



SECULARISM AND GENDER JUSTICE: A CRITICAL ANALYSIS OF UTTARAKHAND'S UNIFORM CIVIL CODE

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Abstract

Indian secularism is concerned with establishing a balanced relationship between the state, religion, and the individual. This triadic relationship aims to prevent religious dominance through discriminatory rules and ensures equality not only among different religious groups but also within each community. At the same time, it seeks to balance religious freedom with individual liberty. This paper analyses a 'double-layer equality' model that combines two forms of religious equality. The first is the inter-religious model of equality, and the second is the intra-religious model of equality. Indian secularism cannot be fully understood only as equality among religions; it must also be seen as equality within religions. The study uses conceptual analysis and applies the double-layer equality framework to examine the Uniform Civil Code (UCC) in Uttarakhand. The UCC also balances religion and community, as well as religion and individuals, while promoting gender equality. Uttarakhand provides an example of how a secular state can use law to bridge the gap between constitutional ideals and social realities. The analysis shows how the Indian secularist state actively supports both individuals and communities through the principle of "principled distance".

Keywords: Indian Secularism, Inter-Religious Equality, Intra-Religious Equality, Uniform Civil Code (UCC), Gender Justice

Introduction

The tension between individual rights and particular community rights remains a focused dilemma for liberal democracies, especially in pluralistic societies. In the Indian context, the complexity interplay between gender equality, secularism and personal law presents a persistent constitutional challenge. The state of Uttarakhand in India has addressed the questions of gender equality and secularism through the implementation of the Uniform Civil Code (UCC). The focus is on how the double-layer religious equality model works within Indian Secularism. Here, "Double-layer equality" refers to the state providing two types of equality within a single framework. Uttarakhand's Uniform Civil Code (UCC)² aims to ensure equality among religions, reflecting inter-religious equality, and to eliminate inequalities within religions, particularly those based on gender, thereby promoting intra-religious equality³. "In philosophical terms, 'Sarva Dharma Sambhav'⁴ represents Inter-religious equality, yet a similar philosophical term for intra-religious equality is still lacking. This demonstrates that equality within religions has received limited attention; that's why the state has intervened through civil law. The model of "double-layer religious equality" aims to resolve this concern by promoting equality both across religions and within each religion. Therefore, this study introduces the role of gender equality⁵ through public law (Uniform Civil Code), which focuses on double-layer religious equality. **This approach addresses the practical reality where different communities follow different personal laws, but when these laws conflict with gender equality, especially in relation to women's rights, serious challenges emerge.** The UCC enhances individual liberty while also respecting collective rights, reflecting the state's active role in

promoting gender justice. Religion and women's rights are often treated as matters of private community life, leading to resistance against state intervention. Women across communities may face similar struggles, yet within their own communities, they often remain unequal to men.

This paper deals with the secular state's use of law as an instrument to balance individual freedom with social harmony. This situation raises a central research question that this paper will address: "What should be the hierarchy between constitutional rights of the individual and cultural rights of the community when both are protected under the Constitution?" This paper argues that Uttarakhand's Uniform Civil Code represents a pragmatic attempt by the state to navigate this hierarchy. The UCC represents precisely this kind of active state role⁶ in promoting gender justice. The paper is divided into three parts. The first part aims to explain the relationship between the state, law and Uniform Civil Code (UCC). The second part analyses how secularization is promoted by the state through Uniform Civil Code while ensuring Inter-religious equality and Intra-religious equality. The third part examines the Uniform Civil Code and feminist progressive interventions that support gender equality, along with social harmony. A closer analysis reveals that the UCC attempts to maintain a balance between religion, the individual and the state. Rather than creating conflict, it reflects the idea of "principled distance." At the same time, the state's approach to secularism often brings gender equality into tension with religion.

1. Modern State, Law and Uniform Civil Code -

The state is a political community that creates and enforces the social order known as law. The legal character of the community called the state is particularly manifest when the state is considered in the realities which usually are assumed to exist among the community as a political body of law⁷. Law is a social order that regulates the mutual behaviour of human beings and institutions, a phenomenon with distinct characteristics crucial for a rational understanding. Through a logical decision-making process, the state then grants equal rights to every community, allowing everyone to utilize their rights for development. In other words, the law defines truth and justice and both depend on each other. The existence of law is possible only when a fact is based on truth; through this factual truth, authority can make a rational decision. For instance, if any decision is taken according to law, the first step is to establish the truth in that contextual situation, after which one can determine the logical decision according to the situation. Therefore, the law should change with time, situation, and context. As time changes, citizens' demands also change; that is why the dimensions of law can also change according to citizens' demands. Thus, the procedural form of law is justice and laws are the legal form of logic and common sense. This is used by the sovereign authority to impose restrictions on institutions and citizens. When studying the state's role in Indian society, one finds that social divisions exist based on caste, religion and sex. These inequalities affect each other, but when one increases more than the others, it creates a foundation for social division. At such times, the state balances these inequalities through law and justice. Thus, the modern state also plays a mediator role in balancing equal rights within the socio-political landscape. Furthermore, the focus is on the state's role in Indian society through the law known as the Uniform Civil Code, mentioned in Article 44 of the Constitution. Through this lens, an analysis can be conducted of Uttarakhand's Uniform Civil Code in the present context, implemented by the state on January 27, 2025.

In the Indian Constitution, Part-IV, the Directive Principles of State Policy, Article 44 is about the Uniform Civil Code, which is important for both social reform and political needs. This article explains that "The State shall endeavour to secure a Uniform Civil Code for the citizens throughout India." This deals with matters such as marriage, divorce, inheritance, adoption and succession. The DPSP is not enforceable by the state; however, according to time and context, the State can enact it through law. This legal provision is not just a directive but also a tool for socio-political reform. Here, social reform is especially related to the process of achieving gender equality, religious equality and removing caste-based discrimination, which helps in creating a balanced society. At the same time, the political need is to provide democratic and equal rights to every community. Therefore, the Uniform Civil Code is necessary not only for gender justice but also for fulfilling political needs in a democratic society. This analysis will also seek to explain how the State can ensure "double-layered religious equality" through the Uniform Civil Code, as mentioned in Article 44 of the Indian Constitution. **This concept involves two levels: first, ensuring**

equality between different religious communities by placing them under a common law, and second, promoting equality within religious communities, particularly by addressing gender-based inequalities in personal laws⁸.

2. Uniform Civil Code, Secularism and Double-layer religious equality-

Indian secularism is designed as a double-layer equality model, ensuring both inter-religious and intra-religious justice. The state does not follow a neutral policy but it interferes in religious matters based on citizens' equality, freedom, justice and other democratic values. In this context, the implementation of Article 44 by the Uttarakhand government serves as a case study for the Indian state's promotion of a double-layered model of religious equality.

Firstly, in examining this provision within the context of inter-religious equality, it is evident that this framework proposes a uniform legal standard. **This standard is proposed by the same marriage documentation process, equal divorce process and equal inheritance and succession rights for all citizens, irrespective of religious affiliation. Moreover, it adds a new clause regulating live-in relationships, applying this provision universally regardless of community, caste and gender.** For instance, two individuals who belong to different religions or castes want to get married, they can follow these processes and legalize inter-caste and inter-religion/faith marriages. Communities cannot ban such marriages through their customary laws. But at the same time, it provides equality and freedom to follow their own cultural ceremonies like Anand Karaj, Saptadi, Nuisin, Mangal Phere, Nikah, Paktone, etc⁹. Enacting these laws, it enhances the secularization process in a multicultural society. However, minority people argue that it is a process of "Hinduization" because most of the provisions are taken from the Hindu Code Bill, 1955¹⁰. On the other hand, the majority of people argue that in reality, only those laws that promote equality over personal laws are taken from the Hindu Code Bill, 1955. For instance, in the Sarala Mudgal Case, her husband changed his religion from Hindu to Muslim because Muslim personal law permits keeping 3-4 wives.¹¹ That's why in this case compulsory registration is required according to time and context which is also mentioned in Hindu Code Bill, 1955. Such as cases create public disorder and immoral values. Consequently, the state restricts this practice through compulsory registration under the Uniform Civil Law. Thus, it reflects that state ensures only democratic just values not the bias of majority rule which demonstrates the essential practice of religion.

In this series, two examples show it isn't a "Hinduization" process but a "secularisation"¹² process. For example, the provision for live-in relationships (Chapter 5) is a new addition according to the modern context, representing a process of 'secularisation'. For addressing such issues, the Uttarakhand Uniform Civil Code provides a common law for everyone regardless of their community. The second one is **that** tribal communities are exempt from this rule. This demonstrates the inclusivity of the law or modernization process in Indian terms and conditions. Although tribal communities already follow their own rules and regulations, the reason they are excluded from the Uniform Civil Code is rooted in their unique constitutional status. In the Constitution of the 1950s, the status of STs is religion-neutral because all tribal communities are included regardless of their religion; **in essence**, tribals are already uniform. This is also because of the constitutional protection enjoyed by Scheduled Tribes under the Fifth and Sixth Schedules of the Constitution, **which stipulates that** laws relating to the customs and practices of ST communities cannot be made applicable to them without the approval of the state's Governor¹³. This means they are not bound by religion and are free from inequalities. **This principle is further illustrated by** the example in the case of "Madhukishwar vs State of Bihar". Thus, it demonstrates inter-religious equality which reduces societal complexity and the administration can easily govern every community. **This inter-religious equality, however, is only sustainable if it is built upon a foundation of intra-religious equity.**

The second dimension of religious equality focuses on intra-religious equity, specifically challenging gender-based inequalities codified in religious personal laws. **The Uttarakhand Uniform Civil Code maintains intra-religious equality via the following provisions-**

- 1) **Marriage Section and Divorce-** The Uttarakhand bill proposed monogamy and registration of marriages. (Mentioned provisions) It gave equal grounds for divorce to both compulsory men and

women and introduced a uniform divorce system. It banned the Triple Talaq system in the Shayara Bano Case and also banned the discriminatory Halala process.

- 2) **Equal Maintenance Rights**- These rights were provided for women, children and old people to ensure their financial support. (mentioned provisions) Through this law, women of every community can claim equal maintenance under CrPC 125. Even a female can claim their maintenance rights who was in live-in relationship.
- 3) **Inheritance Provision**-It abolished the coparcenary system and gave equal inheritance rights to daughters and also allowed widows to inherit property.
- 4) **Adoption and Guardianship**- Women, including widows, were given the right to adopt children, and equality in guardianship was ensured. Here “parents” means both mother and father, which
- 5) **Live-in Relationships**- Chapter 5 of this Civil Code gave legal protection to couples who are not married by ceremony but live together under one roof. They can register their relationship under clause 2 whether they are living in Uttarakhand or outside. This applies if both are citizens of Uttarakhand or if even one partner belongs to Uttarakhand. Under clause 10, the child born from such a relationship or adopted by such couples will be treated as a legitimate child.

Thus, Intra-religious equality enhances the secularization process which is a modern approach.

3. Uniform Civil Code and Feminist Interpretations-

Secularism is a relation between the state and religion which is a phenomenon of the late 20th century, a child of the Renaissance period. But in a modern time, a new phenomenon emerged as a form of secularisation process. This paper’s central question is whether the Indian Constitution prioritizes religious freedom or individual liberty and how this shapes equality within religious communities. By examining discrimination against women within communities, the study assesses whether the gaps between constitutional ideals (secularism) and social realities are being filled through the Uniform Civil Code. For instance, in India, while Articles 14, 15 and 25 grant individual rights, Articles 29 and 30 recognize group rights. This raises the question: how can we prefer individual liberty with reference to community freedom in religious matters? According to the Indian Constitution’s philosophy Article 25, any religion must follow only the essential part of religious practice and maintain secularist nature. It can prefer liberty over equality when these laws maintain public order, morality and health, which are the features of a Defensive Democracy¹⁴. Here, Defensive Democracy means that democracy defends itself based on democratic values like equality, liberty and justice.

Like in Shayara Bano¹⁵ (2017) case, her husband followed talaq-e-biddat or triple talaq which is not an essential practice of Muslim law. According to the Quran, talaq should be pronounced at three different times, not in one instance, triple talaq. The contention of the petitioner was that this type of divorce violates fundamental rights and such practices are not protected under Articles 25(1), 26(b) and 29 of the Constitution. The Supreme Court declared that the practice of triple talaq was unconstitutional. This practice was arbitrary and against the basic practices of Shariat as well as the basic tenets of the Quran. Thus, it cannot be protected under the fundamental rights. Justice Kurian Joseph said that “what is bad in the Quran cannot be good in Shariat and what is bad in theology is bad in law as well.”¹⁶ Some feminist thinkers like Neera Chandoke and Nivedita Menon interpret that individual liberty is more important than community liberty, so that we can develop our thoughts and thinking freely. When a human being is free in the personal decision-making process, then a community will develop. How can we imagine a tree before the seed process? Like this, personal thinking and liberty are a seed for community development.

Therefore, the state often seeks to adopt a **homogeneous society** because it enhances individual liberty rather than community development. Also, it simplifies governance and the application of rules, a process like **secularisation**. Here, the process of secularisation is crucial to differentiate this from **secularism**; the first one is the relation between state and religion known as secularism but secularisation is a modern approach which deals with non-essential practice of religious laws for development. Here, the state’s objective is not to eliminate religion but to refrain from interfering in religious life. This principle stems from a view that human existence comprises two distinct aspects: the **material life** and the **spiritual**

life¹⁷. The **material life**, which encompasses civil and social affairs, is governed by the state. Consequently, the state can interfere in these issues to maintain order and equality. In contrast, the **spiritual life** is a matter of personal liberty and belief, which is why the state does not interfere in this realm. A clear example of this distinction is found in the Uttarakhand civil code's marriage provisions, which operate on two levels. First, individuals may marry through their own **sacred ceremony**, a spiritual activity entirely outside state jurisdiction. Second, they must **register their marriage** with the state, an act that belongs to the material and legal sphere of life. Thus, it can be argued that the state interferes only in **material life**, a focus that does not violate the secular state model. This allows the state to play an active role in promoting **intra-religious equality**, for instance, by ensuring uniform rights for all individuals within a religious community, because it addresses the material subjects of life, not the spiritual ones.

Feminist thinkers support Uttarakhand's Uniform Civil Code for the reasons given above but this code has new challenges regarding to live-in relationships. Feminists argue that this code has codified a relationship that is not recognized by society but this is required according to the times. These types of relationships have no responsibility to society but if two people are mature, then they can live with together. In the future, they want to separate from each other. At that time, what is the standard of separation if a woman has a child or any other dependents, or a financial problem related to that relationship? For this reason, the state supports women and claims maintenance legally through the Uttarakhand Uniform Civil Code. This provision empowers women on a personal level. But the other hand, it is opposed by conservative people. It affects our privacy because, according to Uttarakhand's Uniform Civil Code, people must register their relationship on the Uniform Civil Code portal. If they don't want to disclose their relationship because it can affect their career and future. In India, this is not an acceptable relationship because in women's matters Indian males regulate females' every stage of life. It is therefore called a "Masculinist Protection," a phrase coined by Iris Merium Young¹⁸. Supporting this idea, the Rajasthan High Court has called live-in relationships a Western idea which India is "slowly opening its door to". The irony is that the court stated this in response to a couple coming to it seeking police protection, fearing a threat to their life and liberty. Advocate Grover also contended that while the law is being portrayed as a measure to protect women's rights, a closer analysis suggests that it may instead escalate harassment and violence against women and couples who defy majoritarian norms, according to Bar & Bench.

Conclusion

The analysis of the Uttarakhand Uniform Civil Code presents an inclusive law viewpoint because the Uttarakhand Civil Law is a superset and uniform law is a subset, limited to reform in personal law. It is not bound by personal law; it provides comprehensive responsibility¹⁹. Uniform Civil Law is described in Article 44 of the Indian Constitution which is a legal and moral document. The Uniform Civil Code provides equal citizenship but Uttarakhand's UCC establishes an equal civil law system. Thus, an Inclusive Civil Code includes and respects the diverse identities, communities and marginalized groups in society. Therefore, it can be claimed that this pluralistic legal approach initially aimed to preserve the religious culture of India's populace. However, in modern times, these complexities and the lack of a uniform standard for equality have negatively affected women's rights and freedoms. Personal laws are often gender-biased, limiting women's equality and freedom.

Almost all religions' personal laws create gender inequality within communities, despite the Indian Constitution granting the right to equality (Article 14). Personal laws reflect three major issues: patriarchy in law & customs, limited scope for women's freedom and a lack of emphasis on equality. Over the years, the evolution of these laws has raised socio-political issues, particularly concerning inequalities and the need for modernization within personal laws. This has led to calls for a Uniform Civil Code (UCC) designed to standardize personal laws across caste, class, gender, religion and region. The issue of gender inequality remains a pressing concern within personal laws in Indian society.

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