

RETHINKING EQUALITY WITHOUT THE COMPROMISE OF IDENTITY: A HOLISTIC APPROACH TOWARDS INCLUSION

ANIKET SUR

*"I acknowledge no other God but the one God of truth and righteousness."*¹

- M.K Gandhi.

Abstract

India's personal laws are a mosaic of religious customs, governing marriage, divorce, inheritance, and adoption, reflecting the diversity of Hindus, Muslims, Christians, Parsis, and other communities. While these laws preserve cultural identity, they often perpetuate gender inequalities and societal fragmentation. The Indian Constitution, adopted in 1950, strives to balance this diversity with the principles of secularism, equality, and individual liberty, providing a framework where religious practices are protected but not absolute. Through Articles 14, 15, and 25–28, the Constitution empowers judicial scrutiny to annul customs or practices that violate fundamental rights. The vision of Jawaharlal Nehru shaped modern Indian secularism. Influenced by the renaissance of Indian tradition, colonial experiences, and nationalist ideals, Nehru's approach emphasized individualism, rationalism, and universalism, advocating a society where religion does not hinder democratic governance. His ideas resonate in India's ongoing negotiation between personal law and constitutional equality. Judicial pronouncements have progressively reinforced the need for reform. Landmark cases such as *Shah Bano* (1985), *Sarla Mudgal* (1995), *Shayara Bano* (2017), *Sabarimala* (2018), and the *Haji Ali Dargah* case have addressed gender discrimination and clarified the scope of essential religious practices, as established in the *Shirur Mutt Case* (1954). These decisions underscore the tension between preserving religious identity and ensuring universal rights. The Uniform Civil Code (UCC) emerges as a potential tool to harmonize personal laws, promote gender justice, and enhance social cohesion. While uniformity promises economic and social benefits such as women's asset ownership and financial inclusion its rigid application risks alienating minority communities. Recent measures, like those in Uttarakhand, illustrate the need for culturally sensitive reforms that accommodate diversity while advancing equality. Ultimately, the UCC represents a careful balancing act: respecting India's plural heritage while fostering, legal framework that ensures fairness, inclusion, and national unity, reflecting the Constitution's enduring commitment to justice, liberty, and equality.

KEYWORDS: Uniform Civil Code, Secularism, Gender Equality.

¹ Ramrajya, *Mind of Mahatma Gandhi* ch. 67 (MKGandhi.org), <https://www.mkgandhi.org/momgandhi/chap67.php>.

INTRODUCTION

The Indian Version of the personal laws is governed with respect to their own customs and beliefs governing the marriage, divorce, inheritance, and adoption, derived from their respective religious scriptures and usages transformed into the customs. These broader version of the laws regulate those, individuals applicable to Hindus, Muslims, Christians, Parsis, and others, often perpetuate gender disparities and communal divisions.

The Indian Government is a product of meticulous deliberations and had been produced after the selective unification of numerous laws and constitutions throughout in the entirety from the beginning of the “British Raj” and till date the Indian constitution strikes a “Preserved balance” and ensures “Positive liberty”² among the individuals of the India.

What is a Customary Practice?

According to Keeton, the primary reason for recognizing custom as a source of law lies in its historical role. Before the state assumed the responsibility of framing laws, communities regulated themselves through customs, with rules shaped by repeated practices and enforced in popular courts. When the authority of the state expanded, it absorbed and sanctioned these pre-existing customs, thereby formalizing what people had long followed for their own governance.³

Salmond further identifies two key reasons for the acceptance of custom as law. First, customs often embody principles that resonate with the collective conscience of a community, reflecting notions of justice and public utility. Second, established usages create a rational expectation of continuity, as people naturally assume that long-observed practices will persist into the future. As Salmond notes, justice requires that such legitimate expectations be respected and fulfilled, unless there is compelling reason to depart from them.⁴

BACKGROUND

The Indian Subcontinent is a land of contrasts and continuities, a living tapestry shaped by centuries of history, culture, and diversity. Here, the ancient and the modern coexist temples and mosques stand beside bustling metro cities, while traditional festivals light up daily life even as technology fuels its global ambitions.

A secular and democratic republic, India embraces countless religions, languages, and communities, yet finds unity in its diversity. Its people, guided by shared constitutional values, navigate differences with resilience, creativity, and an enduring spirit. From the snow-capped

² Isaiah Berlin, *Two Concepts of Liberty*, in *Four Essays on Liberty* 118 (Oxford Univ. Press 1969).

³ G.W. Keeton, *Introduction to Jurisprudence* (2d ed. 1965).

⁴ John W. Salmond, *Jurisprudence* 187 (Glanville L. Williams ed., 10th ed. 1947).

Himalayas to sun-kissed beaches, from dense forests to fertile plains, its landscapes mirror the richness of its culture.

India is more than just a land; it is an idea, an ethos a commitment to pluralism, freedom, and the legacy of its people, who carry the wisdom of the past while striving toward the promise of a brighter future.

After the formation of the State there were mainly Hindus residing through the banks of river “Sindhu” the later inhibition of the other people and mainly by the invasion of the Aryans later with Persia and Mesopotamia the land became rich in heritage and more importantly culture, Later ruled by series of Rulers and Great Virtuous kings then there were the invasions of the Dutch, Portuguese, French & most importantly the British which led to a more complicated system of governance and religious order.

The every other religion wanted to increase its population and started the trail of forceful conversions and religion based violence. Soon the First war of Independence broke out due to the several key bottlenecks one of the probable cause, was the hampering of the religious based practices. Eg- Over boarding of the Indian Soldiers, Not allowing the religious identities & the forceful use of Rifles which was believed to be containing the animal fat, against their religious beliefs. This led to the “Sepoy Mutiny of 1857” over this period there were plentiful religions.

For the First time This issue was considered in the The Queen’s Proclamation of 1858, which accompanied the Act, had a very important clause on religion:

- It promised that the British government in India would not interfere with the religious beliefs and practices of Indian subjects.
- This was meant to calm fears after the revolt, which had strong religious undertones.

Then the humungous act of 1935 came, the predecessor of the current Constitution of India it laid down provisions as,

- It introduced Fundamental Rights in a limited, non-justiciable form.
- Under the “Fundamental Rights” chapter (though not enforceable), the Act guaranteed that:
“All subjects of His Majesty shall be equally entitled to freedom of conscience, and the right freely to profess and practice religion, subject to public order and morality.”⁵
- It also prohibited discrimination on grounds of religion in public employment.
- However, since these rights were not enforceable in courts, they were more of a declaration of policy than an actual guarantee.

A. Base on which the Superstructure of Uniform Civil Code Rests In India.

⁵ Government of India Act, 1935, 26 Geo. 5, c. 2, § 18(2) (U.K.).

The Indian Constitution, adopted in 1950, embodies a commitment to “secularism⁶” and “equality” while recognizing the plethora of cultural diversity. The Indian Constitution simply regulates under the term of the “Equality⁷ and Un-Arbitrariness⁸” with the parameter of the “Fundamental Rights” if any such custom or the religious practice is found to be violative of the “Fundamental Rights” such laws stands abrogated under the powers of the “judicial Scrutiny” under the powers of the Art. 13⁹ and stands annulled.

Constitutional provisions empowering the Religious freedom and fundamental rights are all provided as a part and parcel of the fundamental rights guaranteed to the citizens of the country under Part III of the Constitution spanning from Article 12 to Article 35. Uniform Civil code or rather the state interconnects the Art.14¹⁰ (Equality), Art.15¹¹ (Non-Discrimination) and Art. 25-28¹² (Religious Freedom of the Individuals) this is a strictly woven fabric and any hindrance in these fundamental rights are assured to be checked and secured to the societal interests.

India has always been a confluence of innumerable religions and sects, a rich tapestry of diversity. Pandit Jawaharlal Nehru, both a politician and nation-builder, played a central role in shaping modern India. The nature of secularism incorporated into the Indian Constitution was influenced by the renaissance of Indian tradition, the colonial experiences of Indian society, the ideological heritage of the nationalist movement, and Nehru’s own perception of social realities. His search for a modern national identity helped shape the country’s vision.

Nehru expressed alternative and nuanced thinking in modern Indian political thought. His ideas cannot be understood in a strictly linear way, as he negotiated a wide array of subjects during his life, including democracy, socialism, secularism, nationalism, foreign policy, diplomacy, mixed economy, and the Non-Aligned Movement. Many of these concepts are reflected in his seminal works, such as *Autobiography* (1936), *Glimpses of World History* (1939), *The Discovery of India* (1946), and *Whither India*.

Nehru was neither irreligious nor anti-religious. His approach to religion was shaped by the three basic norms of the humanist liberal tradition:

- I. Individualism
- II. Rationalism
- III. Universalism

While Nehru’s opinions on religion were clear, whether the broader society and political governance were ready to embrace them was another matter. Had his vision on religion been widely accepted, religious differences would have posed no barrier to public life, allowing

⁶ The Constitution (Forty-Second Amendment) Act, 1976 (India).

⁷ *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538.

⁸ *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

⁹ Ind. Const. art. 13.

¹⁰ Ind. Const. art. 14.

¹¹ Ind. Const. art. 15.

¹² Ind. Const. art. 25-28.

democracy to function smoothly and effectively. This was the “Advaita Vedanta” thinking of the Pandit Jawarharlal Nehru.¹³

B. Jurisprudential Perspectives on the UCC

Humane looking of the various prudent jurisprudent provides multiple theoretical and practical lenses to assess the contested potential of the Uniform Civil Code (UCC)¹⁴ in the Indian Sub-Continent.

From a “Positivist perspective”, H.L.A. Hart’s¹⁵ conception of law as a system of rules backed by sovereign authority suggests that a UCC could ensure certainty and equality, making fragmented personal laws appear archaic within a modern constitutional framework. This is also evidenced from the approach of the Framers of the Constitution and the several judgements of the Hon’ble courts all over the Nation.

In contrast, “Natural law theory”, particularly as developed by John Finnis¹⁶, emphasizes on the moral viewpoint of justice and human dignity. From this standpoint, a UCC could dismantle practices such as the illicit “Polygamy”¹⁷ or “Unequal Divorce Provisions”¹⁸, thereby aligning family law with universal moral principles rather than mere sovereign command it assesses the personal laws with context to the principles of humanitarian conduct and moral standpoint.

Another view of the Multicultural jurisprudence, drawing on Will Kymlicka’s¹⁹ “theory of Group-Differentiated rights”, critiques the UCC for its homogenizing tendency. This view warns that uniformity risks the banishing minority communities by imposing majoritarian cultural norms, thereby weakening India’s secular character a constitutional value reaffirmed by the Hon’ble Supreme Court in *S.R. Bommai v. Union of India*²⁰. This Majoritarian is also reiterated in the classical theory of the “Hedonism”²¹ where the “Greatest Happiness of the Majority Principle” also has this shortcoming of the “Tyranny of the Majority” thus the independence of the Judicial wing of the state truly articulates the independence of all the religions.

¹³ Surojit Pal & Shubhankar Das, *Secularism of Jawaharlal Nehru*, Int’l J. of Humanities & Soc. Sci., Mar. 2019, ISSN 2349-5162.

¹⁴ Ind. Const. art. 44.

¹⁵ H.L.A. Hart, *The Concept of Law* 79–99 (2d ed. 1994).

¹⁶ John Finnis, *Natural Law and Natural Rights* 85–112 (2d ed. 2011).

¹⁷ Satyaajeet A. Desai, *Mulla: Principles of Hindu Law* 708–15 (22d ed. LexisNexis 2016).

¹⁸ *Shayara Bano v. Union of India*, (2017) 9 S.C.C.

¹⁹ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* 152–76 (1995).

²⁰ *S.R. Bommai v. Union of India*, (1994) 3 S.C.C.

²¹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 14–30 (J.H. Burns & H.L.A. Hart eds., 1996) (1789).

C. Judicial Pronouncements and Case Law

The Hon'ble Supreme Court of India has consistently recognized the desirability of a Uniform Civil Code (UCC), though it has stopped short of making it mandatory and its compelling for the states, signaling its importance without compelling immediate implementation.

In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)²², the Court upheld the maintenance rights for all divorced Muslim women under secular law under the provisions of the BNSS, 2023, while emphasizing the inequities in personal laws and lamenting the absence of a UCC to ensure gender justice though the judgment sparked several intense debates throughout the sects and still the legislature eventually enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986²³, Thereby providing the Muslim women with an equal say at par to their male counterparts.

In *Sarla Mudgal v. Union of India* (1995)²⁴, the Court confronted the issues of bigamy arising from religious conversion of a Man, urging the legislature to introduce an UCC to prevent misuse of personal law and to promote equality across communities. Later, in *Shayara Bano v. Union of India* (2017)²⁵, the Court struck down the practice of triple talaq as arbitrary and unconstitutional to the rights of the Women, reinforcing the argument that uniform legal standards are essential to safeguard women's rights. Reiterated that how the constitution aims to secure a balance between the Personal laws and Natural rights of the Man.

Rulings as *Mary Roy v. State of Kerala* (1986)²⁶, expanded inheritance rights for Christian women, illustrating a gradual judicial effort to harmonize personal laws and promote gender equality, while such judicial interventions have contributed to incremental reform, critics caution that piecemeal codification risks imposing majoritarian interpretations, potentially undermining the pluralistic character of Indian society.

Some other notable Precedents,

1. Sabarimala Temple Case²⁷

Ruling: The Supreme Court struck down the custom prohibiting the entry of women aged 10–50 into the Sabarimala temple.
Reasoning: The practice violated Article 14 (Equality) and Article 25 (Freedom of Religion), as it was not an essential religious practice and constituted gender-based discrimination.

²² *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945.

²³ Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986.

²⁴ *Sarla Mudgal v. Union of India*, A.I.R. 1995 S.C. 1531.

²⁵ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1

²⁶ *Mary Roy v. State of Kerala*, A.I.R. 1986 S.C. 1011.

²⁷ *Indian Young Lawyers Association v. State of Kerala*, (2018) 10 SCC 689

2. Jallikattu & Animal Cruelty²⁸

Ruling: Jallikattu (bull-taming sport) was prohibited under the Prevention of Cruelty to Animals Act.

Reasoning: While cultural traditions were acknowledged, the Court held that cruelty to animals cannot be justified in the name of custom or tradition.

3. Haji Ali Dargah Case²⁹

Ruling: Denial of entry to women in the inner sanctum of the Haji Ali Dargah was held unconstitutional.

Reasoning: The practice violated Articles 14, 15, and 25, as it was not an essential religious practice and amounted to gender discrimination.

So what Constitutes as an essential to maintain the religious sanctity, this issue was held in the case of Shirur Mutt Case³⁰,

The Shirur Mutt Case arose when the Madras Government, under the Madras Hindu Religious and Charitable Endowments Act, 1951, sought to regulate Hindu religious institutions, including the Shirur Mutt. The Swamiar challenged this, claiming it infringed on the Mutt's rights under Articles 25 and 26 of the Constitution. The Supreme Court upheld the Act's constitutional validity but introduced the "essential religious practices" doctrine, holding that only practices integral to a religion are protected from state regulation. Non-essential practices could be regulated to ensure public order, morality, and health. This landmark case established the framework for balancing religious freedom with state regulation, shaping subsequent jurisprudence on religious rights in India.

D. Socio-Economic Implications in India's Emerging Economy

India, as an emerging economy, faces the dual challenge of promoting growth while ensuring the social inclusivity. The implementation of a Uniform Civil Code (UCC) has the potential to harmonize personal laws in a manner that advances gender equality and reduces economic disparities. For example, uniform inheritance provisions could enhance women's ownership of assets, thereby promoting financial inclusion and empowering households economically. Socially, a UCC may strengthen national cohesion by reducing legal fragmentation that sometimes exacerbates the communal tensions among the religious basis, which can, in turn,

²⁸ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547.

²⁹ Dr. Noorjehan Safia Niaz & Anr. v. State of Maharashtra & Ors., (2016) 3 Bom CR 698.

³⁰ The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (1954) 1 SCR 1005; AIR 1954 SC 282.

disrupt economic activity or create total disruption of the state authorities even the state of emergency.³¹

However at the same time, a rigid approach to uniformity carries potential risks. Homogenization of personal laws may alienate minority communities, potentially triggering social unrest that could negatively affect foreign direct investment, tourism, and other sectors sensitive to social stability. At the worst it could lead to the social unrests and loss of public order.

In Uttarakhand, the UCC provisions scheduled to take effect in January 2025 ban polygamy and require registration of live-in relationships, while granting exemptions to tribal communities. This raises questions about whether true uniformity can be achieved without accommodating cultural diversity. Quite a lot of debates surrounding these measures reflect broader concerns about preserving cultural identity while ensuring economic justice, with many scholars advocating for consensus-driven reforms.

Several analyses recommend phased implementation of the UCC to minimize social disruption, ensuring alignment with India's federal structure and economic federalism, while gradually promoting legal uniformity and economic empowerment.

CONCLUSION

The Uniform Civil Code (UCC) represents more than a legislative or judicial aspiration; it embodies India's constitutional commitment to equality, justice, and human dignity. By harmonizing personal laws across religious communities, the UCC seeks to ensure that all citizens, regardless of faith, enjoy fundamental rights in practice, not merely in principle. Its objective aligns closely with the Universal Declaration of Human Rights (UDHR), particularly the guarantees of equality before the law (Article 7), freedom from discrimination (Article 2), and the protection of family life (Article 16). By standardizing rights related to marriage, divorce, inheritance, and adoption, the UCC can correct historical inequities such as gender disparities in property ownership, unequal divorce provisions, and discriminatory practices thereby fulfilling the promise of Articles 14, 15, and 21 of the Indian Constitution.

Judicial precedents from *Mohd. Ahmed Khan v. Shah Bano Begum* to *Shayara Bano v. Union of India* illustrate the practical need for uniform legal standards to protect marginalized groups while balancing religious freedoms as recognized under Articles 25–28. The UCC does not seek to erase cultural identity; rather, it aims to harmonize essential rights with constitutional values, ensuring that personal laws uphold justice and human dignity while respecting the diversity that is India's hallmark.

At a deeper philosophical level, the idea of a Uniform Civil Code resonates with Mahatma Gandhi's vision of *Ramrajya* a just and moral social order where governance is rooted in equality, compassion, and the welfare of all. Gandhi's *Ramrajya* was not a theocratic state but one founded upon truth, non-violence, and justice principles that mirror the Constitution's

³¹ Constitution of India art. 352–360.

Preamble and Directive Principles of State Policy. In this sense, the UCC can be viewed as a constitutional instrument to translate the ethical essence of Ramrajya into legal reality, bridging the moral aspirations of India's freedom struggle with the democratic ideals of its Republic.

In an emerging economy like India, the socio-economic benefits of such uniformity women's financial empowerment, inheritance equality, and social inclusion cannot be understated. However, culturally sensitive implementation remains critical to prevent alienation of minority communities and to respect India's pluralistic ethos. In essence, the UCC offers a framework where constitutional morality, fundamental rights, and Gandhian ideals of Ramrajya converge, promoting a society where equality, justice, and freedom are not abstract ideals but lived realities for all citizens.