



Debating Uniform Civil Code: the making of Article 44 in the Constituent Assembly of India

Sambaiah Gundimeda

To cite this article: Sambaiah Gundimeda (09 Oct 2025): Debating Uniform Civil Code: the making of Article 44 in the Constituent Assembly of India, Indian Law Review, DOI: [10.1080/24730580.2025.2570575](https://doi.org/10.1080/24730580.2025.2570575)

To link to this article: <https://doi.org/10.1080/24730580.2025.2570575>



Published online: 09 Oct 2025.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)



Debating Uniform Civil Code: the making of Article 44 in the Constituent Assembly of India

Sambaiah Gundimedda

Division of Politics, School of Interwoven Arts and Sciences (SIAS), Krea University, Sri City, Andhra Pradesh, India

ABSTRACT

Should a secular state accommodate personal laws in a religiously diverse society? Must legislation reforming personal and cultural practices rest on the consent of affected groups? These questions animated the Constituent Assembly's deliberations on the Uniform Civil Code ("UCC"). Initially conceived as a mechanism to harmonize personal laws, the UCC soon became a site of constitutional contestation over secularism, gender justice, and cultural autonomy. Proponents advanced it as essential to civic equality and national integration, while critics warned of majoritarian homogenization and emphasized the need for preserving plural legal traditions and community assent. The Constituent Assembly ultimately located the UCC within the non-justiciable Directive Principles, signalling a compromise between legal uniformity and pluralist accommodation. Revisiting these debates, this article argues that the democratic legitimacy of personal law reform rests not on equality or uniformity alone, but on inclusive deliberation, negotiated consent, and institutional patience within a plural constitutional order.

ARTICLE HISTORY


Received 13 February 2025
Revised 21 July 2025
Accepted 1 October 2025

KEYWORDS

Consent; Constituent Assembly of India; cultural diversity; freedom of religion; gender justice; personal law; secularism; Uniform Civil Code

1. Introduction

Seventy-five years after the Indian Constitution came into force on 26 January 1950, the Uniform Civil Code ("UCC") remains one of its most contested and symbolically charged provisions.¹ On 27 June 2023, Prime Minister Narendra Modi reignited this enduring constitutional debate by publicly reaffirming his government's commitment to implementing the UCC. Speaking at a Bharatiya Janata Party ("BJP") gathering in Bhopal, Madhya Pradesh, Modi framed the issue as central to India's modernization, arguing that "separate laws for separate communities" were incompatible with the principles of a unified, contemporary nation-state.² In characteristically populist style, he posed the rhetorical question: "Can

CONTACT Sambaiah Gundimedda  sambaiah.gundimedda@krea.edu.in  Division of Politics, School of Interwoven Arts and Sciences (SIAS), Krea University, # 5655, Central Expressway, Sri City, Andhra Pradesh, 517646 India

¹For a representation, see Nivedita Menon, 'Women and Citizenship' in Partha Chatterjee (ed), *Wages of Freedom: Fifty Years of the Indian Nation-State* (Oxford University Press 1998) 241; Werner Menski, 'The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda' (2008) 9(3) *German Law Journal* 211; Tanja Herklotz, 'Dead Letters? The Uniform Civil Code through the Eyes of the Indian Women's Movement and the Indian Supreme Court' (2016) 49(2) *Law and Politics in Africa, Asia and Latin America* 148; and Akhilendra Pratap Singh, 'Utility of Uniform Civil Code' (2017) 59(2) *Journal of the Indian Law Institute* 178.

²Shubhomoy Sikdar and Nistula Hebbar, 'Country needs Uniform Civil Code, asserts PM Modi' *The Hindu* (28 June 2023) <<https://www.thehindu.com/news/national/wont-adopt-the-path-of-appeasement-and-vote-bank-pm-modi/article67014799.ece>> accessed 24 September 2025.

a country run with dual systems?” and likened legal pluralism to domestic chaos – “If there is one law for one member and another for a second member within the same family, can the household function?”³ While this invocation of legal uniformity appeals to a vision of national cohesion, it simultaneously obscures the complex and fraught constitutional history of the UCC – a history marked by deep tensions between secular state-building and the protection of minority rights. Modi’s renewed emphasis on the UCC must also be seen within the BJP’s broader ideological project: having fulfilled two core commitments – the construction of the Ram temple in Ayodhya and the abrogation of Article 370. The party now positions the UCC as the final pillar of its foundational agenda for cultural and legal homogenization.⁴

On 7 February 2024, less than six months after Modi’s public endorsement of the UCC, the BJP-led government in Uttarakhand, a longstanding BJP stronghold, introduced the Uttarakhand Uniform Civil Code Bill 2024. Framed in the language of “constitutional equality” and “gender justice”, this Bill sought to establish a uniform legal framework regulating matters such as marriage, divorce, inheritance, and live-in relationships. While explicitly exempting tribal communities from its ambit, this Bill singled out several practices embedded in Muslim personal law, such as *ṭalāq*, *halāla*, and *iddat*, for abolition.⁵ Following expedited presidential assent, it was enacted as the Uniform Civil Code of Uttarakhand Act 2024 (“the Uttarakhand Act”) on 11 March.⁶ It came into force on 27 January 2025, making Uttarakhand the first state in postcolonial India to operationalize a codified civil code applicable across religious communities.⁷

The enactment of the Uttarakhand Act has reignited enduring constitutional debates concerning secularism, federalism, and minority rights in India. Though officially framed as a measure of progressive reform, the Uttarakhand Act’s underlying asymmetries of targeting specific religious practices while exempting others have drawn significant critical scrutiny. This uneven application of legal norms is widely viewed as obscuring majoritarian cultural assertion beneath the language of constitutional idealism. Suhas Palshikar contends that the political discourse of “New India” increasingly instrumentalizes the rhetoric of reform to legitimize exclusionary agendas, transforming the secular constitutional framework into a vehicle for cultural homogenization under democratic guise.⁸ Underlying these critiques is the concern that such a legislation may infringe upon two of the Constitution’s foremost guarantees: Article 25, which secures freedom of

³ibid.

⁴A great body of literature is available on the issue of BJP’s ideology. For a representation see Thomas Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* (Princeton University Press 1999); and Angana P and others (eds), *Majoritarian State: How Hindu Nationalism is Changing India* (Oxford University Press 2000).

⁵*Ṭalāq* refers to the Islamic procedure for divorce initiated by the husband, derived from the Quran (eg Surah Al-Baqarah 2:229–231) and *Sunnah* and operates within a framework of ethical and procedural constraints to balance spousal rights and social stability; *Halāla*, a contested practice where a divorced woman must marry and consummate a second marriage before remarrying her former husband, intended to discourage frivolous divorce. Critics argue it exploits women, while traditionalists claim it upholds Quranic injunctions (Surah Al-Baqarah 2:230); and *Iddat*, a mandatory waiting period (three menstrual cycles or until delivery if pregnant) post-divorce/widowhood to confirm paternity and allow reconciliation (Quran 65:4).

⁶The Uniform Civil Code of Uttarakhand 2024 <https://prsindia.org/files/bills_acts/bills_states/uttarakhand/2024/Uniform-Civil-Code-Uttrakhhand-bill-2024.pdf> accessed 24 September 2025.

⁷Neeraj Santoshi ‘Uttarakhand First State to bring UCC into Force’ *Hindustan Times* (28 January 2025) <<https://www.hindustantimes.com/india-news/ukhand-first-state-to-bring-ucc-into-force-101738001771866.html>> accessed 24 September 2025.

⁸Suhas Palshikar, “The Political Culture of New India: Some Contradictions” in Niraja Gopal Jayal (ed), *Re-Forming India: The Nation Today* (Penguin 2019) 92.

conscience and the right to profess, practice, and propagate religion;⁹ and Article 29, which protects the cultural and educational interests of minorities.¹⁰ These provisions have long been interpreted as safeguarding not only religious beliefs but also religiously grounded legal practices, particularly in the sphere of personal law. Equally pressing are the federal questions raised by the Uttarakhand Act: is a state legislature constitutionally empowered to legislate on personal law matters traditionally within the Union's domain, particularly when regulated by central statutes such as the Muslim Personal Law (Shariat) Application Act 1937.¹¹ Although the Supreme Court has not offered a definitive ruling on these issues, it has recognized the complex intersection between personal law and fundamental rights in landmark cases such as *Shayara Bano v Union of India*, which invalidated triple talāq on constitutional grounds,¹² and *Indian Young Lawyers Association v State of Kerala*, where it held that exclusionary religious practices could not override the guarantees of equality and dignity enshrined in Part III of the Constitution.¹³ These judgements reflect an evolving jurisprudence that subjects personal law to the discipline of constitutional scrutiny, though its precise contours remain contested.

The ongoing controversy over India's UCC finds its constitutional locus in Article 44, whose directive to "secure for citizens a uniform civil code" embodies what remains the fundamental tension in India's secular democracy: between the state's unifying imperative and the pluralist realities of religious practice. This provision's placement among non-justiciable Directive Principles reflects the framers' deliberate compromise – recognizing legal uniformity as an aspirational goal while insulating it from judicial enforcement to accommodate India's diversity. Seventy-five years later, as Mathew John observes, this constitutional ambivalence continues to fuel debate, with critics divided over whether non-implementation represents a failure of constitutional vision or its sophisticated accommodation of pluralism.¹⁴ The subject has also garnered substantial scholarly attention, resulting in a robust body of literature exploring its complexities.¹⁵

This article, prompted by recent political developments – most notably the enactment of the Uttarakhand Act – examines the framers' approach to the UCC in the Indian Constituent Assembly, on the premise that the contemporary controversy cannot be fully understood without returning to the foundational tensions of India's constitutional history. The Assembly's deliberations show that the issues animating current discourse – minority rights, gender justice, and cultural autonomy – were already sharply articulated

⁹The Constitution of India 1950, art 25.

¹⁰The Constitution of India 1950, art 29.

¹¹The Muslim Personal Law (Shariat) Application Act 1937, s 2. Sharia is the body of Islamic personal law, derived from Qur'an, Hadith and juristic interpretation, governing matters such as marriage, inheritance and family relations.

¹²*Shayara Bano v Union of India* AIR 2017 SC 4609.

¹³*Indian Young Lawyers Association v State of Kerala* AIR ONLINE 2018 SC 243.

¹⁴Mathew John, *India's Communal Constitution: Law, Religion and the Making of a People* (Cambridge University Press 2023) 46.

¹⁵See Flavia Agnes, "Hindu Men, Monogamy and Uniform Civil Code" (1995) 30(52) *Economic and Political Weekly* 3238; Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999); Partha S Ghosh, *The Politics of Personal Law in South Asia: Identity, Nationalism and the Uniform Civil Code* (Routledge 2007); Archana Parashar, "Gender Inequality and Religious Personal Laws India" (2008) 14(2) *The Brown Journal of World Affairs* 103; Kumkum Sangari, "Gender Lines: Personal Laws, Uniform Laws, Conversion" (2008) 27(5/6) *Social Scientist* 17; Nivedita Menon, "A Uniform Civil Code in India: The State of the Debate in 2014" (2014) 40(2) *Feminist Studies* 480; Abhinav Chandrachud, *Republic of Religion: The Rise and Fall of Colonial Secularism in India* (Penguin 2020) 109–43; and Saumya Saxena, "Nikah Halala: The Petition, the Promise and the Politics of Personal law" in Tanja Herklotz and Siddharth Peter de Souza (eds), *Mutinies for Equality* (Cambridge University Press 2021) 133.

at the founding. Accordingly, the article offers a critical re-reading of the UCC debates to illuminate the framers' intentions and to draw guidance for contemporary reform. It is framed around three questions: Should a secular state accommodate the personal laws of culturally diverse communities? Does a UCC conflict with the constitutional guarantee of religious freedom? And, in a democracy, must legislation directly affecting personal and religious practices secure the consent of the communities most impacted? The argument advanced is that the legitimacy of personal-law reform in a secular democracy turns not only on abstract ideals of equality or uniformity, but on deeper procedural principles of inclusion, consent, and pluralism. What renders the present controversy especially fraught is its entanglement with majoritarian politics, which risks recasting a once-progressive vision of legal reform into what Gautam Bhatia has called a "majoritarian project in egalitarian clothing".¹⁶ The Uttarakhand experiment thus marks more than a new episode in the UCC's contested trajectory; it constitutes a critical juncture testing whether India's model of constitutional secularism can withstand the pressures of religious nationalism. By revisiting the Assembly's deliberations, the article shows how the framers sought to reconcile legal uniformity and cultural diversity – ultimately opting for a principled compromise by situating the UCC within the Directive Principles of State Policy rather than among enforceable rights – and underscores the continuing jurisprudential and normative significance of those debates for contemporary constitutional reform.

This article contributes to two intersecting bodies of academic literature. First, it engages the field of multicultural constitutionalism by exploring how the Constituent Assembly confronted the paradox of articulating universal rights within a deeply diverse and religiously plural society. Building on Will Kymlicka's theory of multicultural citizenship and Ayelet Shachar's work on multicultural jurisdictions,¹⁷ the article examines how the framers grappled with the constitutional challenge of reconciling legal uniformity with the imperative of cultural accommodation. Second, it extends feminist legal scholarship by shifting attention from the normative ideal of gender justice – which underpins much of the existing discourse¹⁸ – to the procedural and democratic conditions under which reform becomes legitimate. While acknowledging the UCC's emancipatory potential for women, the article foregrounds the often-neglected dimensions of democratic consent, institutional process, and minority agency in the making of constitutional law.

Through a close textual reading of deliberations in the Sub-Committees on Fundamental Rights and Minority Rights, the Advisory Committee, and the plenary sessions of the Constituent Assembly, this article traces the normative and political vision that animated the framing of Article 44. These debates reveal that the UCC was not conceived as a tool for immediate legal homogenization, but rather as a long-term constitutional aspiration to be realized through democratic processes, inclusive public dialogue, and gradual reform. Situated within the Directive Principles of State Policy, the UCC reflected a dual commitment: to the rationalization of India's postcolonial legal order and to the preservation of its social and religious pluralism. The framers consciously resisted both majoritarian coercion and absolutist universalism, instead

¹⁶Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Act* (HarperCollins India 2022) 317.

¹⁷Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press 1996); and Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press 2001).

¹⁸See Agnes (n 15); Parashar (n 15); Sangari (n 15); and Menon (n 15).

articulating civil code reform within a framework of ethical constitutionalism defined by procedural restraint, deliberative inclusion, and institutional patience. Revisiting these foundational deliberations not only recovers the framers' principled commitment to negotiated constitutionalism, incrementalism, and cultural sensitivity, but also provides critical normative resources for navigating the contemporary impasse over personal law reform – offering a democratic alternative to the polarizing discourse that currently surrounds the UCC.

This article, in addition to the Introduction, is organized into four analytically distinct yet thematically interwoven sections. [Section 2](#) traces how early deliberations within the Sub-Committees transformed the UCC from a proposal for a justiciable right into a non-enforceable directive principle, reflecting a strategic accommodation between legal modernity and cultural pluralism. [Section 3](#) examines the secular, rights-based critiques advanced by Muslim League members, who defended personal law as an essential marker of minority identity and invoked comparative constitutional examples to resist centralized legal assimilation. [Section 4](#) turns to the arguments of key proponents – KM Munshi, Alladi Krishnaswami Ayyar, and BR Ambedkar – who articulated the UCC as indispensable for national integration, gender justice, and legal rationalization. [Section 5](#) revisits Ambedkar's later interventions, alongside the cautious endorsements of certain Muslim members, to uncover an underlying consensus around procedural restraint and consensual constitutionalism. Ultimately, the article contends that the success of personal law reform in a secular democracy such as India rests not on the assertion of majoritarian legislative will, but on cultivating an ethos of pluralist negotiation and participatory constitutionalism. A historically informed reading of the Constituent Assembly Debates thus suggests that constitutional fidelity lies not in enforcing uniformity at all costs, but in pursuing justice through inclusion, deliberation, and respect for India's plural foundations.

Before turning to these debates, it is necessary to briefly situate the question of personal law within a broader legal-historical framework; for contemporary debates on the UCC and the constitutional anxieties it has provoked, cannot be fully understood without situating it within the broader historical context of India's personal law regime. At the heart of the current controversy lies the colonial legacy of pluralistic legal arrangements inherited by the postcolonial India. Prior to British intervention, Hindu and Islamic legal traditions functioned within interpretive frameworks marked by flexibility, regional diversity, and deep social embeddedness. This pluralist ethos was profoundly restructured under British rule, which codified personal laws into rigid textual categories. As JDM Derrett observed, the British sought to transform complex systems of jurisprudence into simplified codes, thereby producing a “fossilized” version of Hindu law divorced from its interpretive traditions.¹⁹ The consequences were far-reaching: legal institutions were centralized, communal identities were legally reified, and customary practices were progressively displaced. Ayesha Jalal has shown how this reification of religious communities through legal codification was central to the colonial state's strategy of governance, laying the groundwork for enduring political contestations.²⁰

¹⁹JDM Derrett, *Religion, Law and the State in India* (Faber & Faber 1968) 225.

²⁰Ayesha Jalal, *Self and Sovereignty: Individual and Community in South Asian Islam since 1850* (Routledge 2000) 32–35, 37–40, 176, 324–28; Mahmood Mamdani, in a comparative African-Asian frame, demonstrated how colonial regimes deployed personal law to construct and regulate “customary” and “religious” identities as distinct political categories. See Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press 2012) 34–41.

Crucially, as Marc Galanter has argued, the colonial structuring of personal law left a lasting imprint on India's constitutional order, entrenching a framework of "compartmentalized pluralism" in which community-specific norms were given legal recognition even as the state claimed overarching sovereignty.²¹ These colonial transformations of law, identity, and institutional authority remain embedded in India's constitutional politics.²² To meaningfully navigate the contemporary debate on the UCC, it is essential to briefly engage with precolonial traditions of legal pluralism and the ways in which colonial codification dismantled and compartmentalized these diverse normative orders.

1.1. Pluralism in pre-colonial legal traditions

The legal landscape of precolonial India was characterized by pervasive pluralism across both Hindu and Islamic traditions. Law did not emanate from a singular authority but emerged from a mosaic of scriptural texts, customary norms, and decentralized adjudicatory practices. Hindu law functioned as a layered and regionally differentiated system, grounded in *śāstra* (scriptural jurisprudence),²³ *ācāra* (custom),²⁴ and the interpretive glosses of jurists. Foundational texts such as the *Dharmasūtras*, as Patrick Olivelle observes, were pedagogical in nature – didactic guides rather than enforceable legal codes, whose authority derived from their local acceptance.²⁵

Doctrinal diversity further emerged through regional commentaries like the *Mitākṣarā*²⁶—a gloss on the *Yājñavalkya Smṛti* by Vijñāneśvara, and the *Dāyabhāga* by Jimūtavāhana that introduced distinct principles of inheritance and succession, shaping divergent schools of Hindu law across different regions of the subcontinent.²⁷ Legal authority in this system was highly diffuse. As Werner Menski notes, adjudication was

²¹Marc Galanter, *Law and Society in Modern India* (Oxford University Press 1989) 107–12.

²²Jalal (n 20) 32–35, 37–40, 176, 324–28.

²³The term *śāstra* signifies a body of authoritative knowledge. In the context of Hindu law, it denotes the scriptural jurisprudence of the *Dharmasāstras*—prescriptive texts articulating norms of *dharma* (righteous conduct), including legal, moral, and ritual duties relating to inheritance, marriage, caste, and social order. For a comprehensive definition, see Patrick Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra* (Oxford University Press 2005) 41–44.

²⁴Within classical Hindu jurisprudence (*Dharmasāstra*), *ācāra*—established local or community practice – was recognized as a primary source of *dharma*. Functioning as a form of customary law, it enabled regional adaptation of legal norms. Jurists frequently accorded precedence to such validated custom over textual rules, thereby embedding legal pluralism within the traditional Hindu legal framework. For details, see Donald R Davis Jr, *The Spirit of Hindu Law* (Cambridge University Press 2010) 144–65.

²⁵The *Dharmasūtras* constitute the earliest stratum of the *dharmaśāstra* tradition and represent the foundational corpus of Hindu law, ethics, and social obligation. In these texts, *dharma* is conceived as encompassing the full range of normative conduct – ritual, moral, and legal – defined in relation to one's age, gender, varna, marital status, and stage of life. Composed in the terse and aphoristic *sūtra* style, the *Dharmasūtras* are generally dated to between 600 and 200 BCE, marking the formative phase of codified Hindu jurisprudence. See Patrick Olivelle (tr), *Dharmasūtras: The Law Codes of Āpastamba, Gautama, Baudhāyana, and Vasīṣṭha* (Oxford University Press 1999) 7–26.

²⁶The *Mitākshara*, composed by Vijñāneśvara in the eleventh century as a commentary on the *Yājñavalkya Smṛti*, a key *Dharmashāstra* text, became the pre-eminent authority on Hindu law across most of India, with the notable exception of Bengal and Assam. It regulated crucial aspects of property, inheritance, coparcenary, and partition, and is most closely associated with the doctrine of coparcenary – where sons, grandsons, and great-grandsons acquire a birth-right interest in ancestral property rather than succeeding only upon the father's death. The exclusion of women from coparcenary membership under the classical *Mitākshara* was later addressed through statutory reform, most decisively by the Hindu Succession (Amendment) Act 2005, which conferred upon daughters the same coparcenary rights as sons, thereby overturning the gender inequality inherent in the traditional system. For further details, see Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press 2003) 174–75, 215.

²⁷The *Dāyabhāga* became the authoritative school of Hindu law in Bengal and Assam. It advanced the principle that heirs acquire rights in property only upon the death of the owner, rather than by birth, thereby vesting greater powers of disposition in the father during his lifetime; See Derrett (n 19) 116.

conducted by Brahmin jurists, caste panchayats, and kin-based councils, all of whom drew on a plural repertoire of textual and customary sources.²⁸ This vernacular jurisprudence prioritized contextual resolution over uniform codification. Even under Islamic rule, Hindu personal law was administered by Hindu interpreters, and customary norms often prevailed in matters such as property and family law.²⁹ Islamic law, too, functioned as a plural and dialogic tradition. Rooted in the *Quraan* and *Sunnah*, classical jurisprudence (*fiqh*) evolved through interpretive mechanisms such as *ijmā'* (consensus) and *qiyās* (analogy), resulting in a diversity of legal schools (*madhāhib*).³⁰ In India, the Hanafi school predominated but was continually adapted to local practices. Wael Hallaq emphasizes that premodern Sharia was not a codified system of rules but a fluid, moral-legal discourse grounded in juristic reasoning.³¹ During the Mughal period, formal law was supplemented by *zawābit* (imperial edicts), and non-Muslim communities retained autonomy in personal matters.³² Legal adjudication remained decentralized, conducted by *qazis*, village elders, and religious authorities who prioritized reconciliation over adversarial litigation.³³ This produced a syncretic legal order in which Hindu and Muslim personal laws coexisted with minimal antagonism, mediated by local institutions and social consensus. Thus, this reflects that in both Hindu and Islamic traditions, personal law was not a static or codified body imposed by the state, but a dynamic, negotiated practice embedded in community norms and evolving jurisprudence. The idea of fixed, state-enforced religious law was largely alien to this pluralist legal order. Instead, law traversed communal, regional, and caste boundaries, adapting to local context and custom.

1.2. Colonial codifications and the invention of legal identities

British colonial rule disrupted this plural legal ecosystem by codifying personal laws into fixed textual forms. Motivated by administrative convenience, efficiency and legal certainty, colonial jurists redefined Hindu and Islamic law as “Anglo-Hindu” and “Anglo-Muhammadan” systems – relying not on lived practices but on selective textual interpretations.³⁴ Colonial codification restructured Hindu law around Brahminical scriptures such as the *Manusmṛti*, thereby marginalizing matrilineal traditions and regional variations. This process of legal “textualization” produced a homogenized and upper-caste version of Hindu law—one that bore little resemblance to the historically diverse and plural practices it purported to represent.³⁵ While reforms such as the Hindu Widows’ Remarriage Act 1856 appeared progressive, they nevertheless operated, as Lata Mani argues, “within the very Brahmanical logic it sought to mitigate”.³⁶ The broader effect was the entrenchment of patriarchal norms and the suppression of interpretive flexibility inherent in the traditional śāstra-based system. Islamic law underwent a similar

²⁸Menski (n 26) 152–55, 160–63.

²⁹ibid 164–66, 170–72.

³⁰Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 2003) 45–60, 85–100.

³¹Wael B Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge University Press 2009) 2, 154–55.

³²Nandini Chatterjee, *Negotiating Mughal Law: A Family of Landlords Across Three Indian Empires* (Cambridge University Press 2020) 102–10.

³³ibid 65–70.

³⁴Bernard S Cohn, ‘From Indian Status to British Contract’ (1961) 21(4) *The Journal of Economic History* 615, 615–18, 620.

³⁵Menski (n 26) 200.

³⁶Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (University of California Press 1998) 92.

narrowing. Colonial courts privileged a textualist reading of the Hanafi school, primarily through the *Hidāyah*,³⁷ and side-lined juristic tools like *ijtihad* (independent reasoning) and customary diversity. As Nandini Chatterjee demonstrates, colonial courts systematically replaced qazi-led adjudication with centralized, formalized British-style courts, eroding community-based dispute resolution.³⁸ The Muslim Personal Law (Shariat) Application Act 1937, though ostensibly aimed at preserving Islamic identity, paradoxically imposed uniformity across diverse Muslim communities.³⁹ Wael Hallaq describes this transformation as the “death of Sharia” – a process through which colonial rationalism stripped Islamic law of its ethical dynamism and community-rooted authority.⁴⁰

The deeper impact of colonial codification was epistemic. Law was transformed from a flexible, negotiated social practice into a rigid marker of religious identity. Ayesha Jalal notes that the colonial state elevated scriptural orthodoxy while ignoring the lived interplay of text and custom, thereby constructing Hindu and Muslim law as mutually exclusive, essentialized domains.⁴¹ Although colonial authorities occasionally acknowledged customary exceptions, they ultimately embedded a binary legal architecture – Hindu versus Muslim – into the foundations of the postcolonial legal order.⁴² This colonial legacy continues to haunt contemporary legal discourse.

2. Demanding a uniform civil code in the name of national unity

The formal inauguration of the Constituent Assembly on 6 November 1946 marked a defining moment in India’s constitutional history. Though constituted under the Cabinet Mission Plan, the Constituent Assembly swiftly asserted sovereign authority to draft an independent constitution. As Granville Austin notes, this was the first time Indians were “responsible for their own governance” and free to “pursue their long-proclaimed aims and aspirations”.⁴³ Yet these aspirations unfolded amidst deepening communal fractures. The Congress’s rejection of compulsory provincial groupings in July 1946, as Ayesha Jalal argues, “shattered the [Muslim] League’s hopes for provincial autonomy”.⁴⁴ Accusing the Congress of negotiating in “bad faith”, Mohammad Ali Jinnah withdrew the League from the Constituent Assembly on 29 July 1946 and called for “Direct Action”,⁴⁵ leading to a decisive collapse in the constitutional process. Despite this impasse, the Congress went ahead with the proceedings of the Constituent Assembly.

³⁷The *Hidāyah* (*al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī*), composed by Burhān al-Dīn al-Marghinānī in the twelfth century, is the most authoritative exposition of Ḥanafī jurisprudence. Written as a commentary on his *Bidāyat al-Mubtadī*, it systematizes ritual (*‘ibādāt*) and civil law (*mu‘āmalāt*), including contracts, inheritance, marriage, divorce, and penal rules. It became the standard reference in Mughal courts and, after Charles Hamilton’s 1791 English translation (*The Hedaya, or Guide*), the principal source of Anglo-Muhammadan law in colonial India; See Wael B Hallaq, *An Introduction to Islamic Law* (Cambridge University Press 2009) 31–37.

³⁸Chatterjee (n 32) 72.

³⁹Asaf A A Fyzee, *Outlines of Muhammadan Law* (5th edn, Oxford University Press 2008) 27.

⁴⁰Wael B Hallaq, *The Impossible State: Islam, Politics, and Modernity’s Moral Predicament* (Columbia University Press 2012) 362.

⁴¹Jalal (n 20) 37.

⁴²Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press 1998) 231.

⁴³Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) XI.

⁴⁴Ayesha Jalal, *The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan* (Cambridge University Press 1985) 194.

⁴⁵*ibid* 174.

To navigate the complex challenge of constitution-making in a deeply plural society, the Constituent Assembly established the Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas, chaired by Vallabhbhai Patel.⁴⁶ This Committee, in turn, created five Sub-Committees, including the Sub-Committee on Fundamental Rights and the Sub-Committee on Minorities – both central to shaping the constitutional stance on civil code reform. In its initial phase, the Sub-Committee on Fundamental Rights considered draft provisions submitted by key members such as KT Shah, Alladi Krishnaswami Ayyar, Sardar Harnam Singh, KM Munshi, and BR Ambedkar.⁴⁷ While these drafts did not explicitly mention either the UCC or personal laws, they articulated a shared constitutional vision grounded in two interrelated principles: individual legal equality and the cultural autonomy of minority communities. Munshi’s draft affirmed both non-discrimination and the right to cultural preservation;⁴⁸ Shah called for the protection of minority languages and traditions “without prejudice” to national unity⁴⁹ and Ambedkar’s proposal recognized group autonomy in religious affairs, subject to the authority of the law as such.⁵⁰ Together, these formulations exposed an underlying constitutional tension between the ideal of legal uniformity and the reality of sociocultural pluralism. Subsequent deliberations in the Sub-Committee on Fundamental Rights and Sub-Committee on Minority Rights crystallized into what may be described as a foundational compromise.

It was in the deliberations of the Sub-Committee on Fundamental Rights on 28 March 1947 that Minoos Masani first advanced a formal proposal for a UCC, thereby initiating its constitutional journal. He argued that religion-based personal laws hindered India’s progression towards legal modernity and national cohesion. A common civil code, in his view, was essential to consolidating egalitarian citizenship.⁵¹ Although the proposal was supported by Rajkumari Amrit Kaur, Hansa Mehta, and BR Ambedkar, the Sub-Committee on Fundamental Rights ultimately rejected it on the ground that the subject lay beyond the scope of justiciable fundamental rights. This decision reflected the Sub-Committee’s emerging distinction between justiciable rights and aspirational principles. On 30 March, it resolved to place the UCC within the Directive Principles of State Policy. Clause 41 of Sub-Committee’s Draft Report read: “The State shall endeavour to secure for the citizens a uniform civil code”.⁵² The Directive Principles articulated the moral goals of the Constitution without conferring enforceable rights. In this spirit, the UCC was framed as an ideal to be pursued, not imposed. In contemporary political discourse, this aspiration often finds expression in slogans such as “one nation, one law”.⁵³ Yet, even in 1947, the implications of such uniformity raised serious concerns: Would legal uniformity erase entrenched normative frameworks that structured personal life? Could such a code override long-

⁴⁶B Shiva Rao, *The Framing of India’s Constitution: Select Documents, vol 2* (The Indian Institute of Public Administration 1967) 65.

⁴⁷*ibid* 21–55.

⁴⁸*ibid* 74.

⁴⁹*ibid* 50–51.

⁵⁰*ibid* 88.

⁵¹*ibid* 128.

⁵²*ibid* 142.

⁵³Rajeev Deshpande, ‘One Nation, One Law’ *Open Magazine* (9 February 2024) <<https://openthemagazine.com/features/politics-features/one-nation-one-law/>> accessed 22 August 2025.

standing religious customs? Crucially, what did it mean for minorities whose personal laws were integral to their identity and belief?

The absence of the Muslim League from the Constituent Assembly meant that its perspectives were entirely missing from the deliberations of the Sub-Committees. Yet the erasure of Muslim viewpoints was not solely a result of the League's boycott. Even within the Congress, prominent Muslim leaders who might have voiced minority concerns did not participate meaningfully in these formative debates. Most notably, Maulana Abul Kalam Azad – then serving as President of the Indian National Congress and one of the most respected Muslim leaders in the nationalist movement – was a nominated member of the Sub-Committee on Fundamental Rights.⁵⁴ A long-standing advocate of India's composite culture and religious pluralism, Azad had consistently defended the preservation of personal laws as essential to the constitutional protection of minority identity.⁵⁵ Yet, between 27 February and 31 March 1947, the critical period during which the Sub-Committee on Fundamental Rights convened nine times, Azad was absent from all meetings,⁵⁶ likely owing to his involvement in sensitive political negotiations with Muslim League leaders.⁵⁷ His absence deprived the deliberations of a crucial minority voice and contributed to the Sub-Committee's tilt towards an integrationist understanding of civil code reform.

By April 1947, the Uniform Civil Code had become a site of contention between the Sub-Committee on Fundamental Rights and the Sub-Committee on Minority Rights. The former endorsed it as an instrument of national integration and civic rationalization, while the latter struck a more cautious note. In its interim report of 19 April, the Minority Rights Sub-Committee described the UCC as “eminently desirable” but insisted that it should be adopted “entirely on a voluntary basis”.⁵⁸ Personal laws, the report argued, were not merely legal provisions but cultural expressions embedded in community life, and imposing uniformity risked alienating the very minorities whose trust the Constitution sought to secure. For some members, however, this compromise was intolerably timid. Amrit Kaur, Hansa Mehta, and MR Masani filed a sharp dissent, bristling with impatience at what they regarded as the Sub-Committee on Fundamental Rights' evasion of responsibility. They objected in particular to the majority's relegation of the UCC to “an ultimate social objective” rather than a binding constitutional guarantee. In their view, this amounted to hollow “window-dressing”: a gesture that paid lip service to reform while retreating from its imperatives. Retaining religion-based personal laws, they argued, was not an act of accommodation but a betrayal of the project of nation-building itself. So long as such laws endured, India would remain “divided into watertight compartments”, shackled by communal boundaries. They therefore urged that the UCC be enacted as a binding constitutional mandate within five years.⁵⁹

⁵⁴For details, see Rao (n 49) 65.

⁵⁵Mushirul Hasan, ‘Secular and Communitarian Representations of Indian Nationalism: Ideology and Praxis of Azad and Mohamed Ali’ in Mushirul Hasan (ed), *Islam and Indian Nationalism: Reflections on Abul Kalam Azad* (Manohar 1992) 77–99.

⁵⁶Rao (n 49) 64–198.

⁵⁷ibid.

⁵⁸ibid 209.

⁵⁹ibid 162.

These early debates crystallized a fundamental constitutional dilemma: how can the unifying promise of a civil code be reconciled with the pluralist reality of a religiously diverse society? The placement of the UCC within the Directive Principles reflected a compromise between two visions of the secular state—one that emphasized formal legal equality, and another that acknowledged the ethical significance of group identity. Yet this compromise also revealed an asymmetry of representation: while majoritarian perspectives on national unity were fully articulated, minority apprehensions were either marginalized or absent.

3. Arguing against uniformity in the name of religious and cultural diversity

Between the Advisory Committee's Report on Minority Rights (8 August 1947) and the introduction of the draft Article on the UCC in the Constituent Assembly (23 November 1948), India witnessed a series of seismic political and social upheavals that reshaped the very foundations of its constitutional project. The Partition of India on 14 August 1947—accompanied by the deaths of nearly one million people and the forced displacement of over 15 million inflicted deep psychological trauma on the newly independent nation.⁶⁰ This upheaval not only heightened communal tensions but also shifted the ideological equilibrium within the Indian National Congress, strengthening conservative currents while weakening the influence of its more progressive voices.⁶¹

The immediate aftermath of Partition had a direct impact on the composition and priorities of the Constituent Assembly. With the exodus of most Muslim League members to Pakistan, minority representation within the Constituent Assembly was drastically diminished, leaving the Congress with an overwhelming 82%.⁶² This numerical dominance significantly reduced the incentive for compromise and contributed to a gradual retreat from earlier commitments to minority rights, including proportional representation, joint electorates, and the legal protection of personal laws. What had once been defended as necessary safeguards for a plural polity were now increasingly cast as colonial contrivances that fostered division.⁶³ This ideological shift was most visible in the Congress leadership's stance on separate electorates. Nehru, among others, framed their abolition not only as a measure of national integration but as a necessary condition for secular democracy. Addressing the Constituent Assembly, he declared that “[d]oing away with this reservation business is not only a good thing in itself—good for all concerned, and more especially for the minorities—but psychologically too it is a very good move for the nation and for the world”.⁶⁴ In this view, removing institutional protections was essential to constructing a unified civic identity beyond communal affiliations. Muslim members of the Constituent Assembly, however, expressed deep unease with this trajectory. They cautioned that dismantling existing safeguards, particularly separate electorates, would result in the political marginalization of their community and inhibit the emergence of capable leaders from within.⁶⁵ These concerns,

⁶⁰Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* (Duke University Press 2000) 3–5, 264.

⁶¹Jalal (n 44) 223–28.

⁶²Austin (n 43) 6, 15.

⁶³Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Harvard University Press 2013) 110–14.

⁶⁴Constituent Assembly Debates (26 May 1949) [8.92.46] (Jawaharlal Nehru) <<https://www.constitutionofindia.net/debates/26-may-1949/>> accessed 8 September 2025.

⁶⁵Rochana Bajpai, 'Constituent Assembly Debates and Minority Rights' (2000) 35(21/22) *Economic and Political Weekly* 1837.

though dismissed at the time, would later prove prescient in the light of the post-independence political developments, where minority representation in mainstream electoral politics remained tenuous.⁶⁶

It was within this altered constitutional environment that the draft provision on the UCC was introduced on 23 November 1948. Article 35 of the Draft Constitution read: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”.⁶⁷ The proposal was placed within the Directive Principles of State Policy, marking it as an aspirational goal rather than an enforceable right. Yet its symbolic significance was not lost on the Constituent Assembly, where the debate revealed sharp divisions along ideological, legal, and cultural lines. For many Muslim members, the issue of a UCC was not merely a theological concern but a constitutional one. Their objections drew upon foundational principles of secularism, minority rights, and democratic legitimacy. In hindsight, these interventions can be seen as early articulations of what would later develop into the normative framework of multicultural constitutionalism.⁶⁸ Nevertheless, the Congress leadership continued to prioritize abstract ideals of national unity and legal uniformity over the lived realities of minority exclusion. The introduction of the UCC in this context reflected a distinctly majoritarian ethos and exposed the limited inclusivity of the constitutional moment. In what follows, this section examines the principal constitutional objections raised by Muslim members of the Constituent Assembly to the proposed provision on UCC.

3.1. *Personal law as religious and cultural identity*

Can individual autonomy be meaningfully secured in a multicultural polity without safeguarding the legal traditions that underpin a communal identity? This question lay at the heart of several Muslim members’ opposition to a UCC in the Constituent Assembly. For them, personal law represented more than a legal regime – it was a cultural anchor, intimately tied to religious identity, historical continuity and ethical life. It was in this spirit that Mohammad Ismail Khan proposed an amendment declaring, “Any group, section or community of people shall not be obliged to give up its own personal law”.⁶⁹ His intervention did not seek to assert sectarian privilege, but rather to preserve what he saw as a civilizational inheritance. Religion, for Khan, encompassed not only private belief but also everyday practices – marriage, inheritance, divorce – that shaped communal life. Denying communities the autonomy to govern such spheres, he warned, would amount to “interference with the way of life of those people who have been observing these laws for generations and ages”.⁷⁰ Khan’s position echoed the ideological underpinnings of the 1940 Lahore Resolution, which described Indian

⁶⁶The 18th Lok Sabha has the lowest Muslim representation in six decades, with only 24 members (4.4%) despite Muslims making up over 15% of India’s population. The BJP, the largest party in the Lok Sabha, has no Muslim MPs, reflecting a trend associated with its rise since the 1990s; See Nitika Francis and Vignesh Radhakrishnan, ‘Eighteenth Lok Sabha has lowest share of Muslim MPs in six decades’ *The Hindu* (18 June 2024) <<https://www.thehindu.com/data/eighteenth-lok-sabha-has-lowest-share-of-muslim-mps-in-six-decades/article68285104.ece>> accessed 24 September 2025; and Also see Mushirul Hasan, *India’s Muslims: Past and Present* (Oxford University Press 2014).

⁶⁷Constituent Assembly Debates (23 November 1948) <<https://www.constitutionofindia.net/debates/23-nov-1948/>> accessed 24 September 2025 (“CAD 23 November 1948”).

⁶⁸Kymlicka (n 17); and Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Palgrave 2000).

⁶⁹CAD 23 November 1948 (n 67) [7.58.109] (Mohammad Ismail Khan).

⁷⁰ibid [7.58.108].

Muslims not as a minority but as a distinct “nation”, entitled to legal and cultural parity with the Hindu “nation”.⁷¹ It also anticipated later normative arguments in liberal multicultural theory – most notably Will Kymlicka’s claim that individual freedom presupposes access to a stable cultural structure, and that minority rights are essential for enabling equitable participation in a diverse liberal democracy.⁷²

Mahboob Ali Baig echoed this sentiment by advancing two interrelated but distinct arguments concerning the place of Islamic personal law in a secular constitutional framework. First, he emphasized the institutional indivisibility of religion and law in the Islamic tradition. For Muslims, he observed, “their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion”.⁷³ Islamic law, in Baig’s view, was not a mutable civil code subject to legislative reform, but a divinely sanctioned legal order – fixed in its sources, doctrinally inviolable, and beyond the reach of secular regulation. This structural entanglement of religious faith and legal obligation, he argued, rendered state-driven uniformity not merely inappropriate but fundamentally illegitimate. Second, Baig articulated a deeper existential claim – that Islamic legal norms are not merely institutional mechanisms but are constitutive of the moral self. In his words, “marriage is enjoined on the Mussalmans by the Quran, and if it is not followed, a marriage is not a legal marriage at all”.⁷⁴ Here, Baig was suggesting that legal practices such as marriage, inheritance, and divorce are not just juridical forms but spiritual acts embedded within a broader ethical life. To override these norms, he contended, would unsettle the community’s moral self-understanding and rupture the lived continuity of faith. This argument finds strong resonance in Charles Taylor’s theory of recognition, which holds that individuals and communities derive their sense of identity and dignity from historically situated “horizons of significance”.⁷⁵ When the state dismisses or overrides these normative frameworks in the name of legal uniformity, it is not acting neutrally; it is engaging in an act of misrecognition that distorts both agency and identity. For Baig, then, the imposition of a UCC was not simply a legal intervention – it was an existential dislocation.

B Pocker likewise issued a powerful warning against the imposition of a UCC, declaring that the abolition of personal law would “murder the consciences of the people”.⁷⁶ His rhetoric did more than express political dissent; it invoked a deeper moral claim about the embeddedness of ethical life within religious tradition. For Pocker, conscience was not an abstract individual faculty but a historically cultivated moral orientation, grounded in a specific tradition of legal-religious reasoning. His argument recalls Alasdair MacIntyre’s insight that moral reasoning is always tradition-constituted – what counts as a valid reason for action is intelligible only within the internal logic of a particular moral tradition.⁷⁷ To disrupt or displace these frameworks in the name of legal uniformity, then, is not simply to change rules, but to disorient the ethical subject.

⁷¹Jalal (n 44) 399.

⁷²Kymlicka (n 17) 6–10, 75–76; Parekh (n 68) 213–20.

⁷³CAD 23 November 1948 (n 67) [7.58.124] (Mahboob Ali Baig).

⁷⁴CAD 23 November 1948 (n 67) [7.58.126] (Mahboob Ali Baig).

⁷⁵Charles Taylor, “The Politics of Recognition” in Amy Gutmann (eds), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1994) 25.

⁷⁶CAD 23 November 1948 (n 67) [7.58.137] (B Pocker).

⁷⁷Alasdair MacIntyre, *Whose Justice? Which Rationality?* (University of Notre Dame Press 1988) 12.

3.2. *Secularism as state restraint*

A significant strand of the Muslim League's opposition to draft Article 35 was grounded not in a rejection of secularism, but in a competing vision of it. While the dominant position within the Constituent Assembly equated secularism with legal uniformity, several Muslim members argued that a truly secular state must exercise restraint, not impose assimilation. In their view, secularism required impartiality towards all religions, not the homogenization of their legal traditions. Naziruddin Ahmad, for instance, contended that the proposed UCC violated Article 19, which guaranteed religious freedom. "Having guaranteed . . . the freedom of religious practice and the freedom to propagate religion", he warned, "the present article tries to undo what has been given . . ." ⁷⁸ Ahmad's concern was not just about contradiction but about constitutional incoherence. The coexistence of a justiciable right to religious freedom and a Directive Principle encouraging legal uniformity, he argued, risked rendering the former hollow. B Pocker reinforced the argument, stating unequivocally that the UCC proposal was "entirely antagonistic to the provision made as regards Fundamental Rights in article 19". ⁷⁹ His concern, like Ahmad's, was structural: that a Directive Principle should not operate in a way that undermines enforceable fundamental rights.

Hussain Imam similarly challenged the prevailing understanding of secularism, clarifying that "a secular State is not irreligious but non-religious [. . .] There is a world of difference". ⁸⁰ Secularism, in his account, did not entail the denial of religion in public life, but the impartial recognition of its various forms. Mohammad Ismail Khan reinforced this position by invoking the example of Yugoslavia, which, under its treaty obligations, guaranteed minorities – Muslims among them – the right to maintain their personal laws in matters of family and personal status". ⁸¹ Mahboob Ali Baig further articulated the conceptual core of this argument: "People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State". ⁸² Together, these arguments proposed a vision of secularism grounded in "principled restraint", where the state refrains from imposing reform unless democratically justified and contextually appropriate. This view echoes Bhargava's theory that secularism must be context-sensitive and morally defensible, particularly in multicultural societies. ⁸³

3.3. *The structural impossibility of uniformity*

Beyond appeals to religious freedom and secular pluralism, a more institutional critique emerged from Hussain Imam and others, who questioned the structural feasibility of legal uniformity in postcolonial India. Their argument was grounded in a pragmatic

⁷⁸CAD 23 November 1948 (n 67) [7.58.117] (Naziruddin Ahmad).

⁷⁹CAD 23 November 1948 (n 67) [7.58.137] (B Pocker).

⁸⁰CAD 23 November 1948 (n 67) [7.58.142] (Hussain Imam).

⁸¹CAD 23 November 1948 (n 67) [7.58.108] (Mohamad Ismail Khan). This references Yugoslavia's obligations under post-First World War minority protection treaties (1919–20) that guaranteed religious community autonomy in family law matters; See Ivo Banac, *The National Question in Yugoslavia: Origins, History, Politics* (Cornell University Press 1984) 129–32.

⁸²CAD 23 November 1948 (n 67) [7.58.131] (Mahboob Ali Baig).

⁸³Rajeev Bhargava, "What is Indian Secularism and What is It For?" (2002) 1(1) *India Review* 1.

understanding of constitutional design, governance complexity, and socio-economic disparity. For them, the UCC was not only normatively problematic but also structurally unworkable in a diverse and asymmetrically developed society. Hussain Imam, for instance, advanced a fundamental challenge of implementing the UCC within India's vast and heterogeneous socio-cultural landscape. His rhetorical query, "[i]n a country so diverse, is it possible to have uniformity of civil law?,"⁸⁴ encapsulated a deeper constitutional insight: that the sheer scale and internal diversity of Indian society rendered legal homogenization not only administratively unfeasible but normatively indefensible. As he observed, the multiplicity of traditions made it "almost impossible to stamp them with one kind of anything" – a remark that moved beyond rhetorical flourish to articulate a principled critique of legal centralism.⁸⁵ Imam's concern prefigures what Marc Galanter later theorized as "legal polycentricity", the coexistence of multiple normative orders – state law, religious jurisprudence, and customary practice – each embedded in distinct communal conceptions of justice.⁸⁶ This phenomenon was vividly evident in the colonial legal regime, where Hindu Mitakshara (a major commentarial school of Hindu law governing inheritance and property rights) principles and Muslim Sharia (the body of Islamic law, governing matters such as marriage, inheritance, and family relations) jurisprudence operated alongside British common law.

Imam also underscored a federal contradiction: family law was placed in the Concurrent List, allowing both Union and State legislatures to enact laws. "How is it possible to have uniformity", he asked, "when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances?"⁸⁷ Sujit Choudhry calls this "differentiated federalism" – a deliberate design to protect group autonomy in multicultural polities.⁸⁸ For Imam, diversity was not a constitutional flaw but a functional necessity. Finally, Imam raised concerns about the substantive justice implications of uniformity in a context marked by stark developmental inequalities. "Parts of the country are very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay?"⁸⁹ His point was not to naturalize backwardness, but to caution against imposing legal norms on communities without the institutional or educational capacity to meaningfully realize them. This anticipates Amartya Sen's capability approach, which stresses that formal rights must be assessed in terms of actual freedom and functioning.⁹⁰ A uniform code, Imam argued, could entrench inequality by privileging those already equipped to navigate the legal system, while marginalizing communities without access to legal literacy or institutional support. In this view, legal uniformity would not level the playing field but reproduce and deepen existing hierarchies.

⁸⁴CAD 23 November 1948 (n 67) [7.58.141] (Hussain Imam).

⁸⁵*Ibid.*

⁸⁶Marc Galanter, "Justice in many Rooms: Courts, Private Ordering, and Indigenous Law" (1981) 19(13) *Journal of Legal Pluralism and Unofficial Law* 24.

⁸⁷CAD 23 November 1948 (n 67) [7.58.141] (Hussain Imam).

⁸⁸Sujit Choudhry, "Does the World need More Canada? The politics of the Canadian Model in Constitutional Politics and Political Theory" (2007) 5(4) *International Journal of Constitutional Law* 606.

⁸⁹CAD 23 November 1948 (n 67) [7.58.141] (Hussain Imam).

⁹⁰Amartya Sen, *Development as Freedom* (Oxford University Press 1999) 74–78.

3.4. *Legal uniformity and the spectre of majoritarianism*

The Muslim members' opposition to the proposed UCC was not a rejection of legal reform *per se*, but a protest against what they perceived to be its function as an instrument of majoritarian dominance. They expressed concern that a centralized legal regime, pursued in disregard of India's intricate mosaic of religious and cultural identities, would legitimize the cultural hegemony of the Hindu majority while eroding the foundations of minority autonomy. B Pocker was particularly direct in framing the threat. He warned that the invocation of legal uniformity, detached from the sensitivities of minority communities, amounted to a subversion of democratic values. "It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities", he declared. "It is not democracy at all; it is tyranny".⁹¹ For Pocker, the democratic legitimacy of the Indian Republic would depend not on majoritarian decision-making alone, but on its willingness to protect pluralism through institutional safeguards. He further underscored the internal diversity within Hindu personal law traditions, such as Mitakshara and Dayabhaga, to expose the selective framing of uniformity.⁹² From his standpoint, the call for a UCC lacked coherence as a legal principle and instead functioned as a cultural project – normalizing the values of the dominant group under the veneer of reform. This line of critique resonates with Bhikhu Parekh's analysis of how legal universalism can become a vehicle of cultural assimilation.⁹³ Parekh cautions that when a dominant community's customs are codified as the legal norm, they acquire a false neutrality that obscures their cultural origins.⁹⁴ Such a "false universalism" does not elevate all traditions to the status of public reason but rather privileges the majority's norms while marginalizing minority ways of life. Pocker's invocation of tyranny through law anticipates precisely this danger, that the law would replicate the biases of the majority culture instead of serving as an impartial framework.

Hussain Imam highlighted the symbolic and affective dimensions of this process. In response to repeated assurances that the UCC would not impair minority rights, he remarked: "The apprehension felt by the members of the minority community is very real".⁹⁵ His concern was not simply about legal outcomes but about the erosion of cultural recognition. This insight parallels Charles Taylor's theory of the "politics of recognition", which holds that identities are formed and sustained through public acknowledgement, and that the absence of recognition in institutions such as the law can inflict a profound harm.⁹⁶ When the legal system renders a community's traditions invisible, it denies their place in the moral and political order. For Imam and others, the UCC threatened not merely religious customs, but also the cultural scaffolding through which minority identities were shaped and affirmed.

Naziruddin Ahmad added a further layer to this critique by warning of the social risks of a premature legal overhaul. "It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions

⁹¹CAD 23 November 1948 (n 67) [7.58.137] (B Pocker).

⁹²*ibid* [7.58.136].

⁹³Parekh (n 68) 16–49.

⁹⁴*ibid* 268–69.

⁹⁵CAD 23 November 1948 (n 67) [7.58.142] (Hussain Imam).

⁹⁶Taylor (n 75) 25–73.

in many communities”, he cautioned.⁹⁷ His tone grew sharp and anguished when he questioned the Constituent Assembly: “[w]ould you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?”⁹⁸ Ahmad’s concern was pragmatic but grounded in social reality. A codified uniform law, imposed without corresponding shifts in communal practices, would rupture social life and provoke widespread alienation. His position aligns with Ayelet Shachar’s critique of what she calls the “paradox of multicultural vulnerability” – where reforms aimed at achieving equality inadvertently reproduce marginality by ignoring the embeddedness of cultural practices in social contexts.⁹⁹ Shachar argues that reforms must be sensitive to the lived dynamics of minority groups, lest they reinforce hierarchies in the very name of justice.

3.5. Diversity as a constitutional value

Can civic peace be sustained through legal uniformity in a society historically shaped by deep and enduring forms of cultural, religious, and normative diversity? Or does democratic cohesion, in such a context, require the constitutional affirmation of that diversity rather than its erasure? Several Muslims warned that the pursuit of a UCC risked unsettling the delicate equilibrium of India’s social fabric. They argued that acknowledging and accommodating diversity was not a challenge to constitutional democracy but the very condition of its legitimacy.

Among the most incisive articulations of this position came from Mohammad Ismail Khan, who warned against the consequences of legal standardization: “Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law, there will be no discontent or dissatisfaction”.¹⁰⁰ For Khan, the imposition of a single civil code was unlikely to foster civic unity; instead, it threatened to generate alienation, discontent, and social unrest. His intervention reframed the dominant nationalist claim that equated legal sameness with national integration. In contrast, Khan proposed that democratic peace could only be achieved by recognizing diversity as a legitimate and enduring feature of India’s constitutional identity.

This argument finds powerful theoretical support in Bhikhu Parekh’s defence of multicultural democracy. As Parekh argues, “a stable and cohesive society must be based on a vision of the good life that respects and accommodates the diversity of ways in which human beings live and seek fulfilment”.¹⁰¹ Diversity, in this account, is not simply a fact to be acknowledged, but a constitutional value that must shape the design and limits of state authority. Khan’s defence of community-specific legal norms should thus be seen not as a refusal of reform or modernity, but as a call for democratic belonging rooted in the recognition of different life-worlds.¹⁰² In a way, Khan’s

⁹⁷CAD 23 November 1948 (n 67) [7.58.118] (Naziruddin Ahmad).

⁹⁸ibid [7.58.118].

⁹⁹Shachar (n 17) 4–6.

¹⁰⁰CAD 23 November 1948 (n 67) [7.58.110] (Mohammad Ismail Khan).

¹⁰¹Parekh (n 68) 6.

¹⁰²CAD 23 November 1948 (n 67) [7.58.110] (Mohammad Ismail Khan).

perspective was not animated by nostalgia or cultural conservatism. It was a forward-looking proposal for how legal institutions might sustain civic trust in a deeply heterogeneous society. His warning that legal uniformity would disrupt social peace reflected an empirically grounded understanding of India's demographic and normative landscape – divided by religion, caste, language, and custom. In such a society, democratic stability could not be imposed from above through juridical sameness, but had to be cultivated through institutional responsiveness to difference.

Thus, the Muslim members' resistance was not a categorical rejection of legal reform, but a defence of India's historically embedded cultural and religious diversity as a legitimate foundation for citizenship. For them, personal laws were not merely religious relics but expressions of distinct ways of life, grounded in ethical traditions and communal histories. They contended that a democratic and secular state must affirm this diversity through legal and institutional recognition, rather than seek unity through enforced uniformity. Yet their defence was not without internal tensions. By treating Muslim personal law as a cohesive legal tradition, they often overlooked the rich internal diversity within the community – across sects, regions, schools of interpretation, and local practices – thereby risking the essentialization of the very identity they sought to preserve. Moreover, their position raised difficult questions about gender justice. In shielding personal law from state intervention, they tended to side-line legitimate concerns around patriarchal norms and gender inequality embedded within certain customary or religious practices. This stance risked placing cultural continuity above the rights and dignity of women, thereby foreclosing avenues for intra-community reform driven by egalitarian principles. Nevertheless, their intervention remains a compelling assertion of diversity as a constitutional value – emphasizing that in a society as complex as India, legal reform must proceed not by suppressing difference, but by finding principled ways to negotiate between cultural belonging, democratic participation, and the pursuit of justice.

4. One law, one nation: arguing for a uniform civil code in the name of equality

In contrast to the constitutional caution and minority resistance analysed in the previous section, a distinct line of argument in the Constituent Assembly affirmed the UCC as a cornerstone of legal modernization and civic equality. This section examines the views of three key constitutional jurists – KM Munshi, Alladi Krishnaswami Ayyar, and BR Ambedkar – who advanced a compelling defence of the UCC as essential to India's transition from colonial legal fragmentation to democratic uniformity. Rejecting the sacralization of personal laws as immutable cultural identity markers, they viewed such regimes as remnants of a divided legal order incompatible with a secular republic. The call for "One Law, One Nation" – to borrow a contemporary phrase – did not imply cultural assimilation but rather articulated a vision of civic equality: that all citizens, irrespective of religion or community, should be governed by a common body of civil laws in areas such as marriage, divorce, and inheritance. Their conception of equality was formal and juridical, rooted in the principle that uniform legal treatment is indispensable to safeguarding individual rights and consolidating a cohesive national identity.

4.1. *KM Munshi: legal uniformity as the foundation for equality*

KM Munshi mounted one of the most rigorous defences of a UCC in the Constituent Assembly, articulating a case that was simultaneously constitutional in its normative grounding and strategic in its political orientation. By drawing a sharp distinction between belief and conduct, he relocated personal law to the civic rather than the religious domain. This move enabled him to counter Muslim members' claims that marriage, succession, and inheritance were matters of divine injunction, recasting them instead as questions of civil regulation. Freedom of religion, Munshi argued, properly protects matters of faith, worship, and doctrine, but not social arrangements such as marriage or inheritance. To treat the latter as intrinsically religious was, in his view, a category mistake that blurred the boundary between spiritual belief and civic order. Pressing the point, he asked: "What have these things (inheritance or succession) got to do with religion?" and insisted that such matters were governed by justice and social policy rather than theology.¹⁰³ For this reason, he urged the Assembly to "divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession". Anchoring this reasoning in draft Article 19(a) (now Article 25[2b]), which guarantees freedom of religion and expressly empowers the state to regulate secular activities connected with religion or to legislate for social reform, Munshi argued that Parliament was constitutionally competent to enact a civil code.¹⁰⁴ The line of reasoning anticipated the Supreme Court's later decision in *Shirur Mutt*, where the Court drew a sharp line between essential religious practices, constitutionally protected, and secular matters subject to state regulation.¹⁰⁵

Munshi reinforced this constitutional reasoning by situating it within historical precedent and colonial critique. Invoking the example of Alaaddin Khilji, he observed that even premodern rulers had overridden religious injunctions when civil governance demanded it, suggesting that a modern constitutional state could claim the same, if not greater, authority.¹⁰⁶ The message was clear: state regulation of secular affairs – particularly those involving civil rights and social relations – was neither alien to Indian political tradition nor a threat to genuine religious freedom. Munshi's sharper critique, however, was directed at the colonial legal architecture that had entrenched personal laws as rigid markers of religious identity. British rule, he argued, had deliberately transformed flexible customary practices into codified communal laws, freezing communities into mutually exclusive categories for administrative purposes. The colonial courts, in turn, he contended, reinforced this distortion by fostering the belief that "personal law is part of religion".¹⁰⁷ In highlighting this history, Munshi anticipated what Uday Singh Mehta later described as the colonial logic of legal pluralism: under British rule, the state did not simply preserve cultural autonomy, but made Indian society legible and manageable by recognizing, defining, and adjudicating across religious and caste communities through a political of managed difference.¹⁰⁸ In this sense, Munshi's argument was not simply

¹⁰³CAD 23 November 1948 (n 67) [7.58.147] (KM Munshi).

¹⁰⁴*ibid* [7.58.144].

¹⁰⁵*The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt* 1954 AIR 282.

¹⁰⁶CAD 23 November 1948 (n 67) [7.58.151] (KM Munshi).

¹⁰⁷*ibid*.

¹⁰⁸Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (University of Chicago Press 1999) 174–82.

nationalist but profoundly postcolonial. He insisted that independent India must dismantle inherited structures of colonial legal pluralism, which undermined both social reform and constitutional equality. For him, the UCC, then, was not an act of assimilation but a necessary rupture with colonial classifications, enabling the construction of a republican legal architecture grounded in civic equality and democratic justice.

Taking up the Muslim members' charge that the UCC would constitute a tyranny of the majority, Munshi argued that this characterization inverted the reality of reform. The proposed code, he observed, would not only affect Muslims but also profoundly unsettle the Hindu majority in the sphere of personal law. Hindu jurisprudence had never been monolithic but was fragmented across schools such as Mitakshara, Dayabhaga, and Mayukha, each prescribing divergent rules of inheritance and family relations. The adoption of a UCC, Munshi noted, would therefore require Hindus to relinquish these entrenched distinctions and accept a new legal framework that bore little resemblance to existing practice. In this way, far from imposing Hindu norms upon others, the UCC would oblige the majority to surrender its own internal diversity in pursuit of a wider national order. Munshi deepened this claim by pointing to the Hindu Code Bill then under debate, which proposed sweeping departures from scriptural injunctions on marriage, succession, and inheritance. The majority community, he stressed, was being compelled to abandon long-cherished customs through legislative reform. In this sense, what minorities described as a tyranny of the majority was in fact a burden borne most heavily by the majority itself. The UCC, Munshi insisted, was not "an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority".¹⁰⁹ Yet Munshi did not regard this as destructive. Rather, it was constitutive – the necessary sacrifice required to forge legal unity in a plural society. As he explained, the aim was "to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular".¹¹⁰ On this reading, the UCC was less a vehicle of domination than a collective renunciation by all communities, binding the nation together under a common constitutional framework.

A particularly compelling strand of Munshi's defence of the UCC was his insistence that the continuation of community-specific personal laws was irreconcilable with the Constitution's commitment to gender equality. He acknowledged that even within the Hindu community, many shared the reservations voiced by Muslim members, regarding succession and inheritance as integral to religion and therefore immune from reform. But this, he argued, only highlighted the problem: Hindu personal law itself was riddled with provisions that systematically subordinated women. "Look at Hindu Law; you get any amount of discrimination against women", he told the Constituent Assembly.¹¹¹ If such provisions were deemed religious, then "you cannot pass a single law which would elevate the position of Hindu women to that of men".¹¹² This, he warned, would render meaningless the prohibition of sex-based discrimination already enshrined in the chapter on Fundamental Rights and now in Article 14. For Munshi, the logic of constitutional equality itself compelled the adoption of a civil code transcending religious boundaries, since only such a code could dismantle patriarchal barriers and secure women's equal

¹⁰⁹CAD 23 November 1948 (n 67) [7.58.150] (KM Munshi).

¹¹⁰*ibid* [7.58.147].

¹¹¹*ibid* [7.58.149].

¹¹²*ibid*.

citizenship. This argument presciently anticipated feminist critiques of multiculturalism, especially those advanced by Susan Moller Okin. Okin argued that group rights, when extended to cultural or religious communities, often operate to entrench patriarchal authority within those groups.¹¹³ In her view, the liberal state must be cautious in recognizing group-specific legal regimes, particularly when those regimes infringe upon the rights and freedoms of women and children. Munshi's rejection of personal law exceptionalism can be seen as an early constitutional embodiment of that critique: the demand that the state guarantees individual rights equally, regardless of group affiliation.

However, this perspective does not fully account for the specific dilemmas faced by women within those very communities. For many minority women the promise of legal reform through the UCC is fraught with ambivalence. While such reform ostensibly offers emancipation from oppressive personal laws, it can simultaneously threaten cultural identity and political autonomy. As Flavia Agnes argues, minority women often occupy a liminal space wherein they are “doubly marginalised” – subject to patriarchal norms within their communities and to homogenizing impulses of state-driven legal reform that disregard their distinct socio-cultural contexts.¹¹⁴ Agnes critiques the tendency of UCC debates to deploy a top-down model of reform, one that sidelines internal community-led feminist initiatives and heightens fears of majoritarian appropriation.¹¹⁵ Nivedita Menon similarly cautions against the rhetorical use of the “Muslim woman” as a symbol of backwardness, arguing that this trope has historically legitimized state overreach rather than enabling genuine empowerment.¹¹⁶ These feminist critiques foreground the need for a more dialogic and participatory approach to legal reform—one that recognizes both the vulnerability and the agency of minority women. In this view, gender justice cannot be advanced solely through uniformity; it must be situated within a framework of intersectional constitutionalism that respects cultural pluralism while enabling egalitarian transformation.

4.2. Filling the “little corner”: Ambedkar's legal justification for the UCC

In his final intervention on the UCC, Ambedkar advanced a pragmatic and historically grounded rebuttal to objections raised by Muslim League members. First, he challenged the claim that Muslim personal law had been a uniform and sacrosanct tradition in India. Citing regional and legislative variations, Ambedkar noted that many Muslim communities – including in the North-West Frontier Province, the United Provinces, and North Malabar – had historically followed Hindu or customary laws until the 1930s. The belated imposition of the Shariat Act in 1937 and the Dissolution of Muslim Marriages Act in 1939, he argued, revealed that personal laws were neither timeless nor divinely fixed but contingent, evolving, and often state-driven. This undercut the premise that reform would constitute religious violation. Second, Ambedkar dismissed the idea that a UCC was incompatible with India's diversity by pointing to existing uniform civil and criminal

¹¹³Susan Moller Okin, ‘Is Multiculturalism Bad for Women?’ in Joshua Cohen, Matthew Howard and Martha C Nussbaum (eds), *Is Multiculturalism Bad for Women?* (Princeton University Press 1999) 9–24.

¹¹⁴Flavia Agnes, *Family Law Volume 1: Family and the Court* (Oxford University Press 2011) 122.

¹¹⁵Flavia Agnes, ‘Muslim Women's Rights and Media Coverage’ (2016) 51(22) *Economic and Political Weekly* 13.

¹¹⁶Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black 2004) 68.

laws – such as the Indian Penal Code 1860, the Transfer of Property Act 1882, and the Code of Criminal Procedure 1898—that already governed all citizens irrespective of religion.¹¹⁷ Against this backdrop, the absence of uniformity in matters of marriage and succession appeared to Ambedkar as an anomaly – a “little corner” of the legal system yet to be harmonized. Article 35, he contended, merely sought to complete this trajectory of legal evolution, extending the reach of secular law into family relations, traditionally protected under the rubric of personal law. For Ambedkar, therefore, the UCC was not an act of coercion but a constitutional continuation of India’s legal modernization. His emphasis on the social utility of civil legislation over religious orthodoxy reflected a deep commitment to what András Sajó calls “constitutional realism” – an approach that ties constitutional reform to historical experience and institutional logic rather than to inherited sentiment or theological purity.¹¹⁸

Yet Ambedkar’s principled defence of the UCC must also be situated within his fraught relationship with the political establishment of the time. His intervention in the Constituent Assembly did not necessarily represent the collective position of the Congress Party, which remained divided on the pace and extent of personal law reform. As an independent legal thinker and Chairman of the Drafting Committee, Ambedkar frequently found himself at odds with Congress leadership, particularly when pushing for the codification of religious laws under a secular legislative framework. His support for the UCC reflected his broader commitment to social justice and civic equality, but it unfolded in an institutional context marked by Congress’ ambivalence – torn between legal modernization and appeasing conservative religious sentiments.

This tension became more visible in the early years of the Republic. Ambedkar’s resignation from the Nehru Cabinet in 1951 was prompted, in part, by the party’s reluctance to pass the comprehensive Hindu Code Bill he had championed – a legislative effort aimed at reforming Hindu personal laws relating to marriage, inheritance, and adoption.¹¹⁹ The Bill encountered strong resistance from conservative factions within the Congress and outside, leading to its dilution and delay. Ambedkar’s resignation marked a turning point in his relationship with the Congress and underscored his disillusionment with the state’s hesitancy to pursue transformative legal change. Viewed in this light, his support for the UCC during the constitutional debates was not a partisan gesture but a principled stance rooted in his broader vision of postcolonial legal modernity – anchored in codification, equality, and constitutional ethics.¹²⁰

5. Arguing for consensual constitutionalism in a multicultural society

Can legal reform in a deeply plural society claim democratic legitimacy solely by virtue of constitutional authority, or must it also be anchored in the consent of those whose normative worlds it seeks to transform? This tension between the formal power to legislate and the ethical imperative of dialogic engagement with cultural communities

¹¹⁷CAD 23 November 1948 (n 67) [7.58.161] (BR Ambedkar).

¹¹⁸András Sajó, *Constitutional Sentiments* (Yale University Press 2011) 223–25.

¹¹⁹BR Ambedkar, ‘The Hindu Code Bill’ in Vasant Mood (ed), *Dr Babasaheb Ambedkar: Writings and Speeches*, vol 14 (Part I) (Education Department, Government of Maharashtra) 789–1312.

¹²⁰Eleanor Newbiggin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge University Press 2013) 162–96.

shaped some of the Constituent Assembly's most searching deliberations. The question was not merely whether the state *could* enact a uniform civil code, but whether it *ought* to do so without the participatory assent of minority communities governed by distinct personal laws. These dilemmas animated both the Muslim League's principled resistance to the UCC and Ambedkar's more cautious, institutionally calibrated approach to its implementation. While differing in political strategy and constitutional outlook, both reflected a shared normative commitment to reform through persuasion, reciprocity, and public reasoning – an orientation best captured by the idea of *consensual constitutionalism*.

5.1. Consociational arguments by Muslim members

Despite their scepticism towards the immediate imposition of a UCC, several Muslim members of the Constituent Assembly did not reject legal reform in principle. Their concern centred not on the desirability of uniformity but on the method of its enactment – particularly the threat of coercive reform absent voluntary assent from minority communities. Hussain Imam clearly articulated this distinction, acknowledging that “uniformity of law is a desirable thing” but insisting that such reform must be preceded by social readiness, educational advancement, and inter-communal trust.¹²¹ Such process should be evolutionary rather than revolutionary, cautioned B Pocker, underscoring the importance of procedural legitimacy in a plural society.¹²² This emphasis on negotiated consent finds a compelling theoretical parallel in Arend Lijphart's model of consociational democracy, which contends that political stability in culturally segmented societies rests on proportional representation, power-sharing arrangements, mutual veto rights, and the inclusion of minorities in decision-making. Although the veto rights are formally available to all segments, in practice they function as minority safeguards, ensuring that communities cannot be compelled to accept measures that threaten their vital political or cultural interests.¹²³ In such contexts, the legitimacy of legal change does not stem from mere majoritarian authority but from consensus among culturally diverse groups. Read in this light, Naziruddin Ahmad's plea that reforms should proceed “gradually” and only “with the consent of the concerned”,¹²⁴ exemplifies an incipient articulation of this principle. For Ahmad, no community should be structurally excluded from deliberations on laws that govern their cultural or personal domains.

Other members echoed this view. B Pocker, for instance, warned that a democracy ceases to be such “if the majority rides roughshod over the rights of the minorities”,¹²⁵ articulating a fear that legal uniformity could erode democratic inclusion. His apprehensions reflect what Parekh describes as the danger of moral monopolies, where culturally dominant groups present their values as universally binding, thereby erasing the legitimacy of minority ways of life.¹²⁶ What Pocker and others resisted, therefore, was not reform per se but its unilateral imposition, which risked transforming constitutional

¹²¹CAD 23 November 1948 (n 67) [7.58.141] (Hussain Imam).

¹²²CAD 23 November 1948 (n 67) [7.58.136] (B Pocker).

¹²³Arend Lijphart, *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice* (Routledge 2008) 16–18.

¹²⁴CAD 23 November 1948 (n 67) [7.58.119] (Naziruddin Ahmad).

¹²⁵CAD 23 November 1948 (n 67) [7.58.137] (B Pocker).

¹²⁶Parekh (n 68) 85.

democracy into a vehicle for soft majoritarianism. These anxieties were also animated by a deeper normative vision—one that finds resonance in Tariq Modood’s theory of multicultural nationalism. For Modood, national cohesion is not incompatible with cultural pluralism; rather, it requires institutional arrangements that reflect the identities of all citizens.¹²⁷ In this view, legal convergence must be built on trust, not imposed before it. Imam’s emphasis on social conditions – literacy, civic maturity, and mutual respect – as prerequisites for reform finds theoretical articulation in what Modood calls “multicultural temporality” or the idea that integration precedes legal standardization.¹²⁸ In a way, the Muslim members’ arguments were not absolutist rejections of a common code. Rather, they offered a democratic counter-vision: reform as a product of inclusion, deliberation, and voluntary alignment. In contrast to a model of enforced uniformity, Muslim members advocated for a pluralist proceduralism, an approach that valued consensus as the ethical anchor of constitutional change.

5.2. Ambedkar’s ethics of incrementalism

Ambedkar’s defence of the provision on UCC embodied a distinctive logic of reform – marked not by haste or ideological rigidity, but by procedural integrity and institutional patience. While affirming the normative desirability of a UCC, he firmly resisted both its immediate enforcement and its outright rejection. Rather than treating uniformity as a legal imperative, Ambedkar advocated a calibrated, constitutional route to reform. By explaining the placement of the UCC within the Directive Principles, he clarified that legal uniformity was a constitutional ideal – aspirational in spirit but non-justiciable in form. The draft Article 35, Ambedkar declared, “merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens”.¹²⁹ This formulation underscored that such reform must evolve through democratic deliberation, grounded in social preparedness rather than coercive enactment. Ambedkar’s stance resonates with what Ran Hirschl terms “incremental constitutionalism”, a reform strategy that seeks transformative outcomes through gradual, dialogic, and adaptive processes rather than through abrupt legal mandates.¹³⁰ In Ambedkar’s vision, meaningful legal change required democratic legitimacy and sensitivity to the social complexities of a postcolonial multi-religious society. The Directive Principle, in this sense, offered a constitutional horizon for legal convergence, while maintaining public confidence in the present, especially among minority communities.

Significantly, Ambedkar drew support from India’s own legal evolution. He cited the gradual codification of Hindu law and the universal application of the Indian Penal Code as evidence that legal reform had succeeded when pursued through deliberation and prudence.¹³¹ Uniformity, in his understanding, was neither alien nor utopian – it was part of India’s constitutional trajectory, provided it unfolded through democratic

¹²⁷Tariq Modood, *Multiculturalism: A Civic Idea* (Polity Press 2007) 57.

¹²⁸*ibid* 72.

¹²⁹CAD 23 November 1948 (n 67) [7.58.166] (BR Ambedkar).

¹³⁰Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press 2014) 122–125.

¹³¹CAD 23 November 1948 (n 67) [7.58.161] (BR Ambedkar).

negotiation. He also resisted any essentialist notion of personal law. As Ambedkar had earlier argued, Muslim personal law was not static; its scope had already been shaped by legislative acts such as the Muslim Personal Law (Shariat) Application Act 1937. His concern was not to protect personal laws from change, but to ensure that their reform was democratically grounded and procedurally legitimate.

In this respect, Ambedkar charted a middle path between two polarities: the absolutist defence of legal pluralism and the majoritarian impulse to homogenize. He framed the UCC as a constitutional ideal—one to be gradually realized through persuasion, public reasoning, and institutional maturity, rather than through top-down imposition. This constitutional ethic finds a contemporary parallel in Rajeev Bhargava's conception of Indian secularism as "principled distance", where the state neither completely withdraws from nor uniformly regulates religion but engages with it through context-sensitive and justice-oriented principles.¹³² Ambedkar's approach to the UCC thus did not seek to resolve pluralism but to manage its tensions ethically. He envisioned a framework for legal transformation that balanced equality with autonomy, and institutional authority with democratic consent – a vision that remains central to the constitutional project of a diverse republic.

Following the debate, when the amendments to draft Article 35—introduced by several Muslim members seeking to protect the autonomy of personal laws – were put to a vote in the Constituent Assembly, Ambedkar unequivocally rejected them, describing the objections as lacking "substance".¹³³ With the exception of the dissenting Muslim representatives, the vast majority of the Constituent Assembly endorsed Ambedkar's position, signalling a broad constitutional consensus. As a result, the Constituent Assembly adopted draft Article 35 in its original form, without incorporating any of the proposed amendments. This provision was later codified as Article 44 of the Constitution of India, enshrining the directive that the state shall endeavour to secure for its citizens a uniform civil code.

6. Conclusion: reimagining civil code reform through constitutional wisdom

The Constituent Assembly debates on the UCC offer a remarkably prescient preview of the tensions that continue to shape personal law reform in contemporary India. Rather than a binary conflict between majoritarian uniformity and minority protection, the framers envisioned a more nuanced constitutional strategy—one that balanced the imperatives of legal modernization with the principles of pluralism, democratic inclusion, and institutional restraint. By locating the UCC within the Directive Principles of State Policy, the Constituent Assembly embraced constitutional gradualism: a recognition that civil code reform was a long-term aspiration to be pursued through persuasion and evolving consensus, rather than an immediate or enforceable mandate.

The arguments advanced by KM Munshi, Alladi Krishnaswami Ayyar, and BR Ambedkar – grounded in ideals of gender justice, legal rationality, and civic equality – reflected a transformative vision of law's potential to reorder social relations. Yet these aspirations were counterbalanced by the powerful warnings of Muslim League members

¹³²Bhargava (n 83) 12.

¹³³CAD 23 November 1948 (n 67) [7.58.166] (BR Ambedkar).

such as Mahboob Ali Baig and Naziruddin Ahmad, who cautioned against coercive assimilation and insisted on the necessity of securing community consent. Ahmad's challenge – why not first remove gender discrimination within existing personal laws before imposing a common code – remains acutely relevant today. Munshi's and Ambedkar's arguments, meanwhile, continue to echo in constitutional jurisprudence, from *Mohd Ahmed Khan v Shah Bano Begum*¹³⁴ to *Shayara Bano v Union of India*,¹³⁵ and now resonate in the current debates under the Modi government's push for a nationwide UCC.

Despite their deep ideological differences, both proponents and critics of the UCC anchored their positions within the framework of constitutional justice and democratic negotiation. Their deliberations offer enduring lessons: that reform in a multicultural polity must be guided by procedural inclusion, negotiated consensus, and recognition of India's deep-seated legal and cultural diversity. Most importantly, they underscore that personal law reform cannot rest on majoritarian will alone; it must be legitimized through a broader ethos of participatory constitutionalism.

As India confronts the UCC question once again in the 21st century, it is imperative to revisit these foundational insights. The Uttarakhand Act – while framed as a progressive intervention – exemplifies the risk that civil code reform may devolve into a project of Hindu majoritarian consolidation. When reform targets specific religious practices while exempting others, it departs from the constitutional promise of equality and pluralism and risks recasting secularism as a tool for cultural homogenization. This moment thus marks not merely a policy shift but also a deeper test of India's secular democratic fabric.

What is needed is a renewed constitutional imagination—one that treats the UCC not as an instrument of uniformity but as part of a broader project of ethical and inclusive reform. Such reform must remain attentive to the lived realities of women within minority communities, whose experiences often lie at the intersection of patriarchal control and communal marginalization.¹³⁶ As feminist legal scholars have argued, the pursuit of gender justice cannot proceed by dissolving cultural specificity in the name of equality, nor by reinforcing community patriarchy in the name of autonomy.¹³⁷ A pluralist constitutionalism requires democratic dialogue, institutional trust, and sustained engagement with intersecting forms of subordination. Only by returning to the framers' method – grounded in incrementalism, cultural sensitivity, and deliberative constitutionalism – can the promise of Article 44 be realized in a manner that affirms both the spirit of the Constitution and the plural ethos of the Indian Republic.

Disclosure statement

No potential conflict of interest was reported by the author(s).

¹³⁴ *Mohd Ahmed Khan v Shah Bano Begum* 1985 AIR 945.

¹³⁵ *Shayara Bano v Union of India* AIR 2018 SC (CIVIL) 1169.

¹³⁶ Flavia Agnes, 'From *Shah Bano* to *Kausar Bano*: Contextualizing the 'Muslim Woman' within a Communalized Polity' in Ania Loomba and Ritty Lukose (eds), *South Asian Feminisms* (Duke University Press 2012) 33–54.

¹³⁷ Menon (n 116); and Ratna Kapur, 'On Gender, Alterity and Human Rights' [2019] 122 *Feminist Review* 167.