

Judicial Activism and the Uniform Civil Code: A Study of Supreme Court Judgments from Shah Bano to Shayara Bano

Madhav Sharan Pathak
Assistant Professor, Department of Law
Shri Krishna University, Chhatarpur (M.P.)

ABSTRACT

The Uniform Civil Code has remained one of the most debated constitutional issues in India. While the legislature has shown hesitation in implementing Article 44, the judiciary has taken a proactive role through landmark judgments that highlight the need for uniformity, gender justice, and secularism in personal laws. This research paper analyses the trajectory of judicial activism in India by examining key Supreme Court judgments from *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) to *Shayara Bano v. Union of India* (2017). It evaluates how the judiciary has shaped the discourse on Uniform Civil Code and promoted reforms in personal laws despite legislative inaction.

KEYWORD

Supreme Court, Uniform Civil Code, Article, Judicial Activism etc.

INTRODUCTION

The Uniform Civil Code, envisioned under Article 44 of the Constitution, aims to replace diverse personal laws with a single civil code for all citizens. While the Constitution directs the State to implement Uniform Civil Code, it remains a matter of political and social sensitivity. In this context, the judiciary has emerged as a significant driver of reform by interpreting personal laws through the lens of constitutional principles such as equality (Article 14), non-discrimination (Article 15), right to life (Article 21), and gender justice. Judicial activism has played a pivotal role in reviving the Uniform Civil Code debate and shaping public policy.

Objectives of the Study

1. To examine the role of the Supreme Court in advancing the idea of Uniform Civil Code.
2. To analyze major Supreme Court judgments from *Shah Bano* (1985) to *Shayara Bano* (2017).
3. To study how judicial activism has contributed to reforms in personal laws.
4. To assess the constitutional implications of judicial pronouncements related to Uniform Civil Code.

Research Methodology

This paper follows a **doctrinal research method**, relying on:

- a) Supreme Court judgments
- b) Constitutional provisions
- c) Law Commission reports
- d) Journal articles and commentaries
- e) Secondary sources (books, academic reports, newspapers)

Constitutional Basis of Uniform Civil Code

- a. **Article 44:** The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.
- b. **Article 14:** Right to equality - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- c. **Article 25:** Freedom of conscience and free profession, practice and propagation of religion.
- d. **Article 13:** The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

Judicial activism operates by interpreting whether personal laws violate fundamental rights and advocating for reform.

Landmark Supreme Court Judgments

- a) **Mohd. Ahmed Khan v. Shah Bano Begum (1985):**-This case is the most important turning point in the UCC debate. The issue involved maintenance under Section 125 Criminal Procedure Code 1973 for a divorced Muslim woman. Supreme Court held that *maintenance is a secular right* applicable to all women irrespective of religion. Justice Y.V. Chandra chud observed that **a Uniform Civil Code would help promote national integration**. The judgment was progressive but triggered political backlash, leading to the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986.
- b) **Sarla Mudgal v. Union of India (1995):**-The issue involved Hindu men converting to Islam to perform a second marriage. The Supreme Court declared such conversions invalid if done solely to circumvent the Hindu Marriage Act. Criticized the absence of UCC and argued that personal law conflicts promote fraud and injustice. Justice Kuldip Singh stated that UCC is necessary for national unity.
- c) **Lily Thomas v. Union of India (2000):**-Reaffirmed Sarla Mudgal that conversion for second marriage is invalid.

- d) **Danial Latifi v. Union of India (2001):-** This case interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986. Supreme Court held that fair and reasonable provision must include lifetime maintenance, thus protecting Shah Bano principles indirectly.
- e) **John Vallamattom v. Union of India (2003):-** The issue concerned discriminatory provisions in Christian succession law. Supreme Court struck down Section 118 of the Indian Succession Act as unconstitutional. Justice Khare remarked that Article 44 has remained a “dead letter.”
- f) **Shayara Bano v. Union of India (2017):-** This case marked a historic moment when the Supreme Court declared *triple talaq (talaq-e-biddat)* unconstitutional. The Court held: Triple talaq violates Article 14 and is arbitrary. Personal laws cannot override constitutional principles. Justice Nariman and Justice Lalit used Article 13 to strike down the practice.

Limitations & Criticisms of Judicial Activism in Uniform Civil Code Context:- While judicial activism has advanced equality and justice, there are inherent limitations and criticisms:

- a. **Judicial Overreach / Separation of Powers Concern:** Critics argue that law-making is the domain of legislature; courts, by fixing personal law issues, risk overstepping their judicial role.
- b. **Partial, Case-by-Case Reform:** Because courts deal only with cases brought before them, many practices remain untouched; comprehensive reform remains elusive.
- c. **Social and Political Resistance:** Even after court judgments, acceptance on ground may lag; personal laws have deep cultural/religious roots.
- d. **Lack of Uniformity:** Different courts may interpret differently; only a codified Uniform Civil Code can ensure uniform application across the country.
- e. **Uncertain Scope:** Courts cannot codify detailed civil law they can only interpret existing law or strike down unconstitutional provisions.

Contemporary Relevance of Uniform Civil Code & Judiciary’s Role

As of 2024, India remains a complex mosaic of personal laws based on religion, caste, community. Judicial pronouncements continue to highlight the contradictions and injustices arising from such pluralism. The trajectory of Supreme Court decisions especially post-2017 shows inclination toward upholding constitutional morality, individual rights, equality, and dignity, even when it means challenging traditional laws. An academic 2025 article on Uniform Civil Code argues that the Supreme Court jurisprudence has built a normative framework for codification and uniformity of personal laws. Given the continuing social change (gender equality movements, evolving definitions of family, recognition of human rights), the need for a

comprehensive Uniform Civil Code appears more urgent; the judiciary's role remains critical to bridge gaps until legislative action materializes.

Application of UCC in Indian States (Status & Details)

1. Goa – Only State with a Functional UCC:- Goa has a Uniform Civil Code applicable through the Goa Family Law (Portuguese Civil Code, 1867). It applies uniformly to all communities regarding Marriage, Divorce, Succession, Adoption, Property rights. Although there are minor religious exceptions, Goa is the only Indian state with a functioning UCC-like system.

2. Uttarakhand – First Indian State to Pass a Modern UCC (2024). In February 2024, Uttarakhand became the first state in India to enact a formal UCC after Independence. Key features include:

- a. Common marriage and divorce procedures
- b. Compulsory registration of live-in relationships
- c. Equal inheritance rights for sons and daughters
- d. Ban on polygamy and halala-like practices
- e. Uniform age of marriage
- f. Adoption rights for all

The law applies to everyone except Scheduled Tribes.

3. Other States Considering or Drafting a Uniform Civil Code

- a. **Gujarat** - In 2023, Gujarat formed a Uniform Civil Code committee. Draft Uniform Civil Code is under review, likely to cover marriage, divorce, succession, maintenance.
- b. **Assam** - Government has publicly supported Uniform Civil Code and banned polygamy in 2023. Move toward Uniform Civil Code framework but no bill yet.
- c. **Uttar Pradesh** - A Uniform Civil Code drafting panel was proposed. Discussions ongoing; no formal bill introduced yet.
- d. **Madhya Pradesh** - Government expressed support. Committee stage/preliminary discussions only.
- e. **Rajasthan** - Public statements supporting Uniform Civil Code but no formal action yet.

CONCLUSION

From *Shah Bano* (1985) to *Shayara Bano* (2017), the Supreme Court has consistently championed the cause of gender justice, equality, and secularism principles that form the foundation of a future Uniform Civil Code. Judicial activism has acted as a catalyst, bringing the Uniform Civil Code debate into mainstream legal discourse. Although courts cannot legislate, their progressive interpretations have laid strong groundwork for future policy reforms. The

judiciary's interventions reflect constitutional morality and highlight the need for modern, fair, and uniform civil laws in a diverse society like India.

RECOMMENDATIONS

1. Parliament should take initiative and draft a Uniform Civil Code using the jurisprudence and principles established by the Court as guiding standards.
2. Any draft Uniform Civil Code should be built around constitutional morality, gender justice, equality, and dignity, preserving India's pluralistic ethos.
3. Public consultations across communities should be held, ensuring that codification is sensitive to cultural diversity while upholding rights.
4. Until Uniform Civil Code is enacted, judiciary must continue to act as guardian of fundamental rights, striking down personal law provisions that contravene constitutional guarantee.

REFERENCES

1. Mohd. Ahmed Khan v. Shah Bano Begum (1985) Supreme Court Judgment.
2. Sarla Mudgal v. Union of India (1995) Supreme Court Judgment.
3. Danial Latifi v. Union of India (2001) Supreme Court Judgment.
4. Shayara Bano v. Union of India (2017) Supreme Court Judgment.
5. Secondary academic commentary on UCC and judicial activism.