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UCC's Gender Paradox: Does 'Uniform' Include All Genders in India's Personal Laws?

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The framers of the Indian Constitution, through Article 44, set out a vision for a Uniform Civil Code (UCC) that would unify personal and religious laws under a common framework of equality. In January 2024, Uttarakhand became the first state in India to adopt such a code, a milestone hailed as a step towards legal uniformity.

But can a law call itself uniform if its protections vanish the moment a citizen's gender identity does not fit the prescribed boxes? While the new UCC addresses parity between men and women, it remains largely silent on the rights of transgender and non-binary individuals, leaving a constitutional promise only partially fulfilled.

Consider three lives. Priya, an independent woman, inherits an equal share of her late father's property alongside her brother, a right secured under the uniform code. Rajesh, once obligated only to pay maintenance post-divorce, now has equal opportunity to seek custody of his child, another step towards gender-equitable parenting. But Arjun, a transgender person, cannot legally marry the partner he loves, adopt a child together, or be recognised on equal terms in personal law documents. While the UCC fulfils Article 44's vision for Priya and Rajesh, it neglects, and in Arjun's case, violates, the guarantees of equality, non-discrimination, freedom of expression, and dignity enshrined in Articles 14, 15, 19, and 21.

The Supreme Court in *National Legal Services Authority v. Union of India* affirmed that "gender identity is integral to the dignity of an individual." Yet, the current UCC framework fails to reflect this principle, prompting the central question, if India's civil code is to be truly 'uniform,' can it afford to exclude millions based on gender identity?

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HISTORICAL EVOLUTION: FROM RELIGIOUS BINARIES TO GENDER INCLUSION

From the very first moment personal laws entered statute books, the grammar of equality was written in only two words: man and woman. The colonial administration codified Hindu and Muslim personal laws into rigid patriarchal structures, with no recognition of identities beyond the binary. Works such as Mulla's *Principles of Hindu Law* reinforced gender hierarchies, while the Muslim Personal Law (Shariat) Application Act, 1937 preserved traditional interpretations that excluded non-binary realities entirely.

When the Constituent Assembly debated Article 44 in 1948, Dr. B.R. Ambedkar defended the UCC's inclusion, stating: "I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field." Supporters like K.M. Munshi shared his vision, while opponents feared intrusion into religious freedom under Article 25. Yet, this "uniformity" they envisioned was exclusively about male–female parity.

After independence, a series of reforms transformed women's rights. The Hindu Code Bills of the 1950s modernised marriage, adoption, and succession laws, culminating in the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights. Landmark cases like *Mohd. Ahmed Khan v. Shab Bano Begum* extended secular maintenance rights to Muslim women, while *Sarla Mudgal v. Union of India* highlighted the misuse of personal law plurality. But these measures still operated entirely within the binary framework.

The turning point in constitutional jurisprudence came only in recent decades. *NALSA* (2014) recognised self-identified gender as a fundamental right, *Navtej Singh Johar v. Union of India* (2018) decriminalised same-sex relations, and *Deepika Singh v. Central Administrative Tribunal* (2022) expanded the very definition of "family." Yet, none of these advances have been meaningfully integrated into personal law or UCC planning. History shows a consistent pattern: progress for binary equality, invisibility for all others.

PRESENT DAY: UTTARAKHAND'S UCC AS A TEST OF UNIFORMITY

On paper, the 2024 Uttarakhand UCC looks like the long-awaited bridge between Articles 25 and 44, until one reads the fine print that decides who may cross it. The law brings parity between men and women by granting equal inheritance, equal grounds for divorce, and equal custody rights.

Yet, it defines marriage strictly as a union between "a man and a woman," cutting off recognition for same-sex and non-binary partnerships. Adoption rules apply only to a "husband and wife" or single man/woman, freezing out joint adoptions by LGBTQ+ couples. Inheritance clauses level the field for sons and daughters but omit any reference to transgender or non-binary heirs. Even the much-discussed live-in relationship provisions presume heterosexual unions.

Thus, while Priya and Rajesh step confidently into the benefits of the new law, Arjun still stands outside the gates, excluded by definitions that fail to name, and therefore fail to protect, all citizens.

THE FIVE GENDER GAPS IN THE CURRENT UCC

From marriage vows that only a man and a woman can exchange, to adoption rights locked behind the words "husband and wife", to inheritance provisions blind to heirs beyond son and daughter, the binary barricade is built into the very language of the law. Live-in partnerships that do not fit a heterosexual mould remain invisible, and official documentation continues to force all citizens into male or female boxes, erasing gender diversity in legal records.

As the Supreme Court reminded in *NALSA*, "recognition of transgenders as a third gender is not a social or medical issue but a human rights issue." Yet, by failing to extend explicit protections to transgender, intersex, and non-binary persons, the UCC reproduces the very exclusions constitutional morality seeks to dismantle. The absence of recognition in marriage violates the principle established in *Navtej Singh Johar* that intimate association is protected under Article 19. The exclusion from adoption contradicts *Shabnam Hashmi v. Union of India*, which recognised adoption as a legal right irrespective of religion. Live-in protections that ignore queer partnerships

undermine the spirit of *Indra Sarma v. V.K.V. Sarma*, which extended protection to women in non-traditional relationships.

CONSTITUTIONAL ANALYSIS: RIGHTS VS. REALITY

The Constitution speaks in the language of universality; the current UCC answers in the dialect of selective inclusion. Article 14's guarantee of equality before the law extends to every person, making gender-specific exclusions a form of unreasonable classification. Article 15 prohibits discrimination on sex, which *NALSA* confirmed includes gender identity. Denying recognition to non-binary marriages and partnerships infringes Article 19 freedoms of expression and association, as affirmed in *Navtej Singh Johar*. Article 21's guarantee of life and liberty, expansively interpreted in *Justice K.S. Puttaswamy v. Union of India* to protect "privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation," is compromised when laws deny recognition to chosen relationships.

Even Article 44, while non-enforceable, cannot be conflated with a model that harmonises only some lives and leaves others unacknowledged. A code that excludes by definition cannot be the code the framers dreamt of.

WHY IT MATTERS IN DAILY LIFE

These are not abstract legal quibbles. They are lived absences felt in hospital corridors, family homes, bank offices, and courtrooms. Without legal recognition, non-binary partners cannot make medical decisions for each other in emergencies, inherit shared property automatically, or access spousal pensions. Transgender heirs risk being written out of succession simply because the statute's language names only "sons" and "daughters." Children raised by LGBTQ+ parents may be left in limbo if their only legal parent dies, as recognised in the broader family definition of *Deepika Singh*.

Unrecognised live-in partners become legally powerless in the face of abandonment or abuse, and everyday bureaucracy, from school forms to passports, forces citizens to misstate their gender. Each instance chips away at the dignity that the Constitution promises as a birthright.

ROADMAP FOR TRUE ALL-GENDER UNIFORMITY

If the law is truly to be the great equaliser, it must first learn to name, and thereby protect, every citizen it claims to serve. Legislative language must evolve: replace "man and woman" with "two consenting adults," "husband and wife" with "spouse," and "mother/father" with "parent." Such simple changes open the door to comprehensive inclusion.

Marriage and adoption rights should be extended to all genders, with explicit recognition of transgender, intersex, and non-binary persons in succession laws. Live-in protections must cover all partnerships, not just heterosexual ones. Official documentation must embrace gender-neutral categories, as seen in international examples like Malta's Gender Identity, Gender Expression and Sex Characteristics Act, 2015 and Canada's Civil Marriage Act, 2005. Implementation requires more than statutory change, it calls for training judicial and administrative officers, public education campaigns, and phased reforms that build social consensus while immediately protecting rights.

CONCLUSION: THE FUTURE TEST OF EQUALITY

A truly uniform civil code will not ask, "Are you a man or a woman?" before granting you your rights, it will simply honour the fact that you are a citizen. Uttarakhand's UCC is a step forward for binary gender equality, but by excluding identities beyond the binary, it risks entrenching the very discrimination it set out to abolish.

Uniformity without universality is exclusion in legislative disguise. To fulfil the spirit of Articles 14, 15, 19, 21 and the inclusive vision of *NALSA*, *Navtej Singh Johar*, and *Puttaswamy*, the UCC must expand its scope to recognise and protect every gender identity. Only then can it transform from a patchwork reform into a living reality of equality and dignity for all.