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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

# “EXPLORING THE INTERPLAY BETWEEN UNIFORM CIVIL CODE AND SUSTAINABILITY”<sup>1</sup>

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Theme of submission: Uniform Civil Code and sustainability

## ABSTRACT

*"In order to foster equality and justice for all, a diverse and heterogeneous society urgently needs a uniform civil code."*

The idea of a Uniform Civil Code (UCC) has generated a lot of debate, with the aim of establishing a standard set of laws governing personal matters for all people, irrespective of their religious beliefs. The intricate relationship between sustainability and the Uniform Civil Code is examined in this abstract, along with its implications for gender equality, peace in the community, and other facets of sustainable development. Social Harmony and Integration: By presenting a cohesive legal framework, a UCC seeks to close gaps and promote social cohesiveness. The implementation of uniform legislation among religious communities may have the effect of mitigating intracommunal tensions and fostering a sense of national unity. There are challenges, nevertheless, in ensuring that this uniformity is achieved without undermining the rich tapestry of cultural difference.

Gender Equality: One of the main tenets of a UCC is the pursuit of gender equality. By addressing disparities engrained in personal laws, it seeks to provide equal rights and opportunities for all people, regardless of gender or religion affiliation.

Individual Freedoms: The creation of a UCC can support more individual autonomy and freedom of choice by reducing the influence of religious legislation on private matters. This is consistent with sustainability principles that prioritise human rights and individual well-being.

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Difficulties and Considerations: Nevertheless, implementing a UCC involves a number of complications. Achieving a balance between cultural sensitivity and the need for a uniform legal code is necessary to preserve religious diversity.

A balanced approach is necessary to uphold the rights of the community and the individual while advancing a more inclusive judicial system.

In summary, there are several facets to the relationship between sustainability and a Uniform Civil Code, including social peace, gender equality, and the broader field of sustainable development. In order to ensure that a UCC respects human rights and sustainability while positively influencing the health of a diverse community, a careful balance between cultural sensitivity and uniformity must be achieved.

*Keywords: UCC.*

## INTRODUCTION

The conflict between sustainable development and the Uniform Civil Code (UCC) is a fascinating and diverse field of study in the changing tapestry of legal systems and social goals. There are serious concerns regarding the Uniform Civil Code's ability to advance social, economic, and environmental sustainability given that it promotes a uniform civil code that is applicable to all individuals, irrespective of their cultural or religious beliefs. This study sets out on an extensive expedition to decipher the intricate interactions between the sustainable development principles and the Uniform Civil Code, and investigate how legal unity can function as a stimulant for long-term societal well-being. A common civil code is needed since many civilizations are striving for social justice, equality, and coherence. It is vital to evaluate how a shared legal framework might support the sustainability pillars in the context of this legal paradigm and the larger sustainability spectrum. For instance, the argument over the Uniform Civil Code frequently centres on gender equality, and knowing how it relates to sustainability can help us promote societies that are resilient and inclusive. This study is focused on social, economic, and environmental sustainability and extends beyond the purview of conventional legal analysis. Inquiring as to how a unified legal system might reduce disparities, support marginalised populations, and enhance social cohesion in general, we aim to investigate the possible benefits and difficulties related to this legal paradigm change. This study attempts to create pathways for bridging civil law with the needs of a sustainable future by navigating the complex web of disparate cultural norms and legal traditions. We aimed to shed light on the transformative possibilities and implications of the relationship between the Uniform Civil Code and broad



sustainability objectives in our evolving society through the use of this multidisciplinary lens.

## HISTORICAL PERSPECTIVES OF UNIFORM CIVIL CODE

The history of the Uniform Civil Code (UCC) is woven through a tapestry of ancient civilizations, mediaeval legal unification movements, colonial authority, and national unification movements aiming for independence. These quick notes offer a succinct synopsis of the primary historical viewpoints that influence the UCC discussion.

A number of ancient societies, including Mesopotamia, India, and Rome, created crude legal systems. These early legal systems aimed to produce standardised concepts that could be applied to various populations, and they were quite cohesive in their approach. For instance, ancient Indian legal books mentioned the oneness of some legal ideas. There were attempts to formalise European legal systems during the Middle Ages and the Renaissance in Europe. To streamline administration, monarchs endeavoured to adopt consistent legal codes. However, difficulties emerged as a result of regional variations, local opposition, and the intricacies of striking a balance between regional autonomy and centralised authority colonial influences enforced legal framework. The legal system in each of their colonies was significantly shaped by the colonial powers. Colonial leaders created legal systems, frequently grounded in common law ideas, with the goal of promoting administrative simplicity. Many post-colonial countries owe their future legal systems to this compulsion.

Stabilisation and National Unity in the Post-Independence Era: Following their independence, the newly sovereign nations made an effort to fortify their legal frameworks. The pursuit of national unification gave rise to conversations for the establishment of a unified civil code. A unified legal framework needed to be created while still preserving cultural variety was carefully balanced throughout this time. Effects of Global Trends on the International Legal Framework. International institutions like the United Nations have greatly influenced the discussion of legal principles and human rights. Discussions about harmonisation were influenced by global legal trends as nations looked to align their legal systems with international norms. In conclusion, the development of the Uniform Civil Code across time demonstrates the dynamic interplay between the prehistoric and post-colonial revolutionary aspirations for national unity, as well as the goals of ancient civilizations for legal unity, mediaeval conflicts, and colonial revolutions. It is vital to comprehend the intricate details of the discussion surrounding the application of the Uniform Civil Code in modern countries in order to comprehend these historical viewpoints.

## LEGAL AND CONSTITUTIONAL PERSPECTIVE AND ONGOING DEBATE

The "Uniform Civil Code" is explained in detail in Article 44 of the Indian Constitution, which also serves as the nation's governing document. It states that all Indian citizens should be subject to the same civil code enforced by the state. The goal of the Uniform Civil Code is to replace arbitrary laws derived from the practices of many ethnic and religious groups with uniform guidelines regarding marriage, inheritance, divorce, and other fundamental particular issues. The purpose of this foundation is to support gender social justice, equality and a single line of justice for all citizens. In a thoughtful understanding of Article 44, it is also important to understand that a court cannot enforce Article 44 because it is a directive principle of state policy. It is the duty of the state to strive for the establishment of a uniform civil law, but the actual establishment of the law depends on political determination and the consent of various interest groups. Although talking about a uniform civil law seems very easy, implementing a uniform civil law is very labour intensive. Because India is a diverse country that unites many religions, communities, castes and belief systems. Thus, the subject of Uniform Civil Code is a subject of debate and controversy in India. Different sections of society have different ways of thinking about the Uniform Civil Code, one section of society believes that it promotes secularism and unity of citizens, and others argue that it is a serious concern for a possible violation of an individual. laws and sacred freedoms as Indian society is diverse. Although the Supreme Court of India has expressed the need for a Uniform Civil Code and the need to make a Uniform Civil Code in many cases and occasions, the Supreme Court has always upheld the common law to uphold the values of the country gender rights, equality and justice. In the Indian legal system, the Uniform Civil Code (UCC) has seen a number of contested and contested cases, the issues of implementation and constitutionality of which have been debated at various venues. In *Shah Bano Begum v. Union of India* (1985)<sup>2</sup> dealt with maintenance of divorced Muslim women. In the aforementioned case, the Supreme Court clearly said that Muslim women have the right to maintenance under Section 125 of the Criminal Procedure Code, regardless of their personal law governing marriage.

That case sparked a nationwide debate on the need for a uniform civil code. Another case that raised

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<sup>2</sup> *Shah Bano v. Union of India*, AIR 1985, Volume 3, SC, 945.

the need for a Uniform Civil Code was *Sarla Mudgal Vs. Union of India*<sup>3</sup> where the Supreme Court dealt with bigamy and conversion to Islam for the purpose of second marriage.

The court clearly stated that a Hindu husband cannot contract a second marriage if his first marriage is still valid even though he has converted to Islam. That case highlighted the need for a uniform civil code to deal with matrimonial and personal law matters. It is important to note that while the courts made comments and recommendations regarding the application of the Uniform Civil Code, they also recognized the complexities and sensitivities involved. Courts have emphasized the need for a thoughtful, rational and measured approach that takes into account the diverse sacred and social practices of India. Basically, some of the challenges are,

**Central Family Law Exceptions:** All central family law Acts passed by Parliament since Independence mention in their preliminary portions that they will include "the whole of India except the state of Jammu and Kashmir." All of these Acts were given a second exception in 1968, which stated that "nothing herein contained shall apply to the renouncants in the Union Territory of Pondicherry." Goa, Daman, and Diu are exempt from the application of these Acts.

**Communal Politics:** The demand for a uniform civil code has been framed in the context of communal politics. A large section of society sees it as majoritarianism under the garb of social reform.

**Constitutional Hurdle:** Article 25 of Indian constitution, that seeks to preserve the freedom to practise and propagate any religion gets into conflict with the concepts of equality enshrined under Article 14 of Indian Constitution. Part IV, Article 44 of the Constitution states that "The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India". However, Article 37 of the Constitution itself makes it clear the DPSP "shall not be enforceable by any court". Nevertheless, they are "fundamental in the governance of the country". This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

Other constitutional provisions relating to religious freedom and secularism are:

Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.

Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and mortality.

Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.

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<sup>3</sup> Smt. Sarla Mudgal, President, Kalyani and Ors. Versus. Union of India & Ors. (W.P.(C) No.347/90, W.P. (C) No.509/92

Article 26- Right to establish and administer religious institutions.

Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.

Article 28- deals with the issue of religious instruction in educational institutions.

The 42nd Constitutional Amendment Act inserted the word 'secularism' in the preamble. In the S.R.Bommai vs Union of India<sup>4</sup> case, the Supreme Court held secularism as a basic feature of the constitution.

Goa Civil Code

Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation. Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender). Every birth, marriage and death have to be compulsorily registered. For divorce, there are several provisions. Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq. During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple. Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member. The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children. However, the code has certain drawbacks and is not strictly a uniform code.

#### UNIFORM CIVIL CODE: CULTURAL DIVERSITY VS. LEGAL UNIFORMITY

The debate over the Uniform Civil Code centres on the relative merits of legal uniformity and cultural variety. UCC seeks to harmonise personal laws among many ethnic, religious, and cultural groupings, including those pertaining to adoption, divorce, inheritance, and marriage. While cultural diversity is good for society, it can make it difficult to reconcile strongly ingrained personal laws. Advocates of legal uniformity contend that a single, secular law can safeguard individual rights, particularly for minorities, while advancing justice, equality, and social cohesion. It's difficult to find the ideal balance between the two. This book investigates its recommendations about individual rights and societal harmony.

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<sup>4</sup> S. R. Bommai v. Union of India ([1994] 2 SCR 644)

## Diverse Cultural Aspects

Indian culture is thought to be the planet's most ancient civilization. India is known as the "land of diversity," having a rich cultural past and many people claiming their own customs and cultures across the nation's various regions. Despite their diverse ethnic backgrounds, they maintain and uphold their unique cultures and customs while leading harmonious lives. The nation is strongly impacted by this diversification in terms of both economy and culture. Because of this population diversity, the nation has been able to develop into a multiethnic centre where people from many origins work together, share perspectives, and collaborate. The existence of many ethnicities has also improved society by making it more accepting and all-encompassing. Article 25 of the Indian Constitution contains provisions pertaining to the practice or profession of religion. "The guarantee under the Indian Constitution not only protects the freedom of religious opinion, but it also protects acts done in pursuance of religion," the Supreme Court declared in the Lakshmindra case<sup>5</sup>. Anyone who is permitted freedom can, however, exercise it so long as it does not infringe upon the fundamental rights of others.

## UNIFORMITY IN LAW

The Uniform Civil Code is mentioned in Part IV of the Indian Constitution's Directive Principles of State Policy, Article 44. This article aims to establish a single national code that will govern personal laws for all cultures and communities in the nation.

When this is implemented in India, the current personal laws will be replaced with a single legal framework that will govern all citizens equally, regardless of their religious beliefs. The word "uniform" refers to rules that all citizens are subject to in the same way, regardless of their gender, place of birth, race, caste, or religion. Article 44 of the Indian Constitution, which states that everyone should be treated equally and without discrimination, is one of its most significant clauses. Personal laws should not divide them; they should remain one. It covers issues such as succession, marriage, divorce, inheritance, support, adoption, and laws requiring uniform treatment and observance of moral standards by all.

The significance of The Hindu Code Bill, in the words of Dr. B.R. Ambedkar, is "To leave inequality

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<sup>5</sup> the commissioner, Hindu religious endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954, AIR 28 SCR 1005.

between class and class, between sex and sex which is the soul of Hindu society, untouched and to go on passing legislation relating to economic problems is to make a farce of our Constitution and to build a palace on a dung heap. This is the significance I attached to the Hindu Code". Apart from the Hindu Code Bills, the legislature also enacted the Special Marriage Act, 1954, to provide special rules for the marriage of two people from different religions. Apart from marriage, the said Act also reserves provisions of divorce for the same people who performed inter-caste marriage.

### **ALTERNATIVE MODELS IN UCC**

Governments may decide to handle personal laws and family matters using one of several alternative models and methodologies rather than enacting a Uniform Civil Code (UCC). Here are a few alternative models:

**Multiple Legal Systems:** In a pluralistic legal system, several religious or cultural groups may have their own legal frameworks governing personal laws. This enables communities to stay compliant with the broader legal framework while preserving their customs and traditions.

**Pluralism in Law:** Legal pluralism recognises the coexistence of multiple legal systems within a single jurisdiction. While some aspects of this arrangement are subject to standard civil or criminal law, personal matters may be controlled by religious or customary rules.

**Secular Legal System with Optional Personal Laws:** Nations may choose to implement a system of law that is secular and applies to all citizens equally, but at the same time, people are free to choose their own personal laws according to their cultural or religious beliefs. For individuals who want to follow their own conventions, this offers some flexibility.

**Codification of Personal Laws:** To promote uniformity, equity, and gender equality, a nation may decide to codify and amend its current personal laws rather than enacting a UCC. While maintaining distinct rules for various communities, this strategy tries to create a more unified and contemporary legal system.

**Recognition of Customary Law:** In certain nations, customary rules are acknowledged and integrated into the legal framework, especially when it comes to family and private problems. This makes it possible for communities to stick to their customs while yet adhering to the larger legal framework.

**International Human Rights Standards:** In order to guarantee that personal laws are consistent with values like gender equality, non discrimination, and individual rights, a legal system may place a high priority on adherence to these standards. This strategy seeks to establish a common ground amongst various communities.

Community-Based Dispute settlement: Communities have the option to use community-based dispute settlement procedures rather than only depending on official legal institutions. In the community, this could entail mediation and arbitration for issues like inheritance, divorce, and marriage.

Incremental Reforms: A nation may decide to gradually adopt changes to its personal laws as opposed to enacting a full UCC. This strategy enables a more gradual and situation-specific legal framework evolution.

It is noteworthy that the applicability of these models is contingent upon the legal and sociocultural milieu of each nation. When deciding between a UCC and other models, it's common to carefully weigh aspects like historical customs, cultural variety, and the defence of individual rights.

## **CONCLUSION AND FUTURE DIRECTIONS**

Collaborative Approach: In addition to exerting significant effort to foster trust, society and the government must unite behind social reformers rather than religious conservatives.

Method by Step: Rather than taking a comprehensive approach, Collaborative Approach: Society and the government should rally behind social reformers instead of religious conservatives, and make a substantial effort to build trust.

Method by Step: Rather than adopting a comprehensive strategy, the government may progressively incorporate a number of components into a single civil code, such as marriage, adoption, succession, and maintenance. The government might gradually include several elements, like marriage, adoption, succession, and maintenance, into a single civil code.

Gender-Sensitive Approach:

In addition to the delayed transition to a standard civil code, the government would do well to conduct a thorough assessment of a number of other laws in light of gender justice.

Pan-India Approach: It's necessary to bring Jammu and Kashmir, Goa, Daman and Diu, Puducherry, Nagaland, and Mizoram into the country's family law mainstream.

The citizens' fundamental rights to equality before law and equal protection of the laws guaranteed by the Constitution call for a similar action in respect of these territories as well. So does the provision of Article 44 enjoining the state to make endeavours to secure for the citizens a uniform civil code throughout the territory of India.

India is a country where the rule of law is supreme, meaning that no other element can be dominant. Nevertheless, because of people's diverse personal views, the rule of religion and the rule of law intersect, necessitating government action. The ideal piece of legislation to restore secularism and

uniformity in personal or civil laws within the Indian legal system is the Uniform Civil Code. The government must put the above-mentioned remedies into practice since the misperception of those who oppose the adoption of UCC is the root of the problem.

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