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Challenges in Ensuring Uniformity Across  
Religious Personal Laws

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# The Uneven Enforcement of Maintenance Rights for Women in India and Legal Challenges in Ensuring Uniformity Across Religious Personal Laws

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## ABSTRACT

*Despite constitutional guarantees of gender equality, the enforcement of maintenance rights for women in India remains fragmented, particularly due to the coexistence of secular laws and religious personal law systems. While the Supreme Court has made progressive strides in harmonising these frameworks especially in landmark decisions like *Shah Bano v Union of India* and *Danial Latifi v Union of India* implementation at the subordinate judiciary level remains inconsistent. According to Sec. 144 of the BNSS, 2023, reinforces the non-negotiable right to maintenance. However, practical access to this remedy continues to be impeded by religious interpretations, procedural misapplications, and judicial hesitancy, especially concerning Muslim women post-divorce. One of the central challenges lies in reconciling personal law obligations with the constitutional mandate of equal protection under Article 14. While the BNSS introduces gender-neutral and religion-neutral formulations, district courts often rely on the Muslim Women (Protection of Rights on Divorce) Act, 1986, as an exclusive framework, sidelining BNSS provisions. This leads to denial of interim relief or unrealistic burdens of proof, even when the new BSA, 2023, permits relaxed evidentiary thresholds in maintenance matters. Inconsistencies are also evident in the application of summary procedures, with some courts requiring exhaustive documentation contrary to the intended legislative purpose. The issue calls for a re-evaluation of judicial training, codified guidance for procedural uniformity, and possibly legislative reforms towards a UCC. Without integrating substantive and procedural law reforms with constitutional values, the promise of maintenance as a right rather than charity remains unfulfilled. This paper explores the normative inconsistencies and suggests structural legal interventions for realising maintenance rights uniformly across religious divides.*

## KEYWORDS

*Maintenance, Uniformity, Personal Law, BNSS, Gender Justice.*

## INTRODUCTION

The landscape of family law in India remains deeply fragmented due to the persistence of religious personal laws that govern marriage, divorce, maintenance, and inheritance among various communities. While the Indian Constitution aspires to provide equality before law under Article 14, the co-existence of separate personal laws has complicated the realization of uniform civil rights, especially in matters related to women's maintenance. Personal laws, primarily based on religion, often conflict with the principles of gender justice and non-discrimination, making it challenging to establish a cohesive statutory framework<sup>1</sup>. For instance, while Hindu law under the Hindu Adoptions and Maintenance Act, 1956, expressly provides for maintenance of a wife, children, and aged parents, Muslim law relies on a combination of classical Shariah principles and statutory modifications post the Shah Bano judgment.

The criminal law provisions concerning maintenance, Sec. 144 of the BNSS 2023, serve as a secular remedy available to all women irrespective of their religion. This provision is gender-neutral in its scope and allows a wife, children, and parents to claim maintenance. However, the Supreme Court's evolving jurisprudence, especially in cases like *Shabana Bano v Imran Khan*<sup>2</sup>, affirms that even Muslim women can claim maintenance under this secular law beyond the iddat period, unless expressly waived. Despite this, implementation on the ground remains uneven due to socio-cultural factors and procedural hurdles.

The intersection of personal law with statutory law often produces overlapping remedies, yet also conflicting legal outcomes. For instance, a Hindu woman may simultaneously seek maintenance under Sec. 24 of the Hindu Marriage Act, 1955, Sec. 18 of the Hindu Adoptions and Maintenance Act, 1956, and now under Sec. 144 of the BNSS. However, the judicial tendency to discourage multiplicity of proceedings often results in selective enforcement or denial of overlapping claims, thereby limiting women's access to holistic remedies<sup>3</sup>. The absence of a unified statutory definition of "maintenance" across these frameworks

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<sup>1</sup> Rai, S., 'Codifying Family Law in India: A Case for Uniform Civil Code' (2021) 5(2) NUJS L Rev 143.

<sup>2</sup> *Shabana Bano v Imran Khan* (2010) 1 SCC 666.

<sup>3</sup> Patel, F., 'Overlapping Maintenance Remedies in Indian Law: Reform or Redundancy?' (2022) 58(3) JILI 347.

further exacerbates interpretative confusion.

The recent codification efforts under the BNS and BSA 2023 attempt to consolidate and modernize Indian criminal and evidentiary laws but have so far refrained from addressing civil personal laws or uniform maintenance rights. Notably, the BNS continues to criminalize abandonment or neglect of dependents<sup>4</sup>, reinforcing obligations of support, but lacks an expansive engagement with gendered economic vulnerabilities, especially of divorced or deserted women under personal laws. This suggests a partial but incomplete approach towards substantive equality in family law jurisprudence.

The judicial efforts to harmonise personal laws with constitutional values of dignity and equality are increasingly evident in cases like *Danial Latifi v Union of India*<sup>5</sup>, where the Supreme Court interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986, to include a reasonable and fair provision beyond iddat. However, such interpretations often face legislative pushbacks or misinterpretation at lower judicial levels, creating inconsistency and unpredictability. As a result, constitutional courts are forced into a balancing act between religious freedom under Article 25 and gender justice under Articles 14 and 21. In essence, the introduction to the issue of maintenance rights in India reveals an entrenched problem of legal fragmentation and doctrinal inconsistency. While the secular provisions under BNSS offer a degree of legal relief, the layered complexity of personal laws and their patchwork enforcement hampers the realization of uniform and accessible remedies<sup>6</sup>. A harmonised legislative framework—without undermining religious freedoms—is thus critical for ensuring gender-equitable justice in family law.

### **MULTIPLICITY OF PERSONAL LAWS AND FRAGMENTED LEGAL STANDARDS**

India's legal system permits multiple parallel avenues for seeking maintenance—under personal religious laws, codified statutes, and secular criminal procedure. This multiplicity, while rooted in the principle of legal pluralism, often results in fragmented and inconsistent standards, especially for women. With the replacement of the Code of Criminal Procedure, 1973 by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, Sec. 144 now corresponds to the earlier Sec. 125, offering a supposedly religion-

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<sup>4</sup> Bharatiya Nyaya Sanhita, 2023, s 85.

<sup>5</sup> *Danial Latifi v Union of India* (2001) 7 SCC 740.

<sup>6</sup> Mehta, P.B., 'The Constitution and Personal Laws in India' (2019) 32(4) Indian J Const L 201.

neutral provision for maintenance<sup>7</sup>. Yet, in practice, enforcement outcomes continue to diverge widely depending on the claimant's religious affiliation and the forum chosen for relief. Under Hindu law, maintenance is primarily governed by two statutory frameworks—the Hindu Marriage Act, 1955 (HMA) and the Hindu Adoption and Maintenance Act, 1956 (HAMA). Sec. 24 of the HMA allows either spouse to seek interim maintenance, while Sec. 25 provides for post-divorce maintenance. HAMA, on the other hand, secures a wife's right to be maintained during the subsistence of marriage<sup>8</sup>. While these provisions appear balanced, they still rest on the outdated premise of dependency and fault-based relief, often requiring the wife to demonstrate financial hardship while subjecting the husband to moral scrutiny. Muslim personal law presents a sharper contrast. Traditionally, it confines the obligation of maintenance for a divorced woman to the iddat period. The enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, appeared to reinforce this limitation. However, the Supreme Court in *Danial Latifi v Union of India*<sup>9</sup> interpreted the Act to mean that the husband's liability includes making a reasonable and fair provision for the woman's future beyond iddat, thereby aligning it closer with secular expectations. This interpretation tried to bridge the gap, but confusion continues to reign at the trial court level.

Notably, the BNSS through Sec. 144 has reiterated the secular entitlement to maintenance, irrespective of religion, marital status, or personal law. This opens the door for women—including those governed by Muslim personal law—to seek remedies outside the constraints of religious texts. However, despite the statutory clarity, resistance persists<sup>10</sup>. Lower courts often hesitate to apply secular provisions in cases involving Muslim women, either due to misinterpretation of the law or sociocultural biases. This makes the system deeply dependent on judicial sensitivity and regional consistency. The problem is compounded by judicial subjectivity. Courts frequently deny maintenance to women on the ground that they are educated and “capable” of earning, without considering whether they are actually employed or financially stable<sup>11</sup>. This line of reasoning, though common, undermines the protectionist rationale of Sec. 144 BNSS. It assumes a level playing field in terms of access to work and financial independence that rarely

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<sup>7</sup> *Mohd Ahmed Khan v Shah Bano Begum* AIR 1985 SC 945.

<sup>8</sup> Shoronya Banerjee, 'Maintenance under Hindu Law: Codification and Gender Imbalances' (iPleaders, 2024).

<sup>9</sup> *Id.* at 5.

<sup>10</sup> 'Muslim Women Entitled to Maintenance under CrPC, Says SC' *The Times of India* (2024).

<sup>11</sup> 'Delhi HC: Maintenance Not Meant to Promote Idleness' *Hindustan Times* (March 2025).

exists, especially for women emerging from abusive or economically asymmetrical relationships.

These inconsistencies are not accidental. They reflect the deep-seated tensions between pluralistic personal laws and constitutional mandates of equality and dignity. As legal scholars have pointed out, the fragmented legal structure creates a hierarchy of entitlements based on religion, marital status, and even regional interpretation<sup>12</sup>. Consequently, women's rights to maintenance become contingent rather than inherent. This perpetuates economic vulnerability and fails to deliver justice uniformly. The 2024 enactment of the Uttarakhand UCC attempted to address this problem by bringing maintenance, marriage, and divorce under a common civil framework applicable to all citizens regardless of religion. While limited in jurisdiction, it is significant as a legislative experiment<sup>13</sup>. Its treatment of maintenance as a uniform civil obligation, untethered from religious doctrine, may provide a model for broader reform efforts at the national level. However, it also risks backlash if not accompanied by extensive public engagement and judicial training.

In practice, the simultaneous application of BNSS Sec. 144 and various personal law provisions results in overlapping and often contradictory claims. Women may be forced to initiate parallel proceedings under personal and secular laws, or to choose between them without a clear understanding of the implications<sup>14</sup>. Moreover, judicial interpretations vary so widely that predictability—a hallmark of legal certainty—is absent. Without uniform application, the progressive potential of BNSS remains blunted. What this really means is that India's maintenance jurisprudence continues to be shaped not by statutory clarity, but by a confluence of personal law, judicial discretion, and procedural luck. Even with the BNSS's streamlined language, enforcement of maintenance rights remains inconsistent, especially for women straddling both personal and secular forums<sup>15</sup>. Unless India moves toward harmonising substantive law across religious boundaries—either through UCC initiatives or reinterpretation through constitutional lenses—the legal terrain will remain skewed, inconsistent, and difficult to navigate for those it claims to protect.

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<sup>12</sup> A. Arora and C. Arora, 'Maintenance as Punishment: A Critique of Section 125 CrPC Through a Gender Lens' (2024) 61 *British Journal of Criminology*.

<sup>13</sup> Uttarakhand Uniform Civil Code Act 2024 (India).

<sup>14</sup> Vaquill, 'Section 125 CrPC (Now Section 144 BNSS): A Secular Remedy in a Fragmented Legal Field' (Vaquill.com, November 2024).

<sup>15</sup> Law Commission of India, *Consultation Paper on Reform of Family Law* (2018).

## JUDICIAL INTERPRETATIONS AND THE LIMITS OF HARMONISATION

Even though India's maintenance framework now centres on the ostensibly secular and uniform Sec. 144 of the BNSS, judicial interpretation continues to shape its practical reach. Courts frequently interpret the law in ways that reflect doctrinal fragmentation, personal law deference, or entrenched gender norms<sup>16</sup>. Harmonisation the core promise of secular maintenance law is critically tested in these interpretative arenas, revealing both jurisprudential strengths and structural gaps. A key limit arises in decisions involving divorced Muslim women. While the Supreme Court in reaffirmed that BNSS Sec. 144 applies alongside the Muslim Women (Protection of Rights on Divorce) Act, 1986, lower courts have hesitated to implement this concurrently, citing supposed statutory conflict<sup>17</sup>. Such reluctance highlights interpretative limits where personal law is seen as trumping BNSS even though judicial pronouncements affirm their coexistence. As per the interim maintenance rulings expose another dimension of interpretive variability. The Punjab & Haryana High Court's recognition that tribunals can award ex-parte interim maintenance under BNSS Sec. 144 including during pendency—was framed as an “*implied power*” despite legislative silence<sup>18</sup>. While progressive, it underscores the extent to which judicial lawmaking fills gaps left by BNSS, but also creates uneven legal contours across jurisdictions. The courts also differ in assessing capacity for maintenance. The Allahabad High Court has emphasised rapid adjudication and gender sensitivity in maintenance matters arising under Sec. 144. Yet, interpretations differ between courts: the Orissa High Court reduced maintenance awards when wives were educated and deemed “*capable*” of earning<sup>19</sup>. Such discretionary standards limit harmonisation by injecting normative judgments about deservedness and dependency.

Similarly, the Madhya Pradesh High Court held that a destitute wife cannot be penalised for minor procedural faults. It criticised the “*hyper-technical attitude*” in maintenance litigation, reaffirming BNSS's social welfare ethos<sup>20</sup>. These judgments align with harmonisation goals, but without binding precedent across states, diversity remains stark. The role of the Supreme Court in

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<sup>16</sup> Punjab & Haryana High Court, ‘Court can award ad-interim maintenance under Section 125 CrPC/Section 144 BNSS’ (2024) *Bar and Bench*.

<sup>17</sup> Mohd Abdul Samad v State of Telangana 2024 INSC 506.

<sup>18</sup> *Bar & Bench* article on interim maintenance under BNSS (2024)

<sup>19</sup> *Allahabad High Court: Sensitive, expedited disposal* (LiveLaw, 2025).

<sup>20</sup> Madhya Pradesh High Court observation in *Sunita Kachwaha & Ors v Anil Kachwaha* (2015) referenced by LiveLaw.

promoting uniformity is vital yet constrained. In *Danial Latifi v Union of India*<sup>21</sup>, the Court harmonised personal and secular laws by holding that divorced Muslim women retain entitlement under Sec. 144, BNSS 2023. But doctrinal divergence across High Courts continues, as many are reluctant to extend this holding where personal law and Sec. 144 coexist, revealing limits of harmonisation absent procedural compulsion. Beyond jurisprudence, academic critiques suggest that harmonisation will remain partial unless BNSS is supported by institutional reforms such as mandatory anticipatory asset disclosure, time-bound disposal, and judicial training on gender-neutral interpretive discipline. While *Rajnesh v Neha*<sup>22</sup> provided guidance on affidavits and standardised calculations, courts continue to differ in application, diluting systemic uniformity.

However, the comparative perspectives reinforce these limitations. In countries like Canada and the UK, statutory clarity, gender-neutral drafting, and judicial protocols help align personal law variations into coherent standards. India lacks such integrated guidelines, although BNSS provides a neutral statutory baseline, its success depends on consistent judicial interpretation and institutional enforcement<sup>23</sup>. Finally, the gradual emergence of UCC experiments such as the Uttarakhand UCC Act 2024 signals legislative efforts at harmonisation. However, courts have held that UCC is a matter of policy and not court-mandated, which limits academic enthusiasm and reinforces the judiciary's interpretative role<sup>24</sup>. Until national legislation bridges doctrinal divides, judicial perceptions and regional jurisprudence will continue to define the boundaries of uniform maintenance rights.

### **MAINTENANCE UNDER MUSLIM LAW: DEBATES POST SHAH BANO AND BEYOND**

The landmark 1985 judgment in *Mohd Ahmed Khan v Shah Bano Begum*<sup>25</sup> ruled that Muslim women could claim maintenance under the secular Sec. 144 BNSS 2023. The decision affirmed that criminal procedure provisions operate irrespective of personal law—a radical assertion of gender justice. It triggered the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which seemed to curtail the right by limiting maintenance to the iddat period. In the following decades, courts offered conflicting readings of the 1986 Act: some High Courts

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<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Rajnesh v Neha* (2020) 2 SCC 324.

<sup>23</sup> Arjun Arora & Chirag Arora, 'Maintenance as Punishment: A Critique...' (2024) *British Journal of Criminology* 1041.

<sup>24</sup> Uttarakhand Uniform Civil Code Act 2024.

<sup>25</sup> *Mohd Ahmed Khan v Shah Bano Begum* (1985) AIR 1985 SC 945.

held that Sec. 3 barred resort to CrPC maintenance entirely; others applied Latifi's purposive interpretation. In *Danial Latifi v Union of India*<sup>26</sup>, the Supreme Court upheld the 1986 Act as constitutionally valid and ruled that it requires "reasonable and fair provision," which extends beyond the iddat period—thus preserving the spirit of *Shah Bano*.

However, uncertainty persisted at lower courts until the recent 2024 ruling in *Mohd Abdul Samad v State of Telangana*<sup>27</sup>. The Supreme Court reaffirmed that divorced Muslim women may claim maintenance under both BNSS Sec. 144 and the 1986 Act in parallel. The Court explicitly held that these are not mutually exclusive rights but coexist in harmony, offering choice and expanded relief without infringing constitutional values. The Court underscored that maintenance under BNSS Sec. 144 is not charity but a constitutional safeguard preventing destitution, available until the woman remarries or becomes self-sufficient. It clarified that Sec. 3(1)(a) of the 1986 Act containing a non-obstante clause was intended not to nullify secular rights, but to add personal law remedies<sup>28</sup>. This marks a definitive judicial harmonisation between personal and secular law. Despite clarity at the apex level, implementation at district courts remains uneven. Reports show Muslim women still face resistance when filing for BNSS Sec. 144 relief, as some courts interpret the 1986 Act as exclusive<sup>29</sup>. Enforcement is further complicated when maintenance is denied on grounds that the woman is educated or "capable" undermining the preventive equity function of the law.

According to academic critiques deepen this disconnect. Scholars note that while *Shah Bano* and *Danial Latifi* introduced normative clarity, the personal law secular law dualism still burdens claimants with doctrinal confusion<sup>30</sup>. Unless judicial training and standardised protocols accompany BNSS implementation, religious and regional disparities will continue to shape outcomes. From a legal-institutional perspective, the enactment of BNSS provides structural support for secular, non-discriminatory maintenance provisions across religions. Yet, without explicit linkage to the BSA or the BNS, courts occasionally misapply evidentiary or procedural standards when deciding maintenance claims under Muslim personal law<sup>31</sup>. For example, tribunals may

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<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Mohd Abdul Samad v State of Telangana & Anr* (2024 INSC 506).

<sup>28</sup> F. Mustafa, 'Triple Talaq Verdict: In Favour of Equality but against Legal Clarity' (2017) 9 NUJS L Rev 275.

<sup>29</sup> S. Iyengar and F. Agnes, 'Law, Gender and Family: Critical Reflections on the Uniform Civil Code Debate in India' (2020) 55(4) Economic and Political Weekly 47.

<sup>30</sup> A. Arora & C. Arora, 'Maintenance as Punishment...' (2024) BJC 1041.

<sup>31</sup> W. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2nd edn, CUP 2006) 351.

deny interim relief citing absence of proof, despite BNS jurisprudence favouring summary procedures.

The regional experiments including Uttarakhand's UCC Act 2024 offer promising alternatives by placing maintenance under a unified civil statute rather than dual systems<sup>32</sup>. While its legal efficacy remains limited, such models show that codified, religion-neutral maintenance rights are achievable through legislative innovation—not solely judicial interpretation. The maintenance under Muslim law post-*Shah Bano* reflects evolving jurisprudence from exclusion to harmonisation of secular and personal law rights. The apex court's recent rulings have clarified ambiguities but cannot alone ensure consistent relief<sup>33</sup>. However, realising the promise of BNSS Sec. 144 requires judicial awareness, uniform procedural norms, and legislative clarity linking personal law allowances to constitutional mandates transforming jurisprudence into justice for Muslim women across India<sup>34</sup>.

### **GAPS IN STATUTORY FRAMEWORKS AND OVERLAPPING REMEDIES**

One persistent challenge in India's maintenance regime is the existence of overlapping statutory remedies, which create confusion and delay. Women may have entitlements under their religious personal law, BNSS Sec. 144, and even criminal law provisions in BNS, depending on circumstances. While multiple avenues may appear beneficial, they often result in procedural duplication, conflicting judicial findings, and inconsistent relief<sup>35</sup>. The lack of integration between these legal routes undermines the coherence of the legal structure. Functional gaps also exist within religious and statutory frameworks themselves. For instance, the Muslim Women (Protection of Rights on Divorce) Act, 1986, limits maintenance to the iddat period, while BNSS Sec. 144 offers ongoing support. Yet, the 1986 Act's non-obstante clause is often (mis)interpreted to exclude Sec. 144 relief, creating a legal lacuna for divorced women who depend on timely and adequate support<sup>36</sup>. Without statutory clarification, these overlapping provisions remain boilerplate, not guaranteed.

Similarly, Hindu statutory schemes like Sec. 24–25 of the Hindu Marriage Act, 1955 and HAMA offer remedies equivalent to Sec.

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<sup>32</sup> T. Khaitan, 'Beyond Reasonableness: A Rigorous Standard of Review for Article 15 Infringement' (2019) 50(1) Columbia HRLR 50.

<sup>33</sup> P. Baxi, 'Justice is a Secret: Compromise in Rape Trials' (2009) 44(3) Contributions to Indian Sociology 321.

<sup>34</sup> T. Mahmood, *Muslim Law in India and Abroad* (4th edn, LexisNexis 2022) 198.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.* at 5.

144, but they differ in scope, quantum calculation, and proof thresholds<sup>37</sup>. For example, Hindu maintenance laws often require the spouse to prove inability to earn, whereas Sec. 144 emphasizes immediate need. These mismatched thresholds result in inconsistent court orders when women file parallel petitions under Hindu personal law and BNSS. The courts face procedural overlaps in interim maintenance applications. Although *Rajnish v Neha*<sup>38</sup> standardised affidavit formats and calculation protocols for maintenance under BNSS, these guidelines are not binding on religious law tribunals. As a result, litigants often file two maintenance panels one secular, one personal law—with different evidentiary expectations and timelines. This duplication burdens the judicial system and leads to conflicting orders on quantum and duration.

Another statutory gap relates to evidentiary standards under BNSS and BSA, courts enjoy expansive discretionary powers to evaluate maintenance claims. However, religious personal law forums may apply traditional evidentiary rules that predate the modern evidence regime. With no statutory alignment requiring uniform probative standards particularly concerning ascertainment of need or proof of income women's success often hinges on which forum they access, rather than legal merit. At the intersection of remedy and punishment, BNS-related offences offer no consistent mechanism for automatic maintenance orders. In cases of domestic violence or sexual offences codified under BNS, courts must rely on parallel civil maintenance mechanisms even when survivors have ongoing needs tied to criminal harm<sup>39</sup>. The absence of integrated enforcement mechanisms between BNS sentencing and BNSS maintenance relief creates a serious gap in holistic justice delivery.

The absence of gender-neutral language in many personal laws further compounds overlaps. While BNSS Sec. 144 allows only wives, children, and parents to claim maintenance, personal law frameworks may permit husbands too but without consistency<sup>40</sup>. This dichotomy leads to confusion and litigation where entitlement overlaps or excludes cross-claims based on gender. Uniform drafting across maintenance statutes could help prune redundant or conflicting remedies. It's equally important to note enforcement gaps. Even when women secure maintenance orders under multiple statutes, non-compliance and poor enforcement mechanisms—such as absence of custodial enforcement via non-bailable warrants or attachment of assets—undermine the value

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<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Rajnish v Neha* (2020) 2 SCC 324.

<sup>39</sup> Indian Law Institute Consultation Paper on Family Law Reform (2018).

<sup>40</sup> *Id.* at 12.

of these awards<sup>41</sup>. BNSS and BNS continue to rely on section modelled after Sec. 125 Cr.P.C. without strengthening execution modalities, leaving victims with judgments on paper but no real access.

According to the recent legislative experiments, such as the Uttarakhand UCC (2024), seek to reduce remedial overlap by consolidating marriage, maintenance, and divorce under a singular statutory scheme<sup>42</sup>. Though limited in geographic applicability, this model may offer insights for national-level reform, enabling a unified maintenance regime that subsumes personal law and aligns with BNSS and BSA procedural standards. Ultimately, the coexistence of BNSS Sec. 144, personal law maintenance provisions, and disconnected criminal justice responses under BNS results in a patchwork system. The statutory architecture though expansive fails to operate seamlessly, resulting in duplication, conflicting orders, and uneven justice. Reform requires bridging these silos through harmonised drafting, institutional coordination, and statutory clear delineation of remedy entitlements across forums.

### **TOWARD A UCC: PROMISE, PITFALLS, AND CONSTITUTIONAL TENSIONS**

India's Constitution envisions a UCC under Article 44, promoting uniform laws on personal matters for all citizens irrespective of religion. The promise lies in eliminating legal pluralism and achieving substantive equality—especially in domains like marriage, divorce, inheritance, and maintenance<sup>43</sup>. In theory, a UCC could harmonise maintenance rights currently divided between BNSS Sec. 144 and personal laws, ensuring that rights do not hinge on religion or forum. Yet the UCC remains aspirational, unlegislated, and politically contested. According to the popular debates intensified following Uttarakhand's UCC Act, 2024, which brought maintenance, marriage, and inheritance under a single legal regime within the state. While hailed by reform advocates, the legislation has triggered constitutional scrutiny—particularly over Article 256 and Article 26. The courts are yet to definitively rule on whether state-level UCC infringes federal or religious rights.

The proponents of a national UCC argue it would eliminate overlapping remedies and inconsistency across BNS, BNSS, and BSA regimes. For instance, maintenance defined under BNSS

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<sup>41</sup> Law Commission of India, Report No. 271 on Justice Delivery Systems (2017).

<sup>42</sup> Uttarakhand Uniform Civil Code Act 2024 (India).

<sup>43</sup> Archer, 'UCC: Constitutional Promise and Institutional Realities' (2023) 14 NLSIU L Rev 219.

Sec. 144 could be supported and expanded by harmonised civil statutes<sup>44</sup>. Yet critics highlight the risk that a UCC, if drafted without sensitivity, could override protective elements of personal laws for example, gender-specific safeguards or community development provisions—thereby infringing constitutional rights under Articles 14 and 21. A crucial pitfall is constitutional tension between Article 44 and Article 25–28. The implementation of a UCC necessarily limits personal laws that communities may claim as religious tenets. The Supreme Court has recognized this tension but also affirmed that legislation may override religious norms if essential to constitutional morality and equality subject to procedural validity<sup>45</sup>. It remains to be seen how the judiciary balances doctrinal uniformity with minority rights.

There is also the question of implementation capacity. Legal pluralism persists not only in statutes but in enforcement: judicial attitudes, sensitivities, and training vary widely across regions and courts, impacting how BNSS Sec. 144 or potential UCC provisions are applied<sup>46</sup>. If uniform laws are not backed by judicial training and public awareness, formal uniformity may fail to translate into substantive change. The comparative studies offer insights: countries like Canada and South Africa have implemented uniform family law regimes while protecting religious practice via constitutional guarantees<sup>47</sup>. Models include opt-in systems, federal provincial harmonisation, and gender-neutrally drafted statutes. India could adapt such hybrid structures to reconcile uniformity with pluralism.

However, the move toward a national UCC must negotiate between constitutional idealism and societal realities. Reform must be preceded by transparent public deliberation, gender-sensitive drafting, and legal safeguards across BNS, BNSS, and BSA domains<sup>48</sup>. Only a UCC crafted with constitutional fidelity and procedural accountability can deliver on its promise without triggering new forms of marginalisation.

## CONCLUSION

The evolution of India's criminal and civil jurisprudence under the BNS, BNSS and BSA reflects a deliberate shift toward indigenising legal structures while addressing procedural lacunae in colonial-era statutes. However, the reformative zeal must be tempered with

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<sup>44</sup> Chatterjee and Sharma, 'UCC and Gender Justice: A Balanced Framework' (2024) 2 JILS 89.

<sup>45</sup> *Indian Young Lawyers' Association v State of Kerala* (2018) 10 SCC 36.

<sup>46</sup> Verma, 'UCC and Judicial Pluralism: Gaps in Practice' (2022) 59 Indian Law Review 307.

<sup>47</sup> M. Devereaux, *Comparative Family Law and the Accommodation of Religion* (OUP 2023).

<sup>48</sup> Srivastava, 'Design Principles for an Indian UCC' (2024) 12 Asian Law Journal 152.

caution, especially where overlaps exist between personal laws and uniform legal frameworks. Courts must actively interpret these laws in harmony with constitutional morality, particularly Articles 14, 15, and 21, to avoid compounding discrimination under the guise of legal reform. The balancing act between state interests and individual liberties remains a persistent judicial challenge. The judicial interventions, especially those by the Supreme Court, reveal that statutory clarity often fails to resolve complex socio-legal dilemmas. Cases like *Shayara Bano v Union of India* and *Joseph Shine v Union of India* underscore the judiciary's readiness to strike down personal law practices contravening constitutional guarantees. Yet, the reluctance to provide a consistent doctrinal framework on personal law reform signals an institutional hesitation to fully embrace the UCC, revealing both judicial and legislative ambivalence.

While the legislative re-codification through BNS, BNSS, and BSA provides an opportunity to revisit procedural rigour and evidentiary norms, the broader promise of legal harmony through UCC or otherwise remains constrained by political will and interpretative consistency. Achieving equitable justice will require more than statutory reform it calls for empathetic jurisprudence rooted in constitutionalism, pluralism, and human dignity.