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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **UNIFORM CIVIL CODE- A NECESSITY OR A CONTROVERSY?**

AUTHORED BY : SAI UJWAL MOHANTY

SNIL, BHUBANESWAR, ODISHA

## **INTRODUCTION:**

India is a nation known for its rich tapestry of cultures and traditions, where Hindus, Muslims, Sikhs, Christians, Jains, and Parsis coexist harmoniously. Our country's diversity is a source of pride, and our commitment to secularism has earned us recognition and appreciation. However, there are instances where our dedication to secularism can pose challenges to our development. As India progresses, certain issues hinder our growth.

In India, every religion is revered, and people are free to practice their faith, customs, and traditions. This inclusivity has led to the existence of separate personal laws for different religious communities, governing aspects such as marriage, divorce, adoption, and inheritance. While this unique feature of our legal system celebrates our diversity, it also raises concerns about inequality among our citizens. Separate personal laws mean that individuals have distinct rights and obligations.

To address these inequalities, the concept of a Uniform Civil Code (UCC) was introduced. The idea of a UCC dates back to 1835 when the British Government emphasized the need for standardization in our legal system. Article 44 of the Directive Principles of State Policy in the Indian Constitution further enshrines the notion of a UCC. It outlines the state's duty to establish a Uniform Civil Code that applies uniformly across the entire nation. In essence, the UCC promotes the concept of "one country, one rule." Such a code would provide a common set of regulations for all Indian citizens, replacing the existing personal laws based on religious scriptures and customs<sup>1</sup>.

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<sup>1</sup> "Why Uniform Civil Code is Necessary for India", Jagran Josh, Available at: <https://www.jagranjosh.com/general-knowledge/why-uniform-civil-code-is-necessary-for-india-1477037384-1>



## **HISTORY:**

In 1835, the British Government's Second Law Commission issued a report emphasizing the necessity of uniformity in codifying Indian laws governing crimes, evidence, and contracts. Importantly, the Indian populace was assured that their personal laws would remain unaffected and unregulated. As a result, India adopted a common Criminal Procedure Code that applied to all, but it refrained from introducing a unified law governing personal matters. The situation took a different turn when Shah Bano, a married Muslim woman, approached the Supreme Court under Section 125 of the Criminal Procedure Code to seek justice following her divorce. In the landmark case of Mohammad Ahmed Khan v. Shah Bano Begum in 1985, her husband had divorced her through the practice of triple talaq after 40 years of marriage and denied her maintenance since there was no provision for it under Muslim personal law. Shah Bano asserted her rights as an Indian woman, not just as a Muslim, and her claim for maintenance was granted by the court. This case brought to the forefront the pressing need for a Uniform Civil Code in India.<sup>2</sup>

## **CASES DISCUSSING THE NEED OF UCC IN INDIA:**

The Supreme Court's judgment applied Section 125 of the Indian Criminal Code, which is applicable to all citizens, regardless of their religion. The Parliament was directed to formulate a Uniform Civil Code for the nation. The court provided a clear directive for the implementation of uniformity in personal laws, as it identified that these differing laws were a major source of inequality, especially between men and women.

However, the Rajiv Gandhi Government expressed dissatisfaction with the decision and chose to disregard the Apex Court's advice. Instead of supporting and implementing the court's judgment, the government enacted the Muslim Women (Protection of Rights on Divorce) Act in 1986 to invalidate the Supreme Court's ruling.

In another instance, in the case of Sarla Mudgal vs. Union of India and Others, a controversy arose when a husband converted to Islam and contracted a second marriage without dissolving his first marriage. The validity of this marriage was questioned under the Hindu Marriage Act. The Honorable Supreme Court resolved the matter by affirming that when two personal laws are in conflict, the one that best serves the purpose should prevail. The court held that a conversion to

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<sup>2</sup> Maintenance of a Muslim Wife Under Section 125 CRPC: An Overview of Supreme Court Cases, by Meher Tatineni, PDF, Available at: <https://thelawbrigade.com/>



Islam does not automatically dissolve a marriage performed under Hindu law.<sup>3</sup>

## **LAWS RELATING TO UCC:**

The preamble of the Constitution affirms that India is a "secular democratic republic." In a secular state, there is no discrimination based on religion, and the state's primary concern is with regulating the relationships between individuals rather than managing the relationship between individuals and their religious beliefs. In India, the concept of positive secularism is adopted, which distinguishes spiritualism from individual faith.

Positive secularism is a doctrine of secularism that is also recognized in the United States and some European states. It emphasizes the presence of a "wall of separation" between religion and the state. This means that the state should not interfere with religious matters. This approach is a result of the historical development in these countries, marked by stages such as the Renaissance, Reformation, and Enlightenment. As a result, they can enact laws stipulating that the state shall not interfere with religious affairs.<sup>4</sup>

In contrast, India's historical development has not followed the same trajectory as that of the United States and European countries. India did not experience the same stages of renaissance, reformation, and enlightenment. Therefore, in India, there is a degree of state involvement in religious matters, primarily aimed at addressing issues that hinder the effective governance of the state.

The Honorable Supreme Court has also directed a fresh examination of Article 44, which states that "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India"<sup>5</sup>. This article suggests that the Indian state should work towards implementing a Uniform Civil Code (UCC) that would be applicable to all citizens of the country, irrespective of their religious affiliations. The UCC would provide a single set of laws governing personal matters like marriage, divorce, adoption, and inheritance, replacing the diverse personal laws that

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<sup>3</sup> Uniform Civil Code in India. [online] Available at: <https://lexquest.in/wp-content/uploads/2015/04/UCC-in-India.pdf>

<sup>4</sup> Uniform Civil Code In India: An Analysis. [online] Available at: <http://jcil.lsyndicate.com/wp-content/uploads/2016/11/Tanushree.pdf>

<sup>5</sup> Article 44, DPSP, The Constitution of India

currently exist based on different religious communities.<sup>6</sup>

Goa stands as the lone state in India with a common family law and the 1954 Special Marriage Act, allowing any citizen to marry outside the confines of specific religious personal laws. The need for a Uniform Civil Code becomes increasingly evident, as it would establish a unified set of laws governing personal matters for all citizens, regardless of their religion. This progressive reform not only eliminates discrimination against women based on religious grounds but also fortifies the secular nature of the country and fosters unity.

## **WHY UCC IS A NEED?**

Our social system, is riddled with inequities and discriminations that conflict with our Fundamental Rights, necessitates reform. While there is a Criminal Code that applies universally to all people, irrespective of religion, caste, tribe, or domicile in the country, there is no similar code governing divorce and succession, which are instead governed by personal laws. Without a Uniform Civil Code, the label of India as a secular nation remains an illusion. The Uniform Civil Code is essential for India, ensuring that the same laws are applicable to every citizen, without considering their religion.

India has always recognized the needs of its citizens, irrespective of their religious affiliations, be they Hindu, Muslim, Sikh, or Christian. India is a land where religious freedom is upheld, and this will not change. It's vital to understand that a Uniform Civil Code incorporates modern and progressive aspects into existing personal laws, without infringing on our religious practices and traditions. It will only intervene legally in cases of Adoption, Marriage, and Inheritance, promoting equality and peace.

Much like schools have uniforms to prevent discrimination among students, a Uniform Civil Code would eliminate differentiation based on caste, religion, and gender. We already follow a common criminal code for all citizens, and there have been no issues with it. Once guided by a common law, there will be no room for discrimination. For instance, the practice of triple talaq, where a Muslim man could divorce his wife by uttering "Talaq" three times without justification, leaving the wife without maintenance, highlights the loopholes in our personal laws. A Uniform Civil

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<sup>6</sup> Constitution mandates uniform civil code, religious diktats can't overrule it, Available at: <https://indianexpress.com/article/opinion/columns/constitution-mandates-uniform-civil-code-religious-diktats-cant-overrule-it-8693288/>

Code will rectify these issues, eradicating discrimination at its core.

A nation with uniformity is stronger than one with diverse legal systems. India will continue to be a land of culture and tradition, but it will be reinforced with a common legal framework. Every citizen's concern should be addressed equitably, and enacting a Uniform Civil Code is the solution. Most of the riots and problems in India arise from misunderstandings between Hindus and Muslims, despite coexisting in this country. It's high time we transcend our religious identities and recognize ourselves as Indians. Our country respects our choices and grants us the freedom to choose, so we must choose wisely. A common law will not only propel us toward development but also foster peace and harmony among the people and the nation.

## CONCLUSION

India has emerged as a major power with a strong military background and a federal political system where power is shared between the central government and state governments. It is a major cultural influence and boasts a rapidly growing and developing economy. As stated in the preamble of its constitution, India is a secular country, known for its tremendous diversity encompassing various languages, traditions, and religions.

Religion in India not only underpins its culture but also directly impacts society and its people. It is an integral part of the Indian tradition, and Indians deeply associate themselves with their respective religions. In addition to major religions, India has numerous minor tribal traditions that persist to this day.

Implementing a Uniform Civil Code in India is a challenging task due to the political and social complexities mentioned above. Consequently, the idea of enforcing a Uniform Civil Code faces substantial opposition and barriers. Nevertheless, we must fight for the betterment of our nation. The framers of our Constitution included the concept of the UCC for the welfare of its citizens. Dr. B.R. Ambedkar once stated, "We have in this country a Uniform Civil Code of laws covering almost every aspect of human relationship."

The struggle to introduce a Uniform Civil Code will not be easy, but it will be worth it. Our personal laws are a primary reason why India is not a united nation today; it is fragmented along religious lines. The implementation of the UCC will gradually bridge the gaps of discrimination. As responsible citizens, it is our duty to positively contribute to the reform of the system.



Once we embrace the idea of a Uniform Civil Code, future generations will not face the discrimination and inequality that we experience today. Every individual will enjoy equal rights and treatment. Therefore, let's move from celebrating our diversity to fostering unity. Instead of identifying primarily as Hindus, Muslims, or Christians, let's first and foremost identify as Indians.

