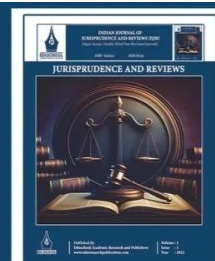




INDIAN JOURNAL OF JURISPRUDENCE AND REVIEWS (IJJR)

(Open Access, Double-Blind Peer Reviewed Journal)

ISSN Online: 3139-177X



Uniform Civil Codes, Legal Pluralism and Constitutional Equality in India

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Article Information

Received: 9th June 2026

Received in revised form: 28th June 2026

Accepted: 12th August 2026

Available online: 2nd September 2026

Volume: 2

Issue: 3

DOI: <https://doi.org/10.63090/IJJR/3139.177X.0021>

Abstract

The enactment of a uniform civil code by a single Indian state has moved a long standing constitutional debate from the level of principle to the level of statutory text. This article examines what the shift makes visible. It argues that the debate has been conducted using a false opposition between uniformity and pluralism, and that the operative question is narrower and more tractable: which subject matters within family law are amenable to a common rule without loss, and which of the differences between personal law systems reflect substantive inequality rather than variation in form. The article separates three distinct claims that are usually run together, namely that plural personal laws are inconsistent with equality before the law, that they disadvantage women, and that codification is the appropriate remedy for either. It examines the Indian judicial record, which has repeatedly invalidated discriminatory personal law rules on constitutional grounds without displacing the plural structure, and compares the pluralist accommodation described in the comparative literature. The Uttarakhand statute is then assessed against the article's framework, with attention to its treatment of succession, of prohibited degrees, and of the registration of live-in relationships. The article concludes that the reform value of codification lies in the extension of statutory remedies rather than in uniformity as such.

Keywords:- Uniform Civil Code, Legal Pluralism, Personal Law, Constitutional Equality, Family Law, India

1. INTRODUCTION

Article 44 of the Constitution directs the state to endeavour to secure for citizens a uniform civil code throughout the territory of India. For seventy five years the provision generated argument and no statute. In February 2024 the Uttarakhand legislature enacted a uniform civil code for the state, which received assent in March 2024 and came into force on 27 January 2025. A directive principle has become an operative enactment in one jurisdiction, and the arguments that were previously conducted in the abstract can now be tested against a text.

This article undertakes that test. It begins by separating three claims that the literature and the political debate ordinarily combine. The first is that a plurality of religiously defined personal laws is inconsistent with equality before the law under Article 14. The second is that the content of those laws disadvantages women, in matters of marriage, divorce, maintenance, guardianship and succession. The third is that a uniform code is the appropriate remedy for the first, the second, or both.

The three claims are logically independent. Plural jurisdictions may operate without inequality between persons, as they do in respect of matters governed by the law of the place of celebration. Discriminatory content may be corrected within a plural structure, as Indian courts have repeatedly done. Uniformity may be achieved by legislation that reproduces the discriminatory content of the dominant tradition, which would satisfy the first claim while defeating the second. Keeping the three apart is the precondition for a useful analysis.

II. THE STRUCTURE OF INDIAN PERSONAL LAW

Indian family law is organised by community rather than by territory. Hindus, Buddhists, Jains and Sikhs are governed by the codified Hindu statutes of the nineteen fifties. Muslims are governed by uncoded Muslim personal law as modified by statute in specific respects. Christians and Parsis are governed by separate enactments. The Special Marriage Act 1954

offers a civil alternative available to any two persons, and the Indian Succession Act 1925 supplies a general law of succession that applies where personal law does not.

Menski (2009) argues that this arrangement is better understood as a working plurality than as a failure to unify, and that the Indian legal system has developed techniques for managing it. Solanki (2011) reaches a similar conclusion from empirical study of adjudication, describing a system in which state courts, religious bodies and community forums interact, and in which the state retains a supervisory role rather than a monopoly. Sezgin (2013), comparing India with Israel and Egypt, distinguishes systems in which the state enforces religious family law through its own courts from those in which separate religious courts operate, and locates India in the first category. The distinction matters. Where the state's own judges apply personal law, the constitutional guarantees travel with the forum.

That last point explains a feature of the Indian record that a purely uniformist account cannot accommodate. Reform of personal law content in India has proceeded largely through constitutional adjudication and targeted statute, not through codification.

III. WHAT THE COURTS HAVE ACTUALLY DONE

The judicial record is longer and more consequential than the debate on Article 44 usually acknowledges.

In *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556, the Supreme Court held that a divorced Muslim woman was entitled to maintenance under the general criminal procedure provision, and observed that Article 44 remained unimplemented. The legislative response, the Muslim Women (Protection of Rights on Divorce) Act 1986, was then construed in *Danial Latifi v. Union of India*, (2001) 7 SCC 740, to require provision for the wife's future extending beyond the period of iddat, a reading that preserved the statute while restoring most of the entitlement. The sequence was completed in *Mohd. Abdul Samad v. State of Telangana*, decided on 10 July 2024, in which the Court held that the 1986 Act operates in addition to and not in derogation of the general maintenance provision, so that a divorced Muslim woman may proceed under either.

In *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635, the Court addressed conversion undertaken to contract a second marriage and held that the first marriage was not dissolved by the conversion. In *John Vallamattom v. Union of India*, (2003) 6 SCC 611, a restriction on charitable bequests by Christians was struck down under Article 14. In *Shayara Bano v. Union of India*, (2017) 9 SCC 1, the practice of instantaneous triple talaq was invalidated.

Two observations follow. The first is that constitutional review of personal law content is available and has been used, so that the plural structure is not a barrier to the correction of discriminatory rules. The second is that the correction has been uneven, because it depends on litigation and therefore on the presence of a litigant. Subramanian (2008), examining changes in Muslim family law in India, shows that the pattern of change reflects the interaction of judicial intervention with community politics rather than a steady application of constitutional principle. Agnes (2011) makes the parallel point from the standpoint of practice, noting that constitutional claims have delivered more for women in some communities than in others, for reasons that have little to do with the doctrinal strength of the claim.

IV. CUSTOM, PLURALISM AND THE POSITION OF WOMEN

The relationship between plural legal orders and women's rights has been examined comparatively, and the findings are more qualified than either side of the Indian debate usually allows. Taak (2025), analysing the intersection of customary law and women's rights across developing jurisdictions in Africa and Asia, finds that constitutional reform displaces custom only where the constitutional text is explicit about the subordination of custom and where an accessible forum exists to enforce it. Where either element is missing, the customary rule survives the constitutional guarantee, because the guarantee is available only to a litigant who can reach a court.

That finding aligns with the Indian evidence on succession. Saxena (2020) documents the persistence of practices that defeat statutory succession rights notwithstanding the amendments that gave daughters coparcenary rights, including relinquishment executed under family pressure and the recording of holdings in a male relative's name. The statute changed the entitlement. The land record did not.

Shachar (2001) frames the underlying problem as one of institutional design rather than of doctrine, arguing that a group's jurisdiction over family matters places the burden of accommodation on its most vulnerable members, and proposing schemes in which jurisdiction is divided so that the individual retains an exit. Kapur and Cossman (2018), revisiting their earlier work on feminist engagement with Indian law, caution against treating a uniform code as a feminist objective in itself, on the ground that the content of the uniform rule is what determines its effect on women.

Nussbaum (2004) reaches the conclusion that follows from these analyses. The constitutional guarantee of sex equality should operate on the content of every personal law system, and the choice between uniformity and plurality is secondary to that operation. Kannabiran (2025), writing on the place of secularism in the uniform civil code debate, adds a point about method: the debate has been conducted as a question of national identity, which has obscured the technical questions about which family law rules can be made common without loss.

V. THE UTTARAKHAND STATUTE

The Uttarakhand enactment provides an occasion to examine those technical questions.

Its principal operative content is a common law of marriage, divorce, succession and related matters, applicable to residents of the state. Scheduled Tribes are excepted. It prescribes conditions for a valid marriage including monogamy and minimum age, provides for compulsory registration of marriage, sets out grounds of divorce applicable to all, and creates a single scheme of intestate succession. It also introduces a registration requirement for live-in relationships, with a duty to submit a statement to the registrar and penal consequences for failure to do so.

The succession provisions are the strongest part of the statute considered as a reform of substance. A single intestate scheme, applied without distinction between sons and daughters and without the residual survivorship rules that complicated

the earlier position, removes a real inequality and does so in a subject matter where the case for a common rule is strongest. Succession concerns the transmission of property on death, an event the state already records, and the arguments for community specific treatment are weakest here.

The provisions on live-in relationships raise a different question. Narayan and Narayan (2024), reviewing the statute, observe that the registration requirement effects a legal recognition of the relationship while simultaneously subjecting it to state supervision, and that the two effects pull in opposite directions. The requirement that a statement be filed, that a person under a stated age have a parent informed, and that failure to register attract penal consequences, converts a private arrangement into a regulated status. The constitutional difficulty is direct. Puttaswamy located decisional autonomy in intimate matters within Article 21, and a criminal sanction attached to the non registration of a consensual adult relationship requires justification under the proportionality standard that judgment prescribes.

The exclusion of Scheduled Tribes is also significant for the article's argument, because it concedes the central point. If uniformity is required by equality before the law, an exemption defined by community membership is difficult to defend. If the exemption is justified by the protection of distinct social organisation under the constitutional provisions governing tribal areas, then the principle that justifies it is pluralist, and the statute is a limited codification rather than an application of a general rule.

VI. THE GOAN COMPARISON AND ITS LIMITS

Goa is regularly cited as evidence that a uniform civil code is workable in India. The Portuguese Civil Code of 1867 continues in force there, and in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, decided on 13 September 2019, the Supreme Court held that it governs the succession of Goan domiciles in respect of property situated anywhere in India, describing Goa as a state with a civil code applicable to all citizens regardless of religion.

The example is instructive but narrower than its usual deployment suggests. The Goan code operates alongside usages preserved for particular communities, and its provisions on community of property produce results that differ from those obtaining elsewhere in India. It is a uniform code in the sense that one body of law applies, not in the sense that a common rule was derived from a comparison of the traditions it displaced. Its authority as a precedent lies in demonstrating that a common civil law can be administered in an Indian state, which is a proposition about feasibility rather than about content.

VII. A FRAMEWORK FOR ASSESSMENT

Three questions should be asked of any proposed uniform code, and they follow from the separation of claims made at the outset.

Does the proposed rule remove an inequality between persons, or only a difference between systems? A common minimum age of marriage removes an inequality, because it alters the position of the person who could previously be married younger. A common form of registration removes a difference. Both may be desirable; only the first is required by the equality guarantee.

Does the proposed rule select the most protective of the existing positions, or an average of them? Codification that adopted the least protective rule available in any tradition would be uniform and regressive. The test of a reforming code is simple. It is whether the code improves the position of the person who was worst placed under the arrangement it replaces.

Does the proposed rule extend a forum and a remedy, or only a norm? This is the lesson of the comparative material. Taak (2025) shows that constitutional reform without an accessible forum leaves customary practice intact, and Saxena (2020) shows the same in the Indian succession context. A code that creates a registrar, a record and a procedure for enforcement changes outcomes. A code that states a rule does not.

VIII. CONCLUSION

The Indian debate on Article 44 has been organised around a choice between uniformity and pluralism, and that framing has obscured what reform requires. The plural structure of Indian personal law has not prevented the correction of discriminatory content, which has been achieved through constitutional adjudication in *Shah Bano*, *Sarla Mudgal*, *John Vallamattom*, *Shayara Bano* and *Mohd. Abdul Samad*. What the plural structure has not delivered is evenness, because adjudication reaches only the litigant who arrives.

Codification can supply that evenness, but only if its content is selected on the protective principle and only if it carries a forum with it. Assessed against those criteria, the Uttarakhand statute is mixed. Its succession scheme removes a real inequality in a subject matter well suited to a common rule. Its live-in registration provisions create a penal regulation of private conduct that will have to answer to the standard set in *Puttaswamy*, and its exemption for Scheduled Tribes concedes that uniformity is not, after all, the operative principle. The useful lesson of the enactment is that the difficult questions in this field are questions of drafting, and that they are answered rule by rule rather than by settling the argument about uniformity as a whole.

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