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# Uniform Civil Code: Reconciling Constitutional Ideals with Pluralistic Realities

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## ABSTRACT

*Article 44 of the Indian Constitution, which envisions the implementation of a Uniform Civil Code (UCC), remains one of the most debated and politically sensitive provisions in India's constitutional landscape. This paper undertakes a critical analysis of Article 44, exploring its historical origins, constitutional context, and evolving interpretations. Anchored in the Directive Principles of State Policy (DPSP), Article 44 reflects the constitutional ideal of legal uniformity in matters of personal law. However, its interface with Articles 25 and 26, which safeguard religious freedom, raises complex questions about secularism, minority rights, and the limits of state intervention in private spheres.*

*Through an examination of key judicial pronouncements, legislative developments, and state-level initiatives—particularly in Goa and Uttarakhand—this study assesses the practical and ideological challenges in implementing a UCC. It further evaluates the role of the Law Commission of India, highlighting the divergence between constitutional aspiration and institutional approach. The article advocates a gradualist model of reform, focusing on gender-just codification of personal laws, public consultation, and legal literacy as pragmatic strategies to advance the spirit of Article 44 without undermining religious pluralism.*

*By engaging with constitutional theory, comparative statutory practice, and contemporary legal debates, this study aims to offer a balanced and forward-looking perspective on the UCC. It concludes that the objective should not be the imposition of uniformity, but the pursuit of substantive equality and justice—values that*

*lie at the heart of India's constitutional morality.*

### **KEYWORDS**

*Uniform Civil Code, Religious Freedom, Legal Pluralism, Gender Justice.*

### **INTRODUCTION**

India's legal landscape is a unique mosaic of pluralistic traditions, deeply influenced by its multicultural and multi-religious fabric. While criminal law is uniformly applicable across all citizens, irrespective of religion, civil laws, particularly those governing marriage, divorce, inheritance, and adoption, have remained mainly community-specific. These laws, commonly called personal laws, are rooted in religious customs and doctrines. This legal duality has long been at the heart of the debate over the UCC, a constitutional ideal enshrined in Article 44, "*proposes to replace personal laws based on religions, customs, and traditions with one common law for everyone irrespective of religion, cast, creed, sexual orientation, and gender.*"<sup>1</sup>

Despite its inclusion in the Constitution under the DPSPs, the UCC remains one of the most debated and least implemented constitutional promises. The core of this debate lies in balancing competing constitutional values, particularly secularism, religious freedom (under Articles 25 and 26), and gender equality (under Articles 14 and 15).<sup>2</sup> The implementation of a UCC, in this context, raises important constitutional questions about the relationship between law and religion in a secular state and whether equality before the law can truly be achieved while maintaining different personal laws for different religious communities.

The issue's sensitivity was recognized by the framers of the constitution. While maintaining that a UCC was necessary for national cohesion and legal rationality, Dr. B.R. Ambedkar bolstered Article 44's adoption in the Constituent Assembly Debates by suggesting that its implementation may be gradual and collaborative.<sup>3</sup> However, due to societal sensitivities and electoral pressures, subsequent administrations have mostly

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<sup>1</sup> "Uniform Civil Code: Explained", *Livemint* (21 Jun. 2023) available at: <https://www.livemint.com/news/india/uniform-civil-code-explainer-ucc-indian-constitution-directive-principles-hindu-marriage-act-muslim-personal-law-11687924522068.html> (last visited Apr. 11, 2025).

<sup>2</sup> India Const., arts. 14, 15, 25 & 26.

<sup>3</sup> Constituent Assembly Debates, Vol. VII, 23 November 1948.

shied away from direct intervention in the decades after independence.

Over the years, the judiciary has occasionally acted as a catalyst, urging legislative action in favour of a UCC, particularly in landmark cases such as *Mohd. Ahmed Khan v. Shah Bano Begum*<sup>4</sup> and *Sarla Mudgal v. Union of India*.<sup>5</sup> Nonetheless, political inertia and social resistance have persisted, making the UCC a constitutional aspiration yet to be realized.

This article undertakes a critical analysis of Article 44, examining its constitutional status, the historical trajectory of the UCC debate, the tensions it raises with other fundamental rights, and the evolving judicial and political discourse. The aim is not only to explore the legal complexities surrounding the provision but also to assess its contemporary relevance in an era increasingly driven by demands for gender justice and legal uniformity.

## **STATUTORY FRAMEWORK REVOLVING AROUND UCC**

Article 44 of the Indian Constitution is embedded in Part IV, which deals with the DPSPs, a set of guidelines meant to direct the State towards achieving socio-economic justice and constitutional governance. The article reads: “*The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.*”<sup>6</sup>

Article 37 makes it clear that DPSPs are not to be enforced in court, unlike the Fundamental Rights listed in Part III. It is the responsibility of the State to adhere to these principles while drafting legislation<sup>7</sup>, as they are “fundamental in the governance of the country.” Thus, while Article 44 does not impose a binding obligation, it certainly constitutes a constitutional directive of enduring importance.

- ***The Constitutional Scheme***

The juxtaposition of Article 44 with justifiable rights such as the freedom of religion (Articles 25–28) has been the primary source of constitutional tension. However, its placement in Part IV reflects the vision of the Constitution's framers: to facilitate social reform gradually without disturbing the delicate religious fabric of the nation in the immediate post-

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<sup>4</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.

<sup>5</sup> *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

<sup>6</sup> India Const, art. 44.

<sup>7</sup> India Const, art. 37.

independence years.<sup>8</sup>

The Constituent Assembly Debates<sup>9</sup> offer critical insight into this intent. Dr. B.R. Ambedkar, the principal architect of the Constitution, defended the inclusion of Article 44, asserting that the State's power to legislate a UCC was essential to ensure equality and national unity. He clarified that personal laws relating to marriage and succession were not intrinsic to religion and could be regulated by the State without violating the right to religious freedom. However, several Muslim members of the Assembly opposed this view, expressing fears that the UCC could encroach upon religious identity and traditions. These conflicting viewpoints shaped the final drafting of Article 44 as a non-binding aspiration rather than a mandatory provision.

- **Judicial Interpretation of Article 44**

Over time, the Supreme Court of India has delivered several observations interpreting Article 44, often lamenting the State's inaction and advocating for legislative intervention. In the landmark case of *Shah Bano*, the Court strongly endorsed the need for a UCC, observing that a common civil code would help promote national integration and remove contradictions based on religious ideologies.<sup>10</sup>

Subsequently, in *Sarla Mudgal*, the Court went a step further by holding that permitting conversion to circumvent personal laws, such as to contract a second marriage, was a misuse of legal plurality, and reiterated the urgency of implementing a uniform code. Justice R.M. Sahai<sup>11</sup> Concurring, noted that Article 44 had remained a "dead letter" and that it was time the State fulfilled its constitutional promise.

However, courts have also recognized the limits of judicial power in this domain. In *John Vallamattom v. Union of India*<sup>12</sup>, Although the Court invalidated Section 118 of the Indian Succession Act because to its Christian discrimination, it noted that the legislature, not the court, is ultimately responsible for passing a UCC.

The judiciary's interpretation of Article 44 reflects an evolving

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<sup>8</sup> M.P. Jain, *Indian Constitutional Law*, (8th ed., LexisNexis 2018).

<sup>9</sup> Constituent Assembly Debates, Vol. VII, 23 November 1948.

<sup>10</sup> *Supra note*, 4.

<sup>11</sup> *Supra note*, 5.

<sup>12</sup> *John Vallamattom v. Union of India*, (2003) 6 SCC 611.

understanding: one that is sympathetic to the idea of uniformity in civil laws but also cognizant of the need for social consensus and legislative will. It recognizes “*the delicate interplay between legal uniformity and cultural diversity*”, emphasizing that legal reform in a plural society must be calibrated, inclusive, and dialogic rather than imposed.

### **HISTORICAL EVOLUTION AND LEGAL MILESTONES**

The discourse surrounding the UCC in India is not a product of contemporary politics alone. It has evolved over a prolonged period, deeply intertwined with India’s colonial legacy, constitutional development, post-independence legal reforms, and periodic judicial interventions. Understanding this historical trajectory is crucial to appreciating both the significance of Article 44 and the hesitancy with which it has been implemented.

- ***Colonial Origins of Legal Pluralism***

The roots of India’s legal pluralism can be traced back to British colonial rule, where a conscious decision was made to retain the personal laws of different religious communities in matters of marriage, divorce, succession, and family relations. This was partly pragmatic, as it allowed the colonial State to govern a culturally diverse population without sparking unrest. It also reflected the colonial policy of “non-interference” in religious matters, even as it simultaneously codified and regulated criminal law, contract law, and property law.

The Hindu Widows’ Remarriage Act of 1856, the Hindu Gains of Learning Act of 1930, and the Dissolution of Muslim Marriages Act of 1939 are examples of legislative interventions during this era that attempted reform within personal laws, albeit cautiously.<sup>13</sup> However, there was no serious attempt to unify civil law across communities.

- ***Constituent Assembly Debates and the Framing of Article 44***

The post-independence period marked a constitutional moment in India’s legal development. During the Constituent Assembly Debates, the question of whether the new republic should implement a common civil code for all citizens was hotly contested.<sup>14</sup>

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<sup>13</sup> Flavia Agnes, “Family Law: Family Law and Constitutional Claims,” in *Oxford Handbook of the Indian Constitution* (Sujit Choudhry et al. eds., OUP 2016)

<sup>14</sup> Constituent Assembly Debates, Vol. VII, 23 November 1948.

Dr. B.R. Ambedkar, chair of the Drafting Committee, advocated firmly in support of a UCC, not as an imposition on religious freedom but as a progressive legal reform required for national unity and gender equity.<sup>15</sup> He clarified that the objective was not to interfere with religious practices per se but to ensure equality in civil matters such as marriage, inheritance, and guardianship. However, several members—particularly from the Muslim community—voiced concerns that such a code could undermine their cultural autonomy.<sup>16</sup>

In light of this resistance, Article 44 was placed in Part IV of the Constitution, signalling that it was a long-term goal rather than an immediately enforceable mandate.

### • ***Post-Independence Reforms in Hindu Personal Law***

While the idea of a UCC remained dormant, the 1950s witnessed major reforms within Hindu personal law, initiated under the leadership of Prime Minister Jawaharlal Nehru. These culminated in a series of legislations such as:

- *The Hindu Marriage Act, 1955*
- *The Hindu Succession Act, 1956*
- *The Hindu Minority and Guardianship Act, 1956*
- *The Hindu Adoptions and Maintenance Act, 1956*

These statutes defined and altered traditions pertaining to marriage, inheritance, and guardianship for Hindus, Buddhists, Jains, and Sikhs, therefore introducing a degree of consistency within the Hindu community. However, comparable attempts were not undertaken for other religious groups, supporting the image that legal reform was selective and fragmented.

The judiciary has played an instrumental role in reviving the debate on UCC at critical junctures. In *Mohd. In Ahmed Khan v. Shah Bano Begum*, the Supreme Court upheld a Muslim woman's right to maintenance under Section 125 of the Criminal Procedure Code, overriding personal law limitations.<sup>17</sup> In doing so, the Court strongly urged the government to implement a UCC, describing it as essential for

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<sup>15</sup> Ibid. (speech by Dr. B.R. Ambedkar).

<sup>16</sup> Ibid. (interventions by Mohammad Ismail, Pocker Sahib, and others).

<sup>17</sup> *Supra note, 4*.

national integration. This triggered a nationwide controversy, leading to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which effectively reversed the Court's verdict.<sup>18</sup> The episode exemplified how political considerations often override judicial initiatives in personal law reform. Another notable case, *Sarla Mudgal v. Union of India*, addressed the issue of religious conversion for polygamy. The Court condemned such practices and reiterated the necessity of a uniform code to prevent the misuse of religious laws.<sup>19</sup> Again, the decision evoked strong reactions, and yet no concrete legislative follow-up ensued.

### **UCC VS. RELIGIOUS FREEDOM: A CONSTITUTIONAL DILEMMA**

The attempt to adopt a UCC in India necessarily finds constitutional conflict, notably between Article 44, which pushes legal consistency in civil concerns, and Articles 25 and 26, which protect the right to religious freedom. This constitutional dichotomy—between the Directive Principles and Fundamental Rights—lies at the heart of the UCC dispute, raising crucial concerns about the nature of Indian secularism and the limitations of State engagement in religious affairs.

- ***Constitutional Provisions in Conflict***

Article 25 guarantees all persons “*the freedom of conscience and the right to freely profess, practise, and propagate religion, subject to public order, morality, and health.*” Article 26 further “*empowers religious denominations to manage their affairs in matters of religion.*”<sup>20</sup> On the other hand, Article 44 seeks to promote a uniform set of civil laws that transcend religious boundaries.

The Supreme Court of India has repeatedly held that personal laws—though often grounded in religious practice—are not immune to constitutional scrutiny. In *State of Bombay v. Narasu Appa Mali*, the Bombay High Court, in a decision that continues to influence judicial thought, held that personal laws are not ‘laws’ under Article 13 and thus cannot be tested for fundamental rights violations. However, this position has been increasingly questioned as courts have more recently intervened in matters traditionally considered religious, especially where such practices contravene gender equality and constitutional morality.

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<sup>18</sup> Muslim Women (Protection of Rights on Divorce) Act, 1986.

<sup>19</sup> *Supra note*, 5.

<sup>20</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.



- **Indian Secularism: Reformatory or Neutral?**

India's model of secularism is distinct from the strict church-state separation seen in Western jurisdictions. Instead, the Indian Constitution envisages principled intervention—allowing the State to reform religion-based practices that are inconsistent with constitutional values.<sup>21</sup> This is evident from social reforms like the abolition of untouchability and the codification of Hindu personal laws in the 1950s, which were carried out despite resistance from conservative sections.

In *Shirur Mutt*, the Supreme Court laid down the “essential religious practices” test, allowing the judiciary to determine whether a particular practice is protected under Article 25.<sup>22</sup> This has become a crucial doctrinal tool in evaluating the constitutionality of religious customs.

A series of landmark judgments in the last two decades reflect the growing judicial willingness to challenge regressive personal laws and customs. In *Shayara Bano case*, the Court invalidated the practice of triple talaq (talaq-e-biddat) because it was arbitrary and violated Article 14, despite being a part of Muslim personal law.<sup>23</sup> Moreover, in *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)*, the Court struck down a ban on the entry of women into the Sabarimala temple, ruling that religious freedom cannot override gender equality.<sup>24</sup> Further, in *Joseph Shine Case*, the Court decriminalised adultery by invalidating Section 497 of the Indian Penal Code, highlighting that patriarchal notions cannot dictate personal liberty.<sup>25</sup>

These cases reflect a consistent trend: the judiciary has shown increasing commitment to upholding constitutional morality—a value system rooted in equality, dignity, and rationality—even if it means overriding religious or customary norms.

The UCC debate is thus situated within a larger tension between group rights (to religious freedom and cultural identity) and individual rights (to equality and non-

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<sup>21</sup> Upendra Baxi, “The Constitutional Future of the Uniform Civil Code,” in *Uniform Civil Code for India: Principles and Prospects* (R. M. Maclver ed., Oxford University Press 2008).

<sup>22</sup> *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282.

<sup>23</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>24</sup> *Indian Young Lawyers Assn. v. State of Kerala*, (2019) 11 SCC 1.

<sup>25</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

discrimination). While group rights are essential in a multicultural society like India, they cannot be used to justify violations of individual dignity or perpetuate structural inequality.

Courts have emphasised that the right to religion is not absolute. Practices that are social rather than religious and that undermine constitutional values are liable to reform. It is within this nuanced framework that Article 44 must be understood—not as a threat to pluralism but as an attempt to secure substantive equality across communities.

## CONTEMPORARY DEVELOPMENTS

The discourse on the UCC in India has witnessed significant developments at both state and institutional levels. While Goa has long maintained a UCC, Uttarakhand's recent legislative initiative marks a notable shift. Concurrently, the Law Commission of India has been actively engaging with the subject, reflecting the evolving perspectives on the UCC.

- **State Level Initiatives**

Goa stands as a unique example within India, having enacted a UCC drawn from the Portuguese Civil Code of 1867.<sup>26</sup> This code, preserved post-liberation in 1961, covers civil affairs like as marriage, divorce, and succession uniformly throughout all communities of Goa, Daman, and Diu. Notably, it assures equal rights for men and women in areas of marriage and inheritance. The code's length and acceptability among Goans reflect its success in fostering legal consistency and gender equality.

In 2024, Uttarakhand became the first Indian state to enact its own UCC.<sup>27</sup> The legislation aims to standardize personal laws across all communities in the state, covering areas such as marriage, divorce, inheritance, and adoption.

- **Marriage and Divorce:** Establishment of a common minimum marriageable age (18 for women, 21 for men),

<sup>26</sup> Elgar Noronha, "Portuguese Civil Code: The Silent Law That Unites Goa, Daman and Diu," *Frontline*, July 27, 2023, available at: <https://frontline.thehindu.com/the-nation/portuguese-civil-code-the-silent-law-that-unites-goa-daman-and-diu/article67093492.ece> (last visited Apr. 11, 2025).

<sup>27</sup> "The Uniform Civil Code (UCC) of Uttarakhand: Advancement in Gender Justice or Violating Individual Liberties?," *Citizens for Justice and Peace*, Jan. 31, 2025, available at: <https://cjp.org.in/the-uniform-civil-code-ucc-of-uttarakhand-advancement-in-gender-justice-or-violating-individual-liberties/> (last visited Apr. 11, 2025).

compulsory registration of marriages, and uniform grounds for divorce.

- **Inheritance and Succession:** Equal inheritance rights for sons and daughters, eliminating distinctions between ancestral and self-acquired property.
- **Live-in Relationships:** Mandatory registration of live-in relationships, with provisions for maintenance and inheritance rights for partners and their children.
- **Prohibition of Polygamy:** Ban on polygamy for all individuals, irrespective of religion.

The Act exempts Scheduled Tribes from its provisions, respecting their customary laws. While the legislation has been lauded for promoting gender equality, it has also faced criticism for potential infringements on individual liberties and privacy. The mandatory registration of live-in relationships, in particular, has raised concerns about state intrusion into personal lives.

- ***The Law Commission of India***

The Law Commission of India<sup>28</sup> has played a vital role in examining the viability of establishing a UCC at the national level. In its 2018 consultation document, the 21st Law Commission decided that a UCC was not essential nor desirable at that moment. Instead, it proposed changing current personal laws to address discriminatory behaviours. The Commission emphasized the importance of preserving India's pluralistic society and cautioned against imposing uniformity that could infringe upon religious freedoms.

Subsequently, the 22nd Law Commission<sup>29</sup>, constituted in 2020, initiated fresh consultations on the UCC, recognizing the need to revisit the subject given the time elapsed since the previous deliberations. In June 2023, the Commission issued a public notice soliciting views from the public and recognized

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<sup>28</sup> Flavia Agnes, "Law Commission's Report on Uniform Civil Code: Undesirable and Unnecessary," *The Indian Express*, June 16, 2023, available at: <https://indianexpress.com/article/opinion/columns/law-commissions-report-on-uniform-civil-code-undesirable-and-unnecessary-8680821/> (last visited Apr. 11, 2025).

<sup>29</sup> "Term of 22nd Law Panel Ends Saturday, Report on UCC Still in Works," *The Indian Express*, August 31, 2024, available at: <https://indianexpress.com/article/india/term-of-22nd-law-panel-ends-saturday-report-on-ucc-still-in-works-9541729/> (last visited Apr. 11, 2025).

religious organizations on the UCC. However, the Commission's term ended in August 2024 without submitting its report on the UCC, primarily due to the absence of a chairperson following Justice Ritu Raj Awasthi's appointment to the Lokpal.

## **CONCLUSION AND SUGGESTIONS**

The path to implementing a UCC in India is fraught with socio-political sensitivities. While Article 44 of the Indian Constitution outlines the objective of securing a UCC, its realization demands a nuanced, phased, and consultative approach. This section proposes pragmatic strategies that can bridge the constitutional vision with the country's socio-religious pluralism.

- ***Gradualist Approach to Avoid Cultural Backlash***

Implementing the UCC in a diverse and multi-religious society like India requires caution. A gradualist approach—adopting reforms incrementally—can mitigate resistance from religious communities and avoid perceptions of state-imposed uniformity. By proceeding step-by-step rather than through sweeping legislative overhauls, the State can foster social acceptance and create an environment conducive to legal harmonization without alienating minority communities.<sup>30</sup>

- ***Codification of Personal Laws as a Soft-Launch Strategy***

An effective intermediary step toward a UCC could involve codifying the uncodified aspects of personal laws, particularly those followed by religious minorities. For instance, large portions of Muslim personal law continue to be governed by custom and tradition rather than legislative codification.<sup>31</sup> Codifying these laws can ensure transparency, judicial consistency, and enhanced protection of individual rights. This strategy would not abolish community-specific laws but standardize them in a way that allows for greater accountability and potential harmonization over time.

- ***Gender-Just Reforms as a Common Ground***

One of the most powerful justifications for a UCC is the promotion of gender equity. A viable entry point might be the

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<sup>30</sup> Faizan Mustafa, "Why a Gradualist Approach Is the Way Forward for UCC," *The Leaflet* (July 4, 2023), available at: <https://theleaflet.in/why-a-gradualist-approach-is-the-way-forward-for-ucc/> (last visited Apr. 11, 2025).

<sup>31</sup> Tahir Mahmood, *Muslim Law in India and Abroad*, 2nd ed., LexisNexis, 2021.

modification of discriminatory elements within personal laws, notably those pertaining to marriage, divorce, and inheritance. For example, the introduction of equal inheritance rights for women across communities, as seen in the Hindu Succession (Amendment) Act, 2005<sup>32</sup>, could serve as a template for similar reforms in other personal laws. Targeting specific issues of gender inequality is likely to garner broader public support and judicial endorsement.

- ***Public Consultation, Interfaith Dialogue, and Legal Literacy***

Reforms of this nature cannot be top-down; they must emerge from inclusive, democratic processes. The success of any future UCC hinges on widespread public consultation, especially involving stakeholders from all religious communities. Interfaith dialogues and community-level engagement can dispel myths and fears surrounding the UCC. Simultaneously, investing in legal literacy and education about constitutional values—especially gender justice, equality, and secularism—can build a stronger foundation for reform.<sup>33</sup>

The idea of a UCC, as envisioned in Article 44, must be balanced against the constitutional guarantee of religious freedom under Article 25. While the demand for a UCC is often framed as a constitutional imperative, it must be implemented in a manner that is respectful of India's pluralistic ethos. This article has traced the historical evolution of Article 44, the legal and constitutional framework surrounding it, and the socio-political debates that have defined its trajectory.

Experiences from Goa and Uttarakhand, along with the Law Commission's evolving stance, suggest that a uniform code is not beyond reach but requires calibration. It is not uniformity but equality that must remain the guiding principle of reform. By adopting a gradual, inclusive, and gender-sensitive approach, India can move towards achieving the spirit of Article 44 without undermining the secular and multicultural foundation of its polity.

Ultimately, the UCC must be conceived not as a legal

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<sup>32</sup> Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

<sup>33</sup> Law Commission of India, Consultation Paper on Reform of Family Law, Aug. 31, 2018, available at: <https://lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf> (last visited Apr. 11, 2025).

imposition but as a collective aspiration for justice, equality, and unity within diversity.

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