



Implementation of the Uniform Civil Code in Assam and its legal impact: A constitutional and contemporary study

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Abstract

The Uniform Civil Code occupies a central yet unresolved place in Indian constitutional discourse. Envisioned under Article 44 as a Directive Principle of State Policy, it seeks to replace religion-based personal laws governing marriage, divorce, inheritance, and adoption with a single body of civil law applicable to all citizens. This study examines the legal and constitutional implications of implementing such a Code in Assam, a State distinguished by a large religious-minority population, extensive tribal protections under the Sixth Schedule, and numerous indigenous communities governed by customary law. Drawing on constitutional provisions, judicial precedent, and comparison with Goa and Uttarakhand, the paper concludes that while the constitutional aspiration is legitimate, implementation in Assam demands a phased, consultative, and constitutionally sensitive approach that respects tribal autonomy and minority rights while advancing gender justice.

Keywords: Uniform Civil Code, Article 44, personal laws, Sixth Schedule, Assam, tribal customary law, gender justice, secularism, federalism

Introduction

Every civilised legal system regulates the family relations of its members through rules governing marriage, divorce, succession, and guardianship. In India, these matters are governed not by a single law but by a plurality of personal laws derived from religion and custom. The Uniform Civil Code represents the aspiration to replace this plurality with a common body of civil law applicable to all citizens regardless of faith.

Article 44 of the Constitution directs that the State shall endeavour to secure a uniform civil code throughout the territory of India. Placed within the non-justiciable Directive Principles, it reflects a deliberate compromise reached by the framers, who recognised that uniformity in personal law required social preparation and democratic consensus. The question has acquired renewed urgency following Uttarakhand's enactment of a state Uniform Civil Code in 2024 and the reconstitution of the Law Commission to re-examine the subject. Assam, with its exceptional demographic and legal diversity, presents one of the most complex settings in which this question can be asked.

Area of the Study

The present research falls within the field of Constitutional Law, with particular reference to the interaction between Fundamental Rights, Directive Principles, and personal laws. The study focuses on the Uniform Civil Code as contemplated under Article 44 and its proposed application to the State of Assam. It examines the constitutional framework, the structure of personal laws operating in the State, and the legal and social consequences of legal uniformity. The research extends to contemporary developments, including the Uttarakhand Uniform Civil Code, 2024 and recent reform initiatives in Assam touching upon personal law.

Objectives of the Study

The primary objectives of the study are:

- To examine the meaning, origin, and constitutional basis of the Uniform Civil Code.
- To analyse the personal laws presently operating in Assam, including tribal customary law.
- To evaluate the judicial perspective on the Uniform Civil Code through leading decisions.
- To assess the constitutional, administrative, and social challenges to implementation in Assam.
- To compare Assam's position with Goa and Uttarakhand.
- To suggest a balanced framework for reform consistent with constitutional values.

Research Methodology

1. Nature of Research

The research is doctrinal, qualitative, and analytical. It relies primarily on the interpretation of constitutional provisions, statutes, and judicial decisions relating to personal law and the Uniform Civil Code.

2. Sources of Data

Primary sources include the Constitution of India, statutory provisions governing personal law, and decisions of the Supreme Court of India. Secondary sources include books, journal articles, Law Commission reports, and reputable legal commentaries.

3. Method of Analysis

The materials have been examined using descriptive, analytical, and comparative methods. Competing constitutional values and divergent community interests have been critically assessed to determine the feasibility and desirability of a Uniform Civil Code in Assam.

Review of Literature

The Uniform Civil Code has attracted sustained scholarly attention. Dr. B.R. Ambedkar, during the Constituent Assembly debates, defended the inclusion of Article 44 as

an instrument of national integration while acknowledging that its realisation would require time and consensus. Archana Parashar, in her study of family law reform, argued that personal laws have historically subordinated women's rights to community identity, and that genuine reform must place gender justice at its centre. Tahir Mahmood, surveying the operation of Islamic law in Indian courts, emphasised the need for internal reform of Muslim personal law rather than its wholesale replacement.

Flavia Agnes has cautioned that a Uniform Civil Code framed around majoritarian assumptions may worsen rather than improve the position of minority women. Virginius Xaxa, writing on tribal society, has stressed that reform of tribal custom must emanate from within the community and not be externally imposed. While this body of literature is rich, comparatively little of it engages specifically with Assam's distinctive constitutional position under the Sixth Schedule, which the present study seeks to address.

Research Gap

Existing literature has examined the Uniform Civil Code largely at the national level, focusing on the tension between religious freedom and gender equality. Limited scholarly attention has been given to the specific constitutional complications that arise in States with Sixth Schedule areas and significant tribal and minority populations. Most studies treat the question either through the lens of Muslim personal law or through general constitutional theory, without integrating the distinctive position of tribal customary law protected under the Constitution. The present research seeks to bridge this gap by analysing the Uniform Civil Code through the particular constitutional, demographic, and political realities of Assam.

Constitutional Framework

The constitutional debate on the Uniform Civil Code arises from the tension between equality and religious freedom. Article 14 guarantees equality before the law, and critics of the present system argue that subjecting citizens to different personal laws solely on the basis of religion is inconsistent with equal treatment. Article 15 prohibits discrimination on grounds of religion and sex, while Article 21, as interpreted by the Supreme Court, protects the right to live with dignity. These guarantees coexist with the religious freedom protected by Articles 25 and 26. Article 25(1) protects the freedom to practise religion, but Article 25(2) expressly permits the State to regulate secular activity associated with religion and to provide for social welfare and reform. Courts have distinguished essential religious practices, which are protected, from customary practices, which are not, holding that polygamy is not an essential religious practice of Islam in India. Articles 29 and 30 further safeguard the cultural rights of minorities and indigenous communities.

On legislative competence, personal law falls under Entry 5 of the Concurrent List, enabling both Parliament and State Legislatures to legislate. The Sixth Schedule, however, empowers the Autonomous District Councils of tribal areas to make laws on marriage, divorce, inheritance, and social customs, and Paragraph 21 of that Schedule gives it overriding effect. This provision is the central constitutional constraint upon any Uniform Civil Code applicable in Assam.

Personal Laws in Assam

Assam's demographic composition is exceptional. According to the 2011 Census, Muslims constitute

approximately one-third of the population, while Scheduled Tribes account for roughly twelve per cent, distributed across more than thirty recognised communities. Each group is governed by a distinct personal law regime.

1. Hindu Personal Law

Hindus are governed by the codified Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, the latter amended in 2005 to grant daughters equal coparcenary rights. Because this body of law is already substantially codified and gender-reformed, a Uniform Civil Code would affect the Hindu population comparatively little.

2. Muslim Personal Law

Muslims are governed by the Muslim Personal Law (Shariat) Application Act, 1937 and the Dissolution of Muslim Marriages Act, 1939. The principal areas of friction with a Uniform Civil Code concern polygamy, the method of divorce, the unequal inheritance shares of daughters, and the institution of mehr. The practice of instantaneous triple talaq has already been invalidated judicially and legislatively.

3. Christian and Other Laws

Christians are governed by the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869, as amended in 2001. These statutes are already largely secular in operation, and the impact of a Uniform Civil Code would be moderate, affecting mainly divorce and adoption procedures.

4. Tribal Customary Law

The most complex dimension is tribal customary law. Three Sixth Schedule areas exist in Assam: the Bodoland Territorial Council, the Karbi Anglong Autonomous Council, and the Dima Hasao Autonomous District Council. Bodo, Karbi, Dimasa, Mising, and Rabha communities follow customary rules in which marriages are solemnised through community ritual, divorce is settled by village bodies, and inheritance is broadly patrilineal. Many such practices, though culturally rooted, disadvantage women — a tension any genuine reform must address without erasing community identity.

Judicial Perspective

The Supreme Court has addressed the Uniform Civil Code repeatedly. In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)^[6], the Court held that a divorced Muslim woman was entitled to maintenance under Section 125 of the Code of Criminal Procedure and, in obiter, urged Parliament to enact a Uniform Civil Code. The decision provoked a political reaction leading to the Muslim Women (Protection of Rights on Divorce) Act, 1986, later qualified in *Daniah Latifi v. Union of India* (2001).

In *Sarla Mudgal v. Union of India* (1995)^[11], the Court held that conversion to Islam for the purpose of contracting a second marriage did not dissolve the first marriage, and again pressed for the enactment of a Uniform Civil Code. In *John Vallamattom v. Union of India* (2003)^[8], the Court struck down a discriminatory succession provision and reiterated the unfulfilled directive of Article 44.

In *Shayara Bano v. Union of India* (2017), a Constitution Bench declared instantaneous triple talaq unconstitutional, affirming that personal law practices causing manifest injustice to women cannot be shielded by claims of religious

freedom. In *Jose Paulo Coutinho v. Maria Luiza Pereira* (2019)^[9], the Court praised Goa's civil code as a working model. For Assam, *Madhu Kishwar v. State of Bihar* (1996) is especially relevant, holding that tribal customs denying women inheritance cannot be applied so as to defeat their constitutional rights.

Comparative Perspective

Goa is the only Indian state with a functioning uniform civil code, the Portuguese Civil Code of 1867, which applies to all residents regardless of religion and demonstrates that a diverse population can coexist under uniform civil law. Uttarakhand's Uniform Civil Code, 2024, the first freshly enacted state code, establishes common rules on marriage, divorce, and succession but significantly exempts Scheduled Tribes, acknowledging that constitutional constraints preclude complete uniformity. This tribal-exemption model is the most directly relevant precedent for Assam, where the Sixth Schedule areas enjoy even stronger constitutional protection. Internationally, France enforces a uniform secular code, Turkey adopted a Swiss-modelled code in 1926, and Indonesia operates a dual-track system combining a common marriage law with religious solemnisation — the last offering a particularly instructive middle path.

Legal and Social Impact

The strongest argument for a Uniform Civil Code in Assam is gender justice. A code mandating monogamy, equal inheritance, and equivalent maintenance would substantially strengthen the legal position of women across communities. Yet legal reform alone is insufficient: the limited rural impact of the 2005 amendment to the Hindu Succession Act shows that formal entitlements become effective rights only when accompanied by access to courts, economic independence, and social support.

Against this stand minority and tribal concerns. A Uniform Civil Code framed around majoritarian assumptions would offend the very constitutional equality it claims to serve. The Sixth Schedule reflects a deliberate constitutional choice to protect tribal autonomy, and overriding customary law without consultation risks both constitutional invalidity and social disruption. Given Assam's history of ethnic agitation, legal homogenisation imposed without consensus is more likely to deepen divisions than to advance the national integration that Article 44 envisages.

Challenges and Recommendations

The principal constitutional challenge is the Sixth Schedule, which requires either a formal exemption for Autonomous Council areas or their voluntary adoption of the Code with the Governor's assent. Administrative challenges include Assam's incomplete civil-registration system and its overburdened family courts. Politically, the experience of the Shah Bano controversy demonstrates that reform of personal law can be explosive, and organised tribal opposition adds a further dimension.

Accordingly, this study recommends a consultation-first process engaging Autonomous Council representatives, minority and tribal bodies, and women's organisations; a phased approach beginning with areas of consensus such as compulsory marriage registration, prohibition of child marriage, and equal inheritance for daughters; a constitutionally mandated carve-out for Sixth Schedule areas with a voluntary adoption mechanism; sustained

investment in civil-registration infrastructure; and gender-neutral drafting that constitutes a genuinely fresh codification rather than a renaming of any single community's law.

Findings of the Study

The present study arrives at the following findings:

- Article 44 expresses a legitimate constitutional aspiration but is deliberately non-justiciable.
- The Sixth Schedule is the central legal constraint on a Uniform Civil Code in Assam.
- A Uniform Civil Code could advance gender justice, but formal reform alone is insufficient.
- Minority and tribal communities have constitutionally grounded concerns that must be respected.
- Goa and Uttarakhand show that state-level codes are feasible, with tribal exemption as a necessary feature.
- A phased, consultative, and constitutionally sensitive approach is most appropriate for Assam.

Conclusion

The implementation of a Uniform Civil Code in Assam is neither constitutionally impossible nor straightforwardly desirable. Parliament possesses the legislative competence, and the Supreme Court has repeatedly affirmed the aspiration underlying Article 44. Yet the Sixth Schedule and the religious-freedom and minority-rights provisions of the Constitution impose genuine limits on what such a Code may legitimately achieve. The case for gender justice is strong but depends upon enforcement and social support beyond the text of any statute, while the case for caution rests upon constitutionally protected claims to cultural and customary autonomy.

The framers placed the Uniform Civil Code among the Directive Principles precisely because its realisation demands consensus, preparation, and time. For Assam, the appropriate path lies not in uncritical uniformity nor in the indefinite preservation of an unjust status quo, but in a principled, phased, and consultative process of civil law reform that honours both the constitutional commitment to equality and the constitutional protection of diversity. The aspiration must be preserved; the approach must be patient and constitutionally honest.

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