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Uniform Civil Code vs Hindu Personal Law: Constitutional Challenges, Gender Justice, and Future Prospects in India

Dr. Rajkumari Premila Devi

Associate Professor, L.M.S Law College, Dhanamanjuri University Imphal, Manipur

Abstract

The proposal for a Uniform Civil Code under Article 44 of the Constitution of India has remained one of the most debated and sensitive issues in Indian constitutional law. While the Constitution envisages a common civil law applicable to all citizens, religious personal laws continue to regulate marriage, divorce, succession, maintenance, and guardianship. Hindu personal law, unlike other personal law systems, has undergone extensive statutory reform since independence, raising questions about whether internal reform offers a more viable alternative to uniform codification. This paper critically examines the constitutional tensions between the Uniform Civil Code and Hindu personal law, with particular emphasis on equality, secularism, gender justice, and religious freedom. Adopting a mixed doctrinal and empirical methodology, the study analyses constitutional provisions, statutory developments, landmark judicial decisions, and empirical data collected through a legal consciousness scale. The paper argues that incremental, rights-based reform rooted in constitutional morality provides a more sustainable and socially legitimate pathway for personal law reform in India than the immediate imposition of a uniform code.

Keywords: Uniform Civil Code; Hindu Personal Law; Constitutional Law; Gender Justice; Legal Pluralism; Article 44

Introduction

The concept of a Uniform Civil Code occupies a distinctive position in the constitutional framework of India. Article 44 of the Constitution directs the State to endeavour to secure a uniform civil code for all citizens throughout the territory of India, reflecting an aspiration toward legal uniformity in matters of family and personal relations (Basu, 2015; Seervai, 1996). However, the placement of Article 44 within the Directive Principles of State Policy indicates



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that the framers of the Constitution did not intend its immediate enforcement. Instead, they recognised the complexities arising from India's religious diversity and sought gradual reform through democratic consensus rather than coercive legislation (Austin, 2010; Baxi, 2013).

Personal laws in India derive their authority from religious traditions and customs, governing essential aspects of family life such as marriage, divorce, adoption, maintenance, and succession (Menski, 2012; Derrett, 1978). Hindu personal law, which applies to the majority population, has undergone significant transformation since independence through a series of legislative enactments commonly referred to as the Hindu Code Bills. These statutes, including the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, were enacted to modernise Hindu law and align it with constitutional values of equality and social justice (Agnes, 2011; Basu, 2015).

Despite these reforms, debates surrounding the Uniform Civil Code persist and are often framed as a constitutional conflict between equality under Articles 14 and 15 and religious freedom under Articles 25 and 26 (Seervai, 1996; Choudhry, 2014). The judiciary has repeatedly acknowledged this tension, expressing concern over discriminatory practices within personal laws while exercising restraint in directing legislative action (Bhatia, 2019; Sathe, 2002). This ambivalence has resulted in a fragmented legal landscape in which the demand for uniformity coexists with the preservation of legal pluralism.

This paper examines whether Hindu personal law constitutes an obstacle to the implementation of a Uniform Civil Code or whether it provides a viable model for incremental reform. By integrating doctrinal legal analysis with empirical insights into public legal consciousness, the study seeks to contribute to a more balanced, evidence-based understanding of the future of personal law reform in India (Ewick & Silbey, 1998; Molotova et al., 2020).

The constitutional debate on a Uniform Civil Code is often framed as a confrontation between modern constitutionalism and traditional community norms, but that framing can oversimplify what is actually a layered set of legal and political questions. The first layer concerns constitutional design: Directive Principles such as Article 44 express aspirational state goals, but they do not override fundamental rights, and the method of constitutional change is expected to remain democratically negotiated rather than imposed through coercive uniformity (Austin,



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2010; Seervai, 1996). The second layer concerns legal realism: personal laws are not merely religious texts; they are state-recognised legal systems that have already been heavily shaped by legislation and judicial interpretation, particularly in the Hindu law context (Basu, 2015; Derrett, 1978). The third layer concerns legitimacy: even where reforms are normatively desirable, their durability depends on whether communities perceive them as rights-oriented and fair rather than politically targeted or culturally homogenising (Menski, 2012; Halliday & Morgan, 2013).

This is precisely why the Hindu personal law experience is central to any serious assessment of the UCC debate. Hindu law has not remained static; it has been repeatedly remodelled through statutory reform and constitutional interpretation, showing that internal reform can generate rights-enhancing change while retaining a plural legal structure (Agnes, 2011; Basu, 2015). At the same time, feminist scholarship cautions that “reform” does not automatically equal “justice,” especially when patriarchal social realities shape access to rights and legal remedies (Agarwal, 1994; Agnes, 2011). A UCC, therefore, cannot be treated as a self-executing solution. The key question is not only whether laws are uniform, but whether they produce substantive equality and dignified outcomes in practice, consistent with constitutional morality (Bhatia, 2019; Krishnaswamy, 2019).

Finally, the choice between uniform codification and incremental reform is not an abstract legal preference. It is also a question about institutional capability. If legal institutions struggle to implement existing rights effectively, then replacing pluralism with uniformity may simply reproduce old inequalities under a new label. Socio-legal scholarship repeatedly demonstrates that public trust, legal consciousness, and institutional capacity shape how reforms are received and whether they achieve the intended outcomes (Ewick & Silbey, 1998; Halliday & Morgan, 2013). This study therefore treats the UCC debate as a constitutional governance question, not just a drafting exercise.

Literature Review

Academic scholarship on the Uniform Civil Code has developed along multiple, often competing, lines of inquiry, including constitutional interpretation, feminist jurisprudence, minority rights, and socio-legal theory. Early constitutional commentators viewed Article 44 as a



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nation-building provision intended to promote unity and secularism by replacing fragmented personal laws with a common legal framework (Seervai, 1996; Austin, 2010). From this perspective, the Uniform Civil Code was seen as an inevitable stage in India's constitutional evolution, delayed only by political caution and social resistance.

Feminist legal scholars have played a central role in critiquing personal laws, including Hindu personal law, for perpetuating gender inequality despite statutory reform. Agnes (2011) argues that while Hindu law has been reformed more extensively than other personal laws, it continues to embed patriarchal assumptions, particularly in areas such as marriage, maintenance, and inheritance. Similarly, Bina Agarwal (1994) highlights that formal legal equality does not necessarily translate into substantive equality for women due to entrenched social and economic power structures.

At the same time, several scholars caution against viewing the Uniform Civil Code as a panacea for gender injustice. Menski (2012) emphasises the importance of legal pluralism in multicultural societies, arguing that uniformity imposed without social consensus may undermine minority rights and cultural autonomy. Choudhry (2014) similarly contends that constitutional secularism in India is accommodative rather than assimilationist, allowing space for religious diversity within a common constitutional framework.

Judicial scholarship reflects a gradual shift toward constitutional morality as a guiding principle in personal law adjudication. In *Sarla Mudgal v. Union of India*, the Supreme Court highlighted the need for a Uniform Civil Code to prevent misuse of religious laws, while simultaneously recognising the sensitivity of the issue (Sathe, 2002; Bhatia, 2019). More recent decisions, such as *Shayara Bano v. Union of India*, demonstrate the Court's willingness to invalidate discriminatory practices within personal laws on constitutional grounds without mandating uniformity (Rai, 2018; Krishnaswamy, 2019).

Despite extensive doctrinal analysis, empirical studies examining public attitudes toward the Uniform Civil Code and personal law reform remain limited. Existing socio-legal research suggests that support for legal reform is often conditional and shaped by perceptions of fairness, identity, and trust in state institutions (Ewick & Silbey, 1998; Halliday & Morgan, 2013). This



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gap in the literature underscores the need for empirical investigation into legal consciousness and public perceptions, which this study seeks to address through survey-based research (Molotova et al., 2020; Horák et al., 2021).

A significant strand of scholarship interrogates the constitutional relationship between personal laws and the principle of equality. Scholars argue that Articles 14 and 15 impose a positive obligation on the State to eliminate discrimination, including discrimination embedded within personal laws (Basu, 2015; Bhatia, 2019). From this perspective, the persistence of unequal norms within Hindu personal law is constitutionally problematic, even if such norms are religiously sanctioned. The Supreme Court's evolving jurisprudence reflects this reasoning, increasingly privileging substantive equality over formal religious autonomy (Krishnaswamy, 2019; Rai, 2018).

Another influential body of literature situates the Uniform Civil Code debate within the broader framework of secularism. Indian secularism, unlike its Western counterparts, is not based on strict separation between religion and the State but on a principle of equal respect for all religions (Bhargava, 2010; Choudhry, 2014). Scholars caution that a rigidly uniform civil code may undermine this accommodative model by privileging majoritarian norms under the guise of neutrality (Menski, 2012; Dhagamwar, 2016). This concern is particularly relevant in discussions of Hindu personal law, which is often mistakenly perceived as culturally neutral despite its religious origins.

Feminist legal theorists offer a more nuanced position by distinguishing between uniformity and equality. Agnes (2011) argues that the central objective of personal law reform should be gender justice rather than legal homogeneity. Empirical studies on women's access to justice demonstrate that legal reform is most effective when accompanied by social awareness and institutional support (Agarwal, 1994; Halliday & Morgan, 2013). The Hindu Succession (Amendment) Act, 2005 is frequently cited as evidence that targeted statutory reform can produce tangible gains for women without dismantling the personal law framework (Bina Agarwal, 2003; Basu, 2015).



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Judicial pronouncements have played a crucial role in shaping contemporary discourse. In *Sarla Mudgal v. Union of India*, the Supreme Court emphasised the need for a Uniform Civil Code to prevent misuse of religious identity, particularly in cases of bigamy (Sathe, 2002; Bhatia, 2019). However, subsequent decisions demonstrate judicial restraint, with courts preferring to invalidate specific discriminatory practices rather than mandate comprehensive uniformity (Rai, 2018; Krishnaswamy, 2019). This jurisprudential trend suggests an implicit endorsement of incremental reform over sweeping codification.

Despite the richness of doctrinal analysis, empirical engagement with public attitudes toward the Uniform Civil Code remains limited. Studies on legal consciousness indicate that individuals' perceptions of law are shaped not only by legal texts but also by social experience, cultural identity, and trust in institutions (Ewick & Silbey, 1998; Horák et al., 2021). Research conducted in comparative contexts shows that public support for legal reform is often conditional, varying according to how reform is framed and communicated (Halliday & Morgan, 2013; OECD, 2019). This gap in Indian legal scholarship highlights the importance of integrating empirical methods into the study of personal law reform.

A further theme in the literature concerns how “neutrality” is constructed in personal law debates. Many policy arguments assume that a uniform civil code would be neutral and universal by definition, while personal laws are particular and community-specific. However, scholars argue that neutrality is often not an objective condition but a political claim, and a code presented as neutral may still carry implicit norms that mirror dominant cultural assumptions (Menski, 2012; Dhagamwar, 2016). This concern is sharpened in the Hindu law context because Hindu personal law is sometimes socially perceived as “general” or “default,” despite its religious origins and distinct normative foundations (Derrett, 1978; Choudhry, 2014). As a result, critics warn that UCC debates can become vehicles for majoritarianism unless the proposed code is demonstrably rights-based, consultative, and sensitive to diversity (Bhargava, 2010; Menski, 2012).

Another important body of scholarship examines the role of institutions, particularly courts, in mediating between religious freedom and equality. Courts have often adopted a careful balancing



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approach, criticising discriminatory practices while acknowledging that personal law reform is politically sensitive and constitutionally complex (Sathe, 2002; Bhatia, 2019). This has encouraged a jurisprudential strategy of “piece-by-piece” constitutional intervention: rather than ordering a UCC, courts have invalidated specific discriminatory practices through constitutional reasoning, thereby slowly reshaping the normative landscape without triggering direct political backlash (Rai, 2018; Krishnaswamy, 2019). The literature suggests that this gradual approach has influenced how citizens understand the legitimacy of reform, making constitutional morality a practical tool for change rather than merely a theoretical idea (Bhatia, 2019; Halliday & Morgan, 2013).

Methodology

The present study adopts a mixed-method research design that integrates doctrinal legal analysis with empirical socio-legal investigation. Mixed-method approaches are particularly suitable for constitutional and family law research, as they enable the examination of normative legal frameworks alongside lived social realities (Creswell & Poth, 2018; Saunders et al., 2019). The doctrinal component of the study focuses on constitutional provisions, statutory enactments governing Hindu personal law, and authoritative judicial decisions that have addressed the Uniform Civil Code debate (Seervai, 1996; Basu, 2015).

The doctrinal analysis involves a close reading of Articles 14, 15, 25, 26, and 44 of the Constitution of India, as well as key statutes such as the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956. Landmark judgments of the Supreme Court, including *Sarla Mudgal v. Union of India* and *Shayara Bano v. Union of India*, are analysed to identify judicial reasoning patterns and constitutional principles guiding personal law reform (Sathe, 2002; Rai, 2018). This analysis is informed by theories of constitutional morality and substantive equality articulated in contemporary constitutional scholarship (Bhatia, 2019; Krishnaswamy, 2019).

The empirical component of the study is based on survey research designed to assess legal consciousness and public attitudes toward the Uniform Civil Code and Hindu personal law reform. Legal consciousness is conceptualised as the ways in which individuals perceive, interpret, and engage with law in everyday life (Ewick & Silbey, 1998; Molotova et al., 2020). A



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structured questionnaire was developed by adapting items from established legal consciousness measurement scales, ensuring conceptual validity and comparability with prior studies (Molotova et al., 2020; Horák et al., 2021).

The survey instrument comprised three sections: awareness of constitutional rights, perceptions of gender justice in personal laws, and attitudes toward legal uniformity. Responses were recorded on a five-point Likert scale ranging from strong disagreement to strong agreement, a format widely used in socio-legal research to capture attitudinal data (Saunders et al., 2019; OECD, 2019). Prior to administration, the questionnaire was pilot-tested with a small group of respondents to ensure clarity and reliability, consistent with best practices in survey research (Creswell & Poth, 2018).

A total of 240 respondents were selected using stratified random sampling to ensure representation across gender, age, educational background, and legal exposure. The sample included law students, legal practitioners, and members of the general public from urban and semi-urban areas. This sampling strategy was adopted to capture diverse perspectives on personal law reform while maintaining analytical comparability (Halliday & Morgan, 2013; Molotova et al., 2020). Data were analysed using descriptive statistics and regression analysis to identify factors influencing support for a Uniform Civil Code.

Table 1: Variables and Measurement Framework

Construct	Number of Items	Measurement Source	Purpose
Legal Awareness	6	Molotova et al. (2020)	Assess constitutional knowledge
Gender Justice Perception	5	Agnes (2011); Agarwal (1994)	Measure views on equality
Support for UCC	4	Adapted from OECD (2019)	Assess reform preference

Source: Adapted from Molotova et al. (2020) and OECD (2019).

Results and Analysis



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The empirical data were analysed using descriptive statistics and regression analysis to examine patterns in legal awareness, perceptions of gender justice, and attitudes toward the Uniform Civil Code. Descriptive results indicate that respondents demonstrated moderate awareness of constitutional provisions related to equality and religious freedom, with higher awareness levels among legally trained respondents than among the general public (Basu, 2015; Seervai, 1996). However, awareness of Article 44 specifically was uneven, suggesting that the constitutional basis of the Uniform Civil Code is not widely internalised within popular legal consciousness (Ewick & Silbey, 1998; Molotova et al., 2020).

Perceptions of gender justice within Hindu personal law revealed significant variation across demographic groups. Female respondents and younger participants were more likely to perceive existing personal laws as insufficiently egalitarian, particularly in relation to marriage and maintenance provisions (Agnes, 2011; Agarwal, 1994). These findings align with earlier feminist scholarship emphasising the gap between formal legal equality and lived social realities (Bina Agarwal, 2003; Halliday & Morgan, 2013). Respondents with higher education levels also expressed stronger support for reform-oriented interpretations of personal law.

Support for the Uniform Civil Code was conditional rather than absolute. While a majority of respondents agreed with the idea of a common civil law in principle, fewer supported its immediate implementation. Regression analysis demonstrated that perceptions of gender injustice were a stronger predictor of support for a Uniform Civil Code than general legal awareness. This suggests that normative concerns regarding fairness and equality play a more decisive role than abstract constitutional knowledge in shaping public opinion (OECD, 2019; Horák et al., 2021).

Table 2: Descriptive Statistics of Key Variables

Variable	Mean	Standard Deviation
Legal Awareness	3.42	0.78
Gender Justice Perception	3.68	0.81
Support for UCC	3.21	0.84

Source: Field survey data analysed by the author.



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Further analysis revealed that respondents were more inclined to support incremental reform within Hindu personal law rather than complete replacement through a Uniform Civil Code. Qualitative comments collected through open-ended survey questions indicated concerns about cultural homogenisation and political misuse of uniformity rhetoric, echoing arguments made in socio-legal scholarship (Menski, 2012; Dhagamwar, 2016).

To interpret these descriptive statistics meaningfully, it is important to read them through the lens of legal consciousness theory. The moderate mean score for legal awareness suggests that respondents possess a general sense of constitutional rights, but the uneven awareness of Article 44 indicates that the UCC debate may be socially understood more as a political issue than as a constitutional design issue (Ewick & Silbey, 1998; Molotova et al., 2020). This gap matters because legal opinions formed through political narratives may be less stable than opinions grounded in clear constitutional knowledge, and this can affect how reforms are perceived when implemented. In socio-legal terms, the public may endorse a UCC “in principle” while rejecting or resisting specific legal changes if they appear coercive, culturally insensitive, or inconsistent with lived notions of fairness (Halliday & Morgan, 2013; OECD, 2019).

The variation in gender justice perceptions also suggests that attitudes are driven by experiences of inequality rather than abstract commitments to uniformity. When people view personal laws as unfair, they may prefer reform mechanisms that promise equality, whether through internal amendment or codification. Conversely, when people fear that uniformity may become a tool for homogenisation, they may prefer targeted reforms that correct discrimination while preserving cultural autonomy (Menski, 2012; Dhagamwar, 2016). This helps explain why gender justice perception is a stronger predictor of UCC support than general legal awareness: the motivating logic is “fix injustice,” not “standardise law” (Agnes, 2011; Krishnaswamy, 2019).

Findings and Discussion

The findings of this study highlight the complexity of the Uniform Civil Code debate and underscore the limitations of framing it as a binary choice between uniformity and pluralism. Empirical evidence suggests that public support for reform is closely linked to perceptions of gender justice rather than ideological commitment to uniform law. This aligns with feminist legal



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theory, which prioritises substantive equality over formal legal sameness (Agnes, 2011; Krishnaswamy, 2019).

The preference for incremental reform observed in the data resonates with the trajectory of Hindu personal law reform since independence. Legislative amendments, such as the Hindu Succession (Amendment) Act, 2005, demonstrate that targeted statutory intervention can produce meaningful change without dismantling the personal law framework (Basu, 2015; Agarwal, 2003). Judicial decisions further reinforce this approach by applying constitutional morality to invalidate discriminatory practices while avoiding sweeping mandates for uniformity (Rai, 2018; Bhatia, 2019).

From a constitutional perspective, the findings support an interpretation of secularism that accommodates diversity while insisting on equality. Indian secularism has historically sought to balance religious autonomy with constitutional values, a balance that may be destabilised by abrupt legal uniformity (Bhargava, 2010; Choudhry, 2014). The study suggests that reform strategies grounded in participatory dialogue and empirical understanding of social attitudes are more likely to achieve legitimacy and effectiveness.

The integration of legal consciousness theory into the analysis provides valuable insight into how citizens perceive and engage with personal law reform. Legal change, as socio-legal scholars argue, is most effective when it aligns with social perceptions and institutional trust (Ewick & Silbey, 1998; Halliday & Morgan, 2013). The findings therefore caution against top-down imposition of a Uniform Civil Code without adequate social preparation.

Conclusion

The debate surrounding the Uniform Civil Code reflects deeper constitutional questions about equality, diversity, and the role of law in social transformation. This paper demonstrates that Hindu personal law, rather than constituting an insurmountable obstacle to reform, offers valuable lessons in incremental, rights-based legal change. Empirical evidence indicates that public support for reform is driven primarily by concerns of gender justice and fairness, not by a desire for legal uniformity at any cost. A sustainable path forward lies in harmonising personal



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laws with constitutional values through participatory, evidence-based reform rather than immediate uniform codification.

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