced Muslim women. The case is often regarded as a turning point in the discourse on the need for a Uniform Civil Code in India.

Facts of the Case:

Shah Bano, a 62-year-old Muslim woman, was married to Mohd. Ahmed Khan for several decades. In 1978, her husband divorced her by pronouncing triple talaq and subsequently refused to provide her with maintenance beyond the iddat period. Left without financial support, Shah Bano filed a petition under Section 125 of the Code of Criminal Procedure, 1973, seeking maintenance.

Section 125 is a secular provision that applies to all citizens irrespective of religion and is intended to prevent destitution by ensuring that a person with sufficient means supports his wife, children, or parents if they are unable to maintain themselves.

The husband contended that under Muslim personal law, his obligation to provide maintenance was limited to the iddat period and that he had already fulfilled this duty.

Therefore, he argued that he was not liable to pay any further maintenance.

Issues Before the Court:

The Supreme Court was required to determine whether a Muslim husband is liable to pay maintenance to his divorced wife under Section 125 of the Code of Criminal Procedure beyond the iddat period. The Court also considered whether the application of this secular provision would conflict with Muslim personal law.

Judgment:

The Supreme Court ruled in favor of Shah Bano and held that Section 125 of the Code of Criminal Procedure applies to all citizens, irrespective of religion. The Court emphasized that this provision is a measure of social justice and is intended to protect women from destitution.

It held that a Muslim husband's liability to provide maintenance extends beyond the iddat period if the divorced wife is unable to maintain herself. The Court rejected the argument that personal law could override a secular statutory provision, thereby affirming the supremacy of general law in matters of social welfare.

The judgment also included strong observations advocating for the implementation of a Uniform Civil Code, noting that a common civil law would help resolve conflicts between personal laws and promote national integration.

Ratio Decidendi:

The central legal principle established in this case is that Section 125 of the Code of Criminal Procedure, being a secular and beneficial provision, overrides personal laws in cases where they conflict with the objective of preventing destitution. The Court held that a divorced Muslim woman who is unable to maintain herself is entitled to maintenance from her former husband, regardless of the limitations imposed by personal law.

Observations on Uniform Civil Code

One of the most significant aspects of the judgment was the Court's explicit reference to Article 44 of the Constitution. The Court lamented the lack of progress in implementing a Uniform Civil Code and emphasized that such a code would help in removing contradictions arising from diverse personal laws.

The Court observed that a common civil code would not only ensure equality but also strengthen national unity by promoting a sense of common citizenship.

Legislative Aftermath:

The Judgment led to widespread political and social controversy, particularly among sections of the Muslim community who viewed it as interference with their personal laws. In response, the Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986.

This Act was seen by many as an attempt to dilute the effect of the Supreme Court's judgment by limiting the husband's liability to the iddat period. However, the Supreme Court later interpreted the Act in a progressive manner in *Danial Latifi v. Union of India*, thereby restoring some of the protections afforded to divorced Muslim women.

Critical Analysis:

The Shah Bano case is widely regarded as a progressive judgment that advanced the cause of gender justice and affirmed the applicability of secular law over personal law in matters of social welfare. It underscored the importance of protecting vulnerable individuals, particularly women, from economic hardship.

At the same time, the case exposed the challenges of implementing legal reforms in a diverse society. The political backlash and subsequent legislation demonstrated the sensitivity of issues involving religion and personal laws.

Critics argue that the judgment, while legally sound, failed to adequately consider the socio-cultural context, leading to resistance and

controversy. Nonetheless, it remains a landmark decision that continues to influence debates on the Uniform Civil Code and the relationship between personal laws and constitutional principles.

2.Sarla Mudgal v. Union of India (1995) 3 SCC 635

Introduction and Background:

The case of Sarla Mudgal v. Union of India is a landmark judgment that addressed the issue of bigamy arising due to the misuse of personal laws in India. It brought into focus the conflicts created by the coexistence of different personal laws and highlighted the urgent need for a Uniform Civil Code. The case was filed through a writ petition under Article 32 of the Constitution, raising questions about the violation of fundamental rights and the misuse of religious conversion to circumvent existing marriage laws.

Facts of the Case:

The petitioners in this case were women whose husbands had converted to Islam after contracting a valid Hindu marriage under the Hindu Marriage Act, 1955. The conversion was not motivated by genuine religious belief but was undertaken solely to enter into a second marriage without dissolving the first one.

Under Hindu law, bigamy is strictly prohibited, and a second marriage during the subsistence of the first is void. However, under Muslim personal law, a man is permitted to have more than one wife. The husbands attempted to take advantage of this difference by converting to Islam and marrying again, thereby avoiding prosecution under Section 494 of the Indian Penal Code, which criminalizes bigamy.

The central issue before the Court was whether such a conversion would automatically dissolve the first marriage and whether the second marriage would be legally valid.

Issues Before the Court:

The Supreme Court was called upon to determine whether a Hindu husband, married

under Hindu law, could validly solemnize a second marriage after converting to Islam without first dissolving the existing marriage. The Court also examined whether such conduct amounted to an abuse of personal laws and whether it violated the rights of the first wife.

Judgment:

The Supreme Court held that the conversion of a Hindu husband to Islam does not automatically dissolve his first marriage solemnized under Hindu law. Consequently, if he contracts a second marriage without legally dissolving the first, he would be guilty of bigamy under Section 494 of the Indian Penal Code.

The Court observed that allowing such practices would defeat the very purpose of monogamy under Hindu law and would result in grave injustice to the first wife. It emphasized that religion cannot be used as a tool to exploit legal loopholes or to commit fraud on the law.

The judgment categorically stated that the second marriage, in such circumstances, would be void, and the husband would be liable for prosecution.

Ratio Decidendi:

The core legal principle laid down by the Court is that a change of religion does not automatically terminate a subsisting marriage governed by the original personal law. The Court further held that a person cannot evade the provisions of law by resorting to conversion for ulterior motives. Such an act constitutes a misuse of personal laws and is punishable under criminal law.

Observations on Uniform Civil Code:

One of the most significant aspects of this judgment is the strong observation made by the Supreme Court regarding the need for a Uniform Civil Code. The Court expressed concern over the lack of uniformity in personal laws, which allowed individuals to manipulate the system for personal gain.

The Court noted that the absence of a UCC leads to conflicting legal standards and

undermines the principles of justice and equality. It urged the State to take steps towards implementing Article 44 of the Constitution, emphasizing that a common civil code would promote national integration and prevent such misuse of laws.

Critical Analysis:

The judgment in *Sarla Mudgal* is widely regarded as a progressive step towards ensuring gender justice and preventing the exploitation of personal laws. By holding that conversion does not dissolve an existing marriage, the Court protected the rights of the first wife and reinforced the principle of monogamy under Hindu law.

However, the judgment has also been subject to criticism. Some scholars argue that the Court's observations on the Uniform Civil Code were beyond the scope of the case and reflected judicial overreach. Others contend that the decision did not adequately address the broader issue of reforming personal laws and instead focused on penal consequences.

Despite these criticisms, the case remains a landmark in the UCC debate, as it clearly illustrates how legal pluralism can lead to inconsistencies and injustices.

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

Introduction and Background:

The case of *Shayara Bano v. Union of India* is one of the most significant constitutional judgments in modern India, dealing with the intersection of personal laws, gender justice, and fundamental rights. It brought into question the constitutional validity of the practice of instant triple talaq, also known as talaq-e-biddat, under Muslim personal law. The case is widely regarded as a turning point in the movement towards reforming personal laws in line with constitutional principles, particularly those relating to equality and dignity.

Facts of the Case:

Shayara Bano, a Muslim woman, was married to her husband for several years before he

unilaterally divorced her by pronouncing talaq three times in one sitting, a practice recognized under certain interpretations of Muslim personal law. This form of divorce, known as instant triple talaq, allowed a husband to dissolve the marriage without any attempt at reconciliation or due process.

Aggrieved by this arbitrary and unilateral act, *Shayara Bano* filed a writ petition before the Supreme Court under Article 32 of the Constitution. She challenged the constitutional validity of three practices-instant triple talaq, polygamy, and nikah halala-on the grounds that they violated her fundamental rights under Articles 14, 15, and 21 of the Constitution.

Issues Before the Court:

The primary issue before the Supreme Court was whether the practice of instant triple talaq (talaq-e-biddat) was constitutionally valid. The Court also considered whether such a practice was protected under the freedom of religion guaranteed by Article 25, and whether it constituted an essential religious practice within Islam.

Judgment:

The Supreme Court, in a 3:2 majority decision, declared the practice of instant triple talaq unconstitutional. The majority held that talaq-e-biddat was arbitrary and violated Article 14 of the Constitution, which guarantees equality before the law.

The Court reasoned that the practice allowed a Muslim man to divorce his wife capriciously and without any reasonable cause, thereby denying women equal protection under the law. It further held that such arbitrariness is incompatible with the constitutional framework and cannot be sustained. The minority opinion, while not declaring the practice unconstitutional, suggested that the matter should be left to the legislature for reform. However, the majority decision prevailed, rendering instant triple talaq legally invalid.

Ratio Decidendi:

The central legal principle established in this case is that any practice, even if rooted in personal law, must conform to the fundamental rights guaranteed by the Constitution. The Court held that instant triple talaq is manifestly arbitrary because it allows the termination of marriage without any procedural safeguards, thereby violating Article 14.

Additionally, the Court observed that talaq-e-biddat is not an essential religious practice in Islam and therefore does not receive protection under Article 25. This distinction enabled the Court to subject the practice to constitutional scrutiny.

Observations on Personal Laws and Constitution:

The judgment marked a significant shift in the judicial approach towards personal laws. The Court made it clear that personal laws cannot be immune from constitutional scrutiny, particularly when they infringe upon fundamental rights.

The decision reinforced the idea that the Constitution is the supreme law of the land, and all practices—religious or otherwise—must align with its values. It also highlighted the role of the judiciary in protecting individual rights against discriminatory practices embedded within personal laws.

Legislative Aftermath:

Following the judgment, the Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice of instant triple talaq. This legislative response gave statutory backing to the principles laid down by the Supreme Court and further strengthened the position of Muslim women.

Critical Analysis:

The Shayara Bano judgment is widely celebrated as a milestone in advancing gender justice and women's rights in India. By striking down an arbitrary practice, the Court upheld

the dignity and equality of Muslim women and reinforced the primacy of constitutional values.

However, the judgment has also attracted criticism. Some scholars argue that the criminalization of triple talaq may lead to unintended consequences, such as the breakdown of families and misuse of legal provisions. Others contend that the Court's Intervention in personal law raises questions about the limits of judicial power in matters of religion.

Despite these concerns, the case represents a progressive step towards aligning personal laws with constitutional principles and reflects the evolving nature of Indian constitutional jurisprudence.

Contemporary Developments and Ongoing Debate

In recent years, the debate on the Uniform Civil Code has gained renewed momentum, both at the political and judicial levels. Discussions have intensified regarding the feasibility of implementing a UCC, with some states taking steps towards codifying uniform civil laws within their jurisdiction. At the same time, concerns have been raised about the scope and content of the proposed code. Questions remain about whether the UCC should be a comprehensive legal framework or a set of guiding principles for reforming existing laws. There are also debates about the need for extensive consultations with stakeholders, including religious leaders, legal experts, and civil society organizations.

The issue has become politically sensitive, with differing views on its implications for secularism and minority rights. As a result, the UCC continues to be a subject of intense public discourse.

Critical Analysis

The Uniform Civil Code debate encapsulates a fundamental tension within the Indian Constitution—the coexistence of multiple, and sometimes conflicting, values. On one hand, the Constitution aspires to achieve equality and justice for all citizens. On the other hand, it seeks

to protect the diversity and autonomy of religious communities.

A rigid approach to implementing the UCC may lead to resistance and social unrest, particularly if it is perceived as undermining religious freedom. Conversely, maintaining the status quo may perpetuate gender inequality and hinder social progress.

A more nuanced approach would involve gradual reforms aimed at eliminating discriminatory practices within personal laws while respecting cultural diversity. This could include codifying best practices from different legal traditions and ensuring that all laws comply with constitutional principles.

The concept of constitutional morality provides a guiding framework for this process, emphasizing the need to prioritize fundamental rights and human dignity over traditional practices.

Conclusion

The debate on the Uniform Civil Code is not merely about legal uniformity but about the broader vision of justice and equality in a diverse society. While the implementation of a UCC has the potential to advance gender justice, it also raises legitimate concerns about religious freedom and cultural identity.

The path forward requires a careful balancing of these competing interests, guided by constitutional principles and democratic values. Rather than imposing a uniform code, the focus should be on fostering dialogue, building consensus, and undertaking gradual reforms.

Ultimately, the success of any legal reform will depend on its ability to reflect the aspirations of the people while upholding the fundamental values of the Constitution. The goal should not be uniformity for its own sake but the creation of a just and equitable legal system that respects both equality and diversity.

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