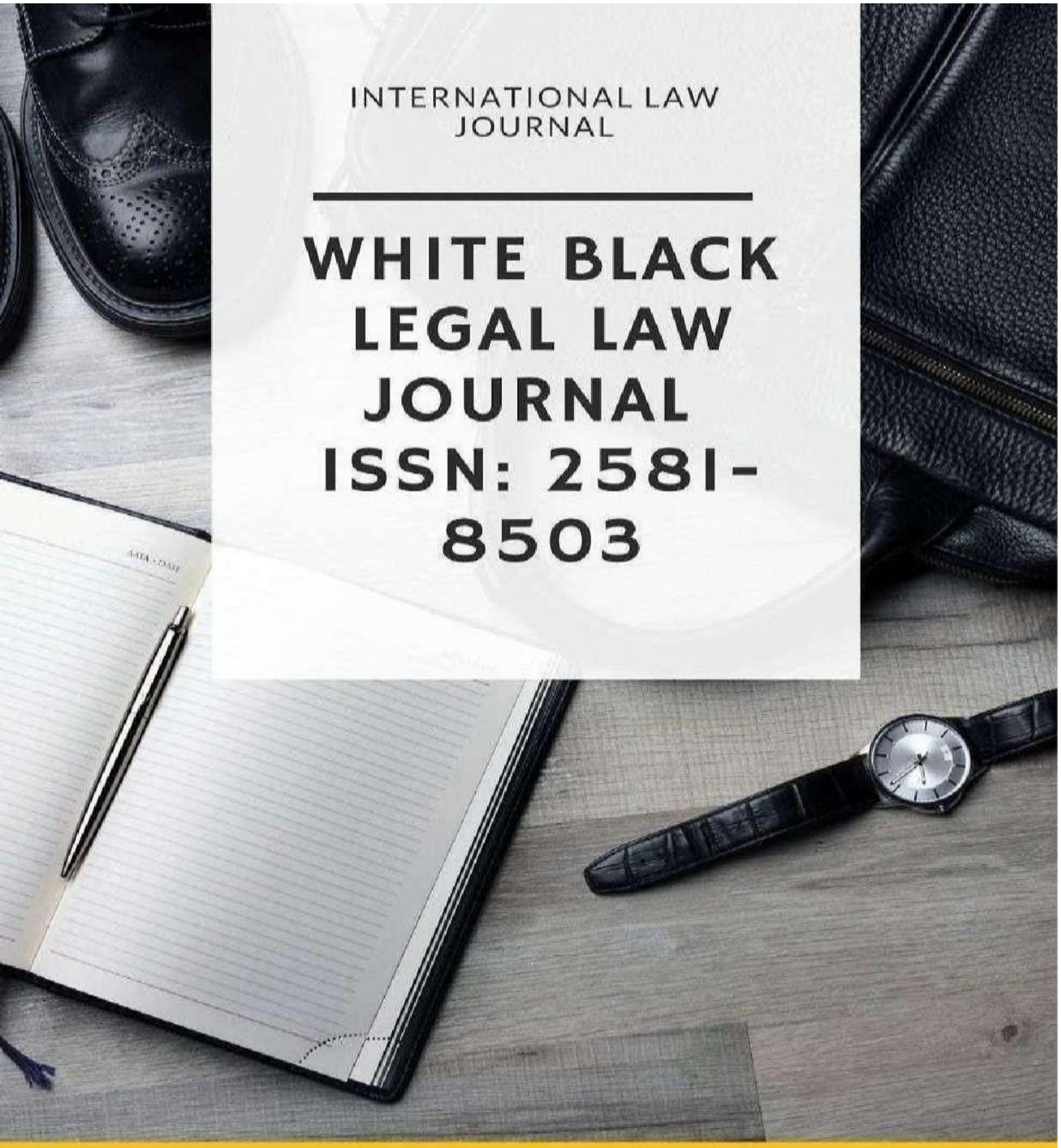

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CONSTITUTIONAL VALIDITY OF UCC: BOON OR BANE?

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Abstract

Examining the Uniform Civil Code in India and its impact on Indian society and democracy, this study seeks to determine whether the code is constitutional and beneficial. In essence, the UCC states that all citizens, irrespective of their religious affiliation, are subject to the same set of civil laws. Currently, Hindu, Muslim, Christian, and Parsi personal laws regulate marriage, divorce, inheritance, and adoption in their own unique ways.

This study examines Article 44, which is part of the DPSP, and the ways in which it interacts with the Fundamental Rights, namely Articles 14, 15, 21, and 25. This conflict between the two sections of the constitution has always been there, but it has never been more apparent than in the UCC dispute.

Cases that illustrate the courts' efforts to strike a compromise between religious freedom and equality include Shah Bano (1985), Sarla Mudgal (1995), and Shayara Bano (2017). We also take a close look at the Uttarakhand UCC Act 2024, which was passed not long ago and makes this Indian state the first to enact a comprehensive UCC since independence.

The article finds that the UCC has constitutional validity, but its implementation, consultation, and sincerity about secularism (or lack thereof) will determine whether it is a blessing or a curse for minority groups. Justice and equality for women can result from a well-

run UCC, but social cohesion and the republic's secular basis can be jeopardized by a poorly run one.

Keywords: Uniform Civil Code, Article 44, Constitutional Validity, Directive Principles, Fundamental Rights, Gender Justice, Secularism, Personal Laws, Minority Rights.

Chapter 1: Introduction

When it comes to the rule of law, India is unlike any other country. Everyone, whether they are Hindu, Muslim, Christian, or Parsi, is subject to the same criminal law: murder. When it comes to matters of civil law, such as marriage, divorce, inheritance, and adoption, however, your religious beliefs suddenly dictate your legal protections. This inconsistency lies at the heart of the discussion about a Uniform Civil Code.

Imagine it in this manner. Divorce is affecting two Indian women. They are both Muslims and Hindus. All things being equal, they come from the same socioeconomic background and have the same degree of education. However, their rights under the law may change drastically following the divorce. Under the Hindu Marriage Act of 1955, the Hindu woman is protected. “Muslim Personal Law (Shariat) Application Act 1937 restricted maintenance rights for Muslim women to the iddat period for a long time. Contrast this with equality. The promise made by the constitution is not being fulfilled.

According to Article 44 of the constitution, the state is obligated to strive for the establishment of a universal civil code.” The word "endeavour" is crucial because it denotes an attempt and does not imply an instant need to execute it. Since the framers anticipated controversy and believed society would require time to adjust, they placed this in Part IV, Directive Principles of State Policy, rather than Part III, Fundamental Rights, of the constitution.

Yet, that happened in 1949. The year 2024–2025 has arrived; seventy-five years have elapsed. As of this writing, Uttarakhand is the only Indian state to have a UCC in place. It is being debated once again by the Law Commission. War has broken out amongst political factions over it. It continues to be cited by courts. Instead of asking whether we should talk about UCC, we should be asking why we haven't already and what are we waiting for.

There are two primary questions that this study will attempt to address. To start with, can the UCC be legally enforced? (In a nutshell, the answer is yes.) For the second question, would it help or hurt India? (Longer answer: it is highly context dependent.)

A doctrinal research technique is employed in the paper. Constitutional provisions, statutes, case laws, reports from law commissions, and scholarly writings on the issue are the key sources examined. It relies on legal texts and judicial reasoning rather than primary surveys or interviews.

An important point to make from the start. This study makes an effort to acknowledge that the problem at hand is complex. On both side, there are valid worries. Given the current political context in India, those who are frightened that minorities may be subjected to Hindu law through the use of UCC have good reason to be anxious. “Additionally, those who argue that women of all faiths and cultures should have equal rights are entirely correct. The difficulty is in navigating forward while simultaneously embracing both of these realities.

There are twelve sections to the report. The origins of personal laws must be understood in order to grasp the current discussion, therefore let's start with the historical context. The following sections will follow: the constitutional framework; issues; gender justice; minority rights; the judiciary; recent developments; a comparative research; assessments; recommendations; and finally, the conclusion.

Chapter 2: Constitutional and Legal Framework

2.1 Article 44 and the Directive Principles of State Policy

Short is Article 44. 'The State shall try to secure for the citizens a uniform civil code across the territory of India.' It's done. I only need one sentence.

The Constitution's Directive Principles of State Policy, however, are located in Part IV. According to Article 37, DPSPs are essential to the country's government, the state must adhere to them while passing laws, but no court can enforce them.” So, you can't threaten to sue someone unless they "implement Article 44."

So what's the big deal? Reasons galore.

To begin, the Supreme Court's decision in Minerva Mills Ltd. v. Union of India (1980) emphasized the need of reading the Constitution in harmony with its Fundamental Rights and

Directive Principles. “One cannot be totally relinquished in order to facilitate the other. Thus, Article 44 is a direction in policy that is fundamentally important to the constitution, and not only an aim.

Secondly, DPSPs have the ability to legitimize laws that could potentially go against specific basic rights. Parliament has the authority to pass a UCC by citing Article 44 of the Constitution.

Third, the courts have often held that Article 44 is an unfulfilled constitutional promise. Parliament has failed to take action on this, and courts have noted this with scarcely hidden displeasure in many cases. In the cases of Shah Bano, Sarla Mudgal, and John Vallamattom, the court specifically requested that UCC be addressed. They have the power to convey their constitutional opinion clearly, but they cannot order Parliament to act.

2.2 Articles 14, 15 and 21 – the equality arguments

This is where the strong argument in favor of UCC's constitutionality becomes apparent. Not only because of Article 44 on its own, but also because of the Fundamental Rights guaranteed by Articles 14, 15, and 21.

According to Article 14, no one shall be denied equal protection under the law or equality before the law by the state. Not only does this mean that everyone must play by the same set of rules, but the Supreme Court has taken a broad view of the concept, stating that there must be no discrimination of any kind. Distinctions are made under the present personal law system solely on the basis of religion. In the same set of circumstances, a Muslim woman's inheritance rights could differ substantially from those of a Hindu woman. This difference is purely theological. It ought not to be constitutionally permissible according to Article 14.

According to Article 15, the government cannot treat its citizens differently because of their religion, color, caste, sex, or the fact that they were born in a certain country. Religion and sex are both used as reasons for discrimination in personal laws. When it comes to divorce and property, a Muslim woman is treated differently—and sometimes worse—than a Hindu woman. Discrimination based on religion is what this is. Article 15 ought to forbid such conduct.

In Article 21, the right to life and liberty are guaranteed. The Supreme Court has greatly broadened this throughout the years. Any process influencing Article 21 must be reasonable, fair, and just, according to the court's 1978 decision in Maneka Gandhi v. Union of India. The court has expanded the scope of Article 21 to encompass respect for individual autonomy, personal liberty, and dignity in subsequent decisions. It is arguable a breach of Article 21 when

personal legislation restricts a woman's freedoms, such as her capacity to leave an abusive marriage, her right to economic independence, and her right to own property.

When numbers 14, 15, 21, and 44 are added together, they form a strong argument for the constitution. When taken as a whole, they state the following: there should be a consistent civil code; all citizens should be equal; religious discrimination should be outlawed; and everyone should have their dignity and freedom protected. The continuation of personal law based on religion is at odds with these provisions.

2.3 Article 25 – the religious freedom counterargument

All people have an equal right to freedom of conscience and the freedom to profess, practice, and propagate their religion freely, according to Article 25 of the Constitution, which is the primary reason against UCC. Additionally, Article 26 guarantees religious groups the autonomy to conduct their own religiously-related business.

The reasoning behind these clauses is that religious law includes personal laws. Islam recognizes marriage as a sacred covenant, or nikah. Quranic injunctions control inheritance under Islam. Attempts to supplant them with a secular civil code would amount to an intrusion on religious practice. Thus, UCC is in violation of Article 25.

Even while it doesn't make everyone happy, the logic is sound, and the courts have repeatedly rejected this argument.

The most important difference is between fundamental religious rituals and secular pursuits that are just linked to religion. Article 25 solely protects religiously necessary practices, according to the Supreme Court's 1954 decision in Shirur Mutt. Something is crucial if its absence would cause a radical shift in religious practice. Rules pertaining to marriage, inheritance, and maintenance may have religious overtones, but the court has consistently ruled that they are of a civil nature. Secular outcomes include their regulation of property rights and interpersonal legal status. The state can establish regulations about these without interfering with people's ability to worship, believe, or engage in the spiritual aspects of their faith.

Even though their legacy is subject to civil law, a devout Muslim can nevertheless live their life according to Islamic inheritance rules. In the event of a legal disagreement, the civil law shall govern the allocation of rights. Ignoring this fact does not alter the religious practice. Both of these areas are distinct.

Be that as it may, those who hold their own law in the highest regard may find this argument emotionally and psychologically unconvincing. This fact of emotion is important for practical application, regardless of whether it affects the constitutional analysis or not.

2.4 Current personal law statutes and their problems

There is a real lack of cohesion and clarity in the current personal law landscape. This is a high-level summary.

There are five primary statutes that pertain to Hindus (legally including Sikhs, Jains, and Buddhists): the Hindu Marriage Act 1955, the Hindu Succession Act 1956 (as amended in 2005), the Hindu Minority and Guardianship Act 1956, and the Hindu Adoptions and Maintenance Act 1956. These are up-to-date and have been amended to conform to constitutional requirements.

Muslim women now have the right to divorce under the Dissolution of Muslim Marriages Act of 1939, which codified specific grounds for divorce, and the Muslim Women (Protection of Rights on Marriage) Act of 2019, which outlaws instant triple talaq. However, when it comes to inheritance and maintenance, Muslim personal law is still mostly uncodified, and judges rely on treatises and precedent to determine what is right.

Hindus: Hindu Christian Marriage Act of 1872, Indian Divorce Act of 1869 (as revised in 2001), and Indian Succession Act of 1925.

The Indian Succession Act of 1925, with certain revisions, and the Parsi Marriage and Divorce Act of 1936 are applicable to Parsis.

The issues this raises are practical as well as academic. When it comes down to it, judges occasionally have to sort out questions of ambiguity or marriages between people of different faiths as to whose personal law applies. Divorce laws vary from one community to another, making it more difficult for women to leave abusive relationships. Because of differences in inheritance laws, a father's religious affiliation could determine whether or not his daughters can inherit his possessions. The current legal system is incoherent. A historical hodgepodge has formed.