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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated 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

# **UNIFORM CIVIL CODE**

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## **Abstract:**

The concept of a Uniform Civil Code (UCC) in India has been a topic of debate and discussion for decades. The UCC proposes to replace personal laws based on religious customs and traditions with a common set of laws governing matters such as marriage, divorce, inheritance, and adoption for all citizens, irrespective of their religious affiliations.

This abstract delves into the historical context, legal implications, socio-political challenges, and the prospects of implementing a UCC in India. It examines the constitutional mandate, judicial pronouncements, and the socio-cultural diversity of the country that influence the discourse surrounding the UCC.

Additionally, it considers the perspectives of various stakeholders, including religious communities, legal experts, policymakers, and civil society, in shaping the narrative on the UCC.

The abstract also discusses the potential benefits of a UCC, such as gender equality, social justice, and national integration, while acknowledging the concerns regarding cultural autonomy, minority rights, and the practicality of its implementation. By critically analyzing these dimensions, this abstract aims to contribute to the ongoing dialogue on the feasibility and desirability of a Uniform Civil Code in India.

The concept of a Uniform Civil Code (UCC) in India, aimed at replacing disparate personal laws with a common civil law for all citizens, has sparked intense debates and discussions. This abstract explores the historical context, constitutional provisions, legal challenges, and socio-political dynamics surrounding the implementation of a UCC. It examines the diversity of personal laws based on religious customs and traditions, the constitutional mandate for a UCC under Article 44, and the interpretations by the judiciary.



Furthermore, it delves into the socio-cultural complexities, including the implications for religious minorities and the need for cultural sensitivity in lawmaking.

The abstract also highlights the potential benefits of a UCC, such as gender equality, social justice, and national integration, while acknowledging the concerns regarding cultural autonomy and minority rights. By offering a nuanced analysis of these issues, this abstract contributes to the ongoing discourse on the path forward for a Uniform Civil Code in India.

**Keywords:** Uniform Civil Code, Secularism, Gender Equality

### **Introduction:**

The notion of secularism is not expressly delineated within the Indian constitution; nevertheless, India is widely acknowledged as a secular nation. The understanding of secularism has undergone a process of development over the years, leading to diverse interpretations and occasional misinterpretations. India boasts a heterogeneous populace adhering to various faiths including Islam, Hinduism, Christianity, Buddhism, and Sikhism.

The inclusion of the term "secular" in the preamble was effected through the 42nd Amendment in 1976, underscoring the principle that all citizens possess the liberty to observe any religion of their choice without encountering discrimination on the basis of their religious convictions.

Various religions have their own distinct personal laws that govern the lives of citizens within a country, resulting in a lack of consistency in personal legal frameworks. This lack of uniformity presents a significant challenge in contemporary society, particularly in terms of potentially depriving women of their rights. One proposed solution to address this issue is the introduction of a Uniform Civil Code, which aims to establish consistent personal laws applicable to all individuals.

These personal laws encompass a range of areas including marriage, divorce, maintenance, and inheritance, and are separate from public laws. The concept of a Uniform Civil Code is enshrined in the Indian constitution under Article 44 of the Directive Principles of State Policy (DPSP).

Advocates argue that the separation of religion from the legal system is crucial, although critics contend that this notion may contravene Article 25 of the Indian constitution.



The objective of this study is to explore the concept of the Uniform Civil Code in a more effective and efficient manner to ensure its successful implementation in India, and to assess its suitability for a diverse country like India.

**Research Question:** whether it is a demand of time? - “Issues and Challenges”

## **Uniform Civil Code and the Personal Laws**

The personal laws, originating from traditional customs, have historically favored men within society. Hindu and Muslim personal laws were established in the early 20th century to shield family matters from colonial oversight. Men are typically regarded as having superiority in personal affairs such as marriage, adoption, maintenance, and inheritance, while women encounter discrimination across various facets of life. Prior to 1955, polygamy was prevalent among Hindus, and the elimination of this practice in Hindu Personal Law was met with resistance from men who threatened to convert to Islam to uphold their customary privileges.

The Hindu Succession Act of 1956 did not confer daughters with inheritance rights to ancestral property. Hindu Personal Laws differ among various states in India, each with distinct regulations and customs. For instance, Sikhs are allowed to carry a ceremonial dagger known as a kirpan, whereas individuals from other communities could face legal repercussions for the same act. Hindu women are restricted from adopting children and are unable to assume the role of natural guardian for their own child without the presence of their husband.

Before the bill following a 2017 Supreme Court ruling that the practice of instant triple talaq is unconstitutional and a divorce pronounced by uttering talaq three times in one sitting is void and illegal. In Muslim society, women are subjected to harsh discrimination from the very beginning, being given a secondary status. In the Islamic faith, a husband is permitted to have multiple wives, while the same privilege is not extended to the wife who is considered impure.

Numerous laws violate women's rights, such as the practice of "Triple Talaq," which allows a Muslim man to divorce his wife by saying "Talaq" three times, leaving the wife with no recourse. In India, there are numerous cases where husbands have divorced their wives through phone calls or messages. Under Muslim Personal Law, a Muslim man is only obligated to provide maintenance to his wife until the end of the Iddat period, and not beyond that.

## **Uniform Civil Code and Indian Constitution**

The discourse surrounding the Uniform Civil Code (UCC) in India has been ongoing since the country gained independence, yet the issue remains unresolved with minimal progress in addressing gender discrimination and inequality in societal status. Post-independence, the UCC was deliberated in the Indian Parliament in 1948, with the initial support of India's first Prime Minister, Jawaharlal Nehru, who later abandoned the proposal due to perceived lack of societal readiness, particularly within the Muslim community. Divergent opinions emerged, with individuals like Dr. B. R. Ambedkar advocating for the UCC while facing opposition from Muslim fundamentalists. Article 44 of the Indian Constitution encourages the state to work towards implementing a UCC for all citizens; however, this falls under the Directive Principles of State Policy, which are not legally binding but rather serve as governmental guidelines.

Consequently, although the Constitution recognizes the significance of a UCC for the welfare of citizens, its enforcement is not obligatory.

The Uniform Civil Code entails a standardized set of civil laws that would be universally applicable to all Indian citizens, irrespective of their religious affiliations. These laws encompass various aspects such as marriage, adoption, divorce, inheritance, and financial support.

The term "secular" was incorporated into the preamble of the Indian Constitution via the 42nd Constitutional Amendment Act, ensuring that the state remains impartial towards any religion. Articles 25 and 26 of the Constitution guarantee individuals the freedom to practice their religion and manage religious affairs as part of their fundamental rights.

Critics of the Uniform Civil Code argue that it contradicts Article 25 of the Constitution, which is a misconception. The UCC aims to replace diverse personal laws with a singular law to eliminate favoritism and biases, ensuring that individuals are not compelled to adhere to rituals from a different faith. Instead, it focuses on regulating matters such as marriage, adoption, and inheritance without any gender-based discrimination.

## **Uniform Civil Code in Goa**

Goa stands out as the sole state in India where a Uniform Civil Code (UCC) is enforced uniformly across all communities, irrespective of gender, religion, or caste. This code was instituted by Portuguese colonizers during the 19th and 20th centuries. The state operates under a consolidated family law system, ensuring that individuals from Hindu, Muslim, and Christian backgrounds are subject to the same legal provisions concerning marriage, divorce, and inheritance.

This inclusive legal framework has bolstered Goa's image as a progressive and forward-thinking state. Notably, property is equitably divided among spouses and children in Goa, without regard to gender. Furthermore, Muslim residents who marry and register in Goa are prohibited from engaging in polygamy or issuing Triple Talaq.

In cases of divorce, assets are divided equally between the husband and wife. Registration of marriages is compulsory in Goa. Following independence, all colonial laws were repealed in Goa, with the exception of the Family law, which was preserved due to unanimous backing from all communities in the state.

## **Special Marriage Act, 1954:**

This legislation was passed by the Indian Parliament to offer a unique type of marriage option for Indian citizens, irrespective of their religious beliefs. The main aim of this law was to allow individuals to marry without adhering to the customs and traditions dictated by their personal laws. Polygamy was prohibited under this law, and divorce and inheritance matters were to be regulated by the Indian Succession Act. In Goa, specific regulations regarding divorce are in place.

## **Uniform Civil Code and Arguments for and Against**

### **Arguments in the favor of UCC:**

- The enforcement of Uniform Civil Code (UCC) is crucial in addressing discrimination and gender disparities. Personal laws primarily benefit men in society.
- Politicians manipulate individuals using religion, hindering the practice of unethical politics.
- The Uniform Civil Code (UCC) is seen as a way to promote national integrity and unity. It was deemed necessary even at the time of India's independence, but despite 72 years passing

since then, it has not been put into effect.

- One of the key issues in society is the status of women, and the UCC aims to establish uniform civil laws to prevent discrimination against women and improve their standing in society.
- In the modern world, countries require new laws that foster unity and peace, while personal laws continue to adhere to outdated customs and traditions.
- The UCC is viewed as a symbol of modernization and progress, as it eliminates personal laws and shifts the nation away from politics influenced by religion and caste, promoting equality for all individuals regardless of gender, caste, or religion.

### **Arguments against UCC:**

- Critics argue that the UCC may be perceived as an attempt to assimilate minority groups into Hinduism, which is a misconception.
- They believe that its implementation could offend a significant portion of India's diverse population with varying interests, potentially violating Article 25 and moving the nation away from secularization. Opponents argue that personal laws are rooted in religious beliefs and should be left untouched without interference.

### **Cases:**

- In 1985, the Shah Bano case involved a 73-year-old woman named Shah Bano who was divorced by her husband, Muhammad Ahmad Khan, using Triple Talaq after 40 years of marriage. Khan refused to provide her with financial support post-divorce. Shah Bano then sought legal recourse, and both lower courts ruled in her favor. Khan, being a lawyer himself, appealed to the Supreme Court claiming he had fulfilled his obligations under Islamic law. However, in 1985, the Supreme Court sided with Shah Bano under the "maintenance of wives, children and parents" provision (section 125) of the All India Criminal Code, which applied to all Indian citizens regardless of religion. The Supreme Court also introduced the idea of a Uniform Civil Code (UCC).
- The Sarla Mudgal case involved four petitioners and was a writ petition filed under Article 32 of the Indian Constitution. The central issue was whether a Hindu husband, already married under Hindu law, could legally enter into a second marriage by converting to Islam. The court



ruled that a Hindu marriage can only be terminated according to the grounds specified in the Hindu Marriage Act of 1955.

Merely converting to Islam and marrying again would not dissolve the Hindu marriage, and would be considered a violation of Section 499 of the Indian Penal Code. Justice Kuldeep Singh urged the government to consider Article 44 of the Indian Constitution.

- In the John Vallamattom case, a priest from Kerala challenged the constitutionality of section 118 of the Indian Succession Act. He argued that this section unfairly discriminated against Christians by imposing unjust limitations on the donation of property for religious or charitable reasons through a will. The court ultimately ruled that this section was unconstitutional and struck it down.

### **Conclusion and Suggestion:**

After considering the various perspectives discussed above, the most effective solution to the issues at hand is the adoption of a Uniform Civil Code (UCC). It is essential to standardize personal laws for all citizens, irrespective of their religious beliefs. Although the UCC bill was approved, it faced opposition and criticism, preventing its implementation. The concept of UCC in India is highly regarded by members of the Constituent Assembly, judges, and legal experts who recognize its significance in a diverse country like India.

It is crucial for individuals to recognize the distinction between law and religion and avoid their conflation. UCC aims to unite all individuals and eliminate discrimination, rather than threaten minority groups. Its implementation would not only benefit citizens but also contribute to the progress and development of the nation as a whole. Courts have urged the Parliament to introduce UCC in the country.

By embracing UCC, people can experience genuine secularism, not just the notion of living in a secular state. Despite ongoing debates since Independence, there has been a lack of concrete efforts to advance the implementation of UCC. It is important for people to understand that UCC does not infringe upon Article 25 of the Constitution, allowing individuals to practice any religion freely.

The introduction of UCC in India is imperative, and it is hoped that personal laws will soon be standardized, leading the nation towards becoming a truly democratic society.

Moreover, the adoption of a Uniform Civil Code (UCC) has the potential to streamline legal processes and reduce bureaucratic complexities associated with personal laws. A uniform set of laws applicable to all citizens would simplify legal proceedings, enhance access to justice, and promote efficiency within the judicial system.

Additionally, the implementation of a UCC can foster social cohesion and national integration by transcending religious boundaries and promoting a sense of unity among diverse communities. It would serve as a unifying force, reinforcing the principles of equality and justice enshrined in the Indian Constitution.

Furthermore, the introduction of a UCC can catalyze socio-economic development by eliminating discriminatory practices embedded within personal laws. Equal treatment under the law irrespective of religious affiliations can empower marginalized groups, particularly women, by granting them equal rights and opportunities.

In essence, the adoption of a Uniform Civil Code in India is not only a legal imperative but also a moral and societal imperative. It holds the potential to uphold constitutional values, promote social justice, and propel the nation towards a more inclusive and progressive future.

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