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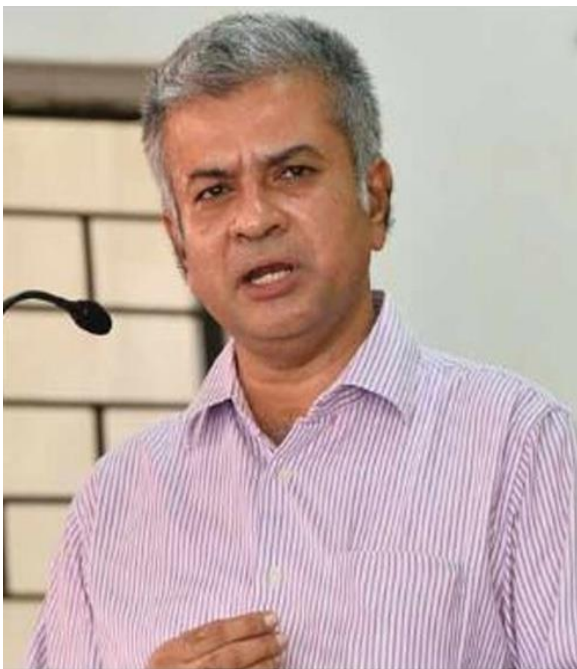
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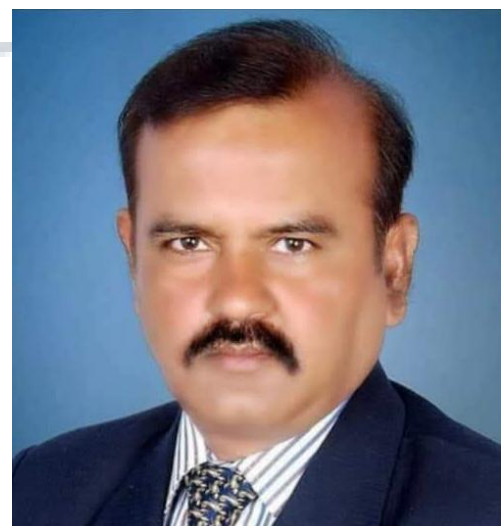
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Dr. Neha Mishra



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Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

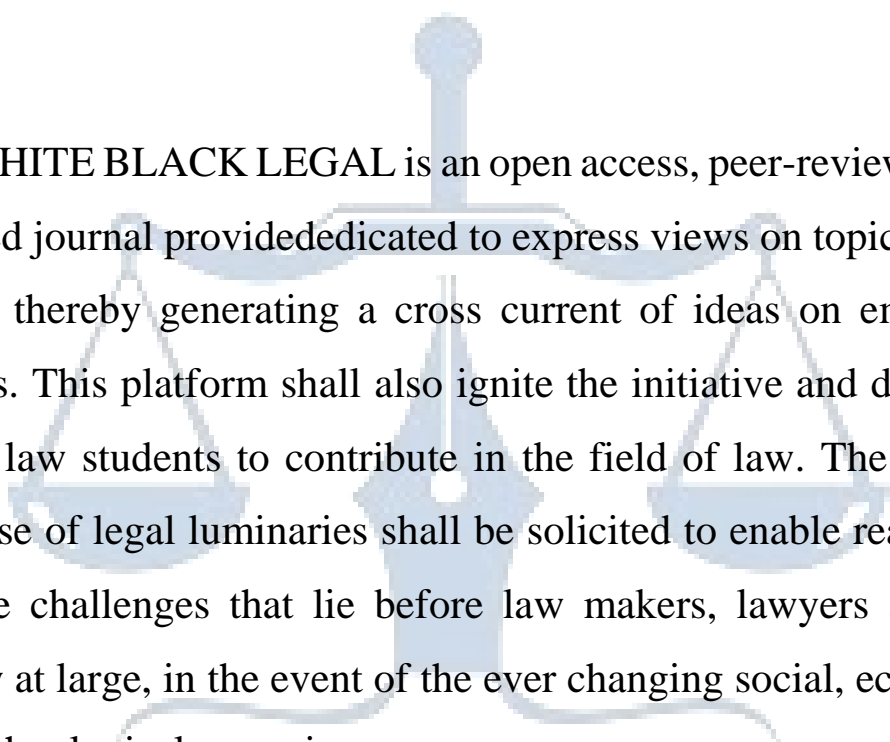


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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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

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UNIFORM CIVIL CODE AND SECULARIZED CIVIL CODE: WHAT MAKES IT DIFFERENT

AUTHORED BY - DIVAKAR V & BALA NIVETHA S

ABSTRACT:

WHY INDIA NEEDS UCC? What is SCC (Secular civil code)? Can SCC (secular civil code) be adopted in INDIA? In India, the personal laws applied to marriage, adoption, divorce, and custody are discriminatory across religions. So, people with different religions having the same problem get different solutions some get benefits and some get affected. The basic ideology of the legal system is not to be discriminatory to its citizens whereas the personal law does that among the religions. A uniform civil code is a proposed set of laws that applies to all citizens regardless of religion. This would govern personal areas like divorce, inheritance, and succession. UCC claims no relation between religion and law in ART- 44 of the Indian constitution. Secular civil codes aim (SCC) to establish a set of laws that are neutral and applicable to all individuals, regardless of their religious beliefs, gender, or other personal characteristics. The primary goal of these codes is to eliminate discrimination and ensure equal treatment under the law. This approach allows individuals to practice their religious beliefs freely, while also protecting their rights as citizens. In the context of marriage registration, secular civil codes recognize the right of individuals to marry according to their religious beliefs. This means that a couple can choose to have a religious ceremony, and the state will recognize their marriage- as legally valid. However, the state will not impose any particular religious belief or practice on the couple, ensuring that their freedom of religion is respected. For example, a couple may choose to have a Christian, Muslim, Hindu, or any other religious ceremony, and the state will recognize their marriage as long as it meets the legal requirements. This ensures that there is no discrimination among the people and of their religion. The major difference between UCC and SCC is SCC tries to safeguard the people's religion under its provision separately and UCC tries to provide the same roof for all people of the nation irrespective of their religion. In India UCC bill was introduced in Uttarakhand in 2024 which has four parts in total, the first part deals with marriage and divorce the second part deals with succession, the third party deals with live-in relationships and the fourth part deals with repeals. Majorly this paper deals with the SCC (Secular Civil Code), and UCC (Uniform Civil Code) and their comparative analyses.

I. INTRODUCTION TO UCC

A uniform civil code is a set of proposed rules in marriage, inheritance, succession, adoption, etc. UCC is applied to all people in the nation regardless of their religion and the law doesn't involve any religious customs. Firstly, the discussion of introducing a UCC bill happened in the constituent assembly. ARTICLE 44 of the Indian constitution provides that the state must secure a uniform civil code for the citizens throughout India's territory. The first meeting of the Constituent assembly¹ was in 1946. In 1976 the word "secularism" was inserted in the preamble, and even before the commencement of the constitution, the fundamental right relating to religious freedom was framed in the constitution. In the discussion, Mohamed Ismail argued that adhering to one's law is a fundamental right and he claimed that no group, minority, section, or any community of people should be compelled to abandon its law if it's got one. M.A. Ayyangar forcefully argued that the matrimonial contract was mandated by the Holy Quran and the prophet's traditions, he also claimed that the Indian concept of secularism accommodates all religions with equal respect and dignity. And many more people questioned the assembly's authority to interfere with religious laws. K.M. Munshi expressed that it is lawful for the parliament to enact a uniform civil code and personal laws to discriminate between individuals based on gender, which the constitution did not permit. A.K.Iyer supported K.M.Munishi and urged the assembly to approve the article related to the uniform civil code. But, B.R.Amedkar, did not accept those amendments and defended the arguments of Hindus and affirmed that even in the application of UCC in India it would apply to the persons who are consented to governed by it. In India, the first case to urge the government to bring UCC into India is Sarala Mudgal V Marriage of India², in this case, a Hindu man already married to a Hindu woman then converts to Muslim and marries another woman without obtaining a divorce for his first marriage, it highlighted the conflict between personal laws and broader principles of equality, calling reforms like the UCC to avoid such loopholes.

II. SCC (Secular Civil Code)

Secular civil codes aim to establish a set of laws that are neutral and applicable to all individuals, regardless of their religious beliefs, gender, or other personal characteristics. The primary goal of these codes is to eliminate discrimination and ensure equal treatment under the law. This approach allows individuals to practice their religious beliefs freely, while also

¹ https://eparlib.nic.in/bitstream/123456789/762996/1/cad_04-11-1948.pdf , pg no .529-544

² AIR 1995 SC 1531

protecting their rights as citizens. In the context of marriage registration, secular civil codes recognize the right of individuals to marry according to their religious beliefs. This means that a couple can choose to have a religious ceremony, and the state will recognize their marriage as legally valid. However, the state will not impose any particular religious belief or practice on the couple, ensuring that their freedom of religion is respected. For example, a couple may choose to have a Christian, Muslim, Hindu, or any other religious ceremony, and the state will recognize their marriage as long as it meets the legal requirements. This approach promotes religious freedom and equality, while also ensuring that the state does not interfere with an individual's relationship with their faiths. In summary, secular civil codes aim to strike a balance between religious freedom and equality, ensuring that individuals are treated fairly and without discrimination, while also respecting their right to practice their religious beliefs. Instead of imposing a UCC, India could focus on reforming existing personal laws to make them secular and in line with constitutional principles of equality and justice. This approach would allow different religious communities to retain their laws but ensure that these laws are reformed to conform to constitutional values like gender equality and human rights.

III. Difference between UCC and SCC

The difference between UCC and SCC is hard to put in words but it is present, UCC is a uniform civil code where all the citizens give up their rights and just follow the uniform law regardless of their religion and their practices. In SCC, the term secular itself defines that there will be no intervention of government in the relationship between man and God so in this civil code, individuals don't want to give up their rights and they can follow their religion or cultural practices within the scope of the Constitution. If the civil codes come, then these areas will be affected: marriage rights, property rights, guardianship, inheritance law, and so on. In the case of a uniform civil code for marriage, they will fix the standard age for both men and women and probation for polygamy. But if SCC comes, then they interfere in the practices of the religion, and they play a role in marriage rights. In case of divorce, divorce laws under UCC would be uniform for everyone in India, replacing the religious-based law that is practiced. Example: Currently, a Hindu couple can seek divorce under the Hindu Marriage Act on grounds such as cruelty, desertion, and adultery. Meanwhile, a Muslim couple follows Muslim Personal Law, where the husband has the option of triple talaq (though recently criminalized). Under the UCC, both Hindu and Muslim couples would follow one common divorce law, such as mutual consent or irretrievable breakdown of marriage regardless of their religion.

In a secular civil code, divorce laws would be non-religious and based on civil principles only. Example: In France, the civil divorce laws apply to all citizens, irrespective of religion, and only include grounds like irretrievable breakdown or mutual consent. The state doesn't consider any religious traditions or personal laws while granting divorce. A similar approach would be seen under an SCC, where no religious laws (such as Hindu or Muslim divorce rules) would apply. Under UCC, guardianship and maintenance laws would be uniform, irrespective of religious background. Example: Currently, under Hindu law, the father is often considered the natural guardian of the child, though in some cases, the mother may be granted guardianship. Under Muslim law, the father is the sole guardian unless otherwise specified. Under a UCC, both parents would have equal guardianship rights irrespective of their religion, and laws would ensure that both mother and father have an equal say in the upbringing of their child. In an SCC, guardianship laws would be purely based on civil principles, with no religious biases or traditions involved. Example: In countries like France, custody and guardianship decisions are made purely in the best interests of the child, without considering any religious background. Both parents are seen equally in the eyes of the law, ensuring fairness. An SCC would follow a similar model in which all decisions are based on the secular welfare of the child. In the case of adoption, India already has a secular code, which is governed by the CARA and SARA there is one preference for the child that the adoptive parents are preferred in the same religion which allows the child to practice their religion. But it also allows to adoption of any child by any parent but with some restrictions on their conditions. Previously in Hinduism, only a male child and a child from the same religion were considered as adoptive children and also considered as legal heir, but after these secular codes the view has changed and even the girl child was considered as legal heir until she gets married. A uniform civil code would bring all religious communities under a common set of laws, while a secular civil code would further remove any religious influences, focusing on purely civil rights and principles across all matters relating to personal laws.

EXAMPLE OF UCC: -

1. The Goa Civil Code is an example of UCC because it applies uniform personal laws across all religious communities in the state, though it still acknowledges some historical religious elements.
2. The UTTARKHAND civil code is an example of UCC because it applies its sets of rules and regulations to the whole state, regardless of the communities.

EXAMPLE OF SCC: -

1. Hindu Succession (Amendment) Act, 2005

Original Law: The original Hindu Succession Act, of 1956, discriminated against Daughters in matters of property inheritance. Sons were considered coparceners (joint inheritors of family property), but daughters were not given equal rights.

Reform: In 2005, the Act was amended to give daughters equal rights to inherit ancestral property, just like sons. This reform was a secular approach to bringing gender equality into Hindu personal law.

Significance: The amendment addressed gender injustice within the Hindu community without affecting the religious or cultural practices of other communities, which aligns with the SCC approach.

2. The Muslim Women (Protection of Rights on Divorce) Act, 1986

Original Law: Under Muslim personal law, women had limited rights to maintenance after divorce, which became a point of controversy following the Shah Bano case in 1985. Shah Bano, an elderly Muslim woman, had petitioned for alimony after being divorced through triple talaq.

Reform: After the Shah Bano case, the government passed the Muslim Women (Protection of Rights on Divorce) Act, 1986, which protected a Muslim woman's right to maintenance, although it sparked debates on the extent of support provided.

Significance: While controversial, the law aimed to address gender rights within the framework of Muslim personal law without fully overriding it. This reflects the SCC approach, where reform occurs within the community's existing legal system.

3. Triple Talaq Ban (2019)

Original Law: Under Islamic personal law, Muslim men were allowed to divorce their wives instantly by pronouncing "talaq" (divorce) three times, either in person or even via electronic means like phone or text, known as triple talaq.

Reform: The Muslim Women (Protection of Rights on Marriage) Act, 2019, Criminalized triple talaq and made the practice void and illegal, protecting Muslim women from arbitrary divorces.

Significance: This reform directly addressed a gender issue within Muslim personal law without replacing the entire legal framework of Islamic family law, making it an example of an SCC where a specific injustice is targeted without imposing uniform

laws across all religions.

4. Indian Divorce (Amendment) Act, 2001 (for Christians)

Original Law: Christian divorce laws were traditionally more restrictive, particularly for women. For example, under the Indian Divorce Act of 1869, Christian women had to prove adultery along with other offenses like cruelty or desertion to get a divorce, whereas men could simply claim adultery.

Reform: The Indian Divorce (Amendment) Act, 2001, amended this provision, making it easier for Christian women to file for divorce on equal grounds.

Significance: This reform was made without abolishing Christian personal law altogether, reflecting the secular civil code approach of bringing personal laws in line with gender equality principles while allowing religious communities to maintain their distinct legal traditions.



IV. INDIA NEEDS UCC OR SCC

The debate over whether India should adopt a Uniform Civil Code (UCC) or continue with secular civil codes (i.e., reformed personal laws for different religious communities) is one of the most enduring and divisive issues in Indian politics, law, and society. Below is a detailed explanation of both concepts, their benefits and challenges, and real-world examples that can provide context.

Why India Might Need a UCC?

1. **Equality Before the Law**: A UCC would ensure that all citizens, irrespective of religion, are governed by the same personal laws. This promotes equality as everyone, regardless of gender, caste, or religion, would have the same legal rights.

For example:

Under current Muslim personal law, triple talaq (which has now been outlawed) allowed men to divorce their wives unilaterally, but this was not the case in Hindu or Christian laws. A UCC could standardize divorce laws, preventing such gender-biased practices. In Hindu law, sons and daughters have equal rights to inherit property after the 2005 amendment to the Hindu Succession Act, but in many communities, religious personal laws still treat daughters unequally.

2. **Simplification of the Legal System**: India currently has multiple personal laws for

different religions (Hindu, Muslim, Christian, Parsi, etc.), leading to complexities in the legal system. A UCC would streamline these into a single, secular legal framework, reducing confusion and legal conflicts.

For instance:

Polygamy is legal for Muslim men under personal law but illegal for Hindus and Christians. A UCC would provide one clear rule for everyone, eliminating these disparities.

3. **Gender Justice:** Many personal laws discriminate against women, particularly in matters of marriage, divorce, and inheritance. A UCC could ensure gender equality across all communities.

For example:

Muslim women, before the Muslim Women (Protection of Rights on Divorce) Act (1986), had fewer financial rights after divorce compared to Hindu and Christian women.

4. **National Integration:** Proponents of a UCC argue that a common law would promote national unity and integration by removing religious divisions in legal matters. With one civil code, the law would treat everyone equally, fostering a sense of shared citizenship.

Challenges with UCC in India

1. **Religious and Cultural Diversity:** India is a pluralistic society with deep-rooted religious and cultural traditions. Different communities have their laws based on centuries-old customs, and imposing a UCC could be seen as eroding cultural identities.

For instance: Muslims might feel that a UCC threatens their religious autonomy and customs like Nikah (Islamic marriage) and inheritance rules, which are deeply embedded in Islamic law. Tribes in northeastern India and other indigenous groups have their customary laws, and imposing a uniform code might undermine their unique practices.

2. **Opposition from Minority Communities:** Religious minorities, especially Muslims and Christians, fear that a UCC might reflect the majority Hindu community's norms. They worry about losing their cultural identity.

For example: Muslims fear the loss of their laws based on Sharia, which they consider an integral part of their religious identity. Christians have their marriage laws under

the Indian Christian Marriage Act, of 1872, which they fear might be diluted in favor of a majoritarian law under the UCC.

Need for Consensus: A UCC would require broad social and political consensus, which is difficult to achieve in a diverse society like India. Attempts to impose such a law without consultation might lead to social unrest and backlash from minority communities.

Why India Might Need Secular Civil Codes?

1. **Respect for Religious Pluralism:** India's Constitution recognizes the right to religious freedom and allows different communities to practice their religion and customs. Reforming personal laws to make them more equitable and secular allows for incremental change without erasing religious identity.

For instance: Hindu personal law was reformed after independence to remove gender inequalities through the Hindu Marriage Act (1955) and Hindu Succession Act (1956). Muslim law has also undergone some reform, particularly after the 2019 ban on triple talaq (instant divorce), a move hailed for improving gender justice without abandoning Islamic law.

2. **Gradual Reform:** Instead of a sudden shift to a UCC, gradual reforms within each religious community's laws can address issues of inequality over time. This approach avoids the social resistance and religious backlash that a UCC might provoke.

For instance, Hindu laws have been reformed several times to address issues like widow remarriage, child marriage, and equal inheritance for women, showing that reform within a community is possible without abandoning cultural traditions.

3. **Avoiding Religious Polarization:** Secular civil codes can help avoid the polarization that a UCC might cause, especially if minority communities feel that their rights are being targeted. Reforming personal laws within each community's framework might lead to more social cohesion and reduce tensions. In Goa, the only state in India with a form of UCC, personal laws have been secularized to a large extent, but still, allow some community-specific provisions like joint family property rules for Hindus.

Challenges with Secular Civil Codes

1. **Continued Fragmentation:** Maintaining different personal laws for different communities may continue to create legal fragmentation and inconsistencies in justice.

For example, women from different religious backgrounds might continue to have unequal rights in matters like inheritance and divorce.

2. **Uneven Progress:** Different communities might reform their laws at different speeds, leaving some groups behind in terms of gender justice and equal rights. For instance, while Hindu women have gained inheritance rights, some communities may still lag in enacting similar reforms.
3. **Legal Complexity:** Having different personal laws for different communities creates complexity in the legal system, making it difficult for courts to apply justice uniformly. A UCC would eliminate this confusion by providing one set of laws for all citizens.

Real-World Examples

1. **Goa:** Goa is often cited as an example of a UCC in action. The Goa Civil Code applies equally to all residents of the state, regardless of religion, in matters like marriage, divorce, and inheritance. However, it does allow some exceptions for certain communities, like joint family property rules for Hindus. This shows that a UCC can work in a pluralistic society but with some room for flexibility.
2. **Hindu Law Reform:** After India's independence, Hindu personal laws were reformed significantly, particularly through the Hindu Marriage Act (1955) and the Hindu Succession Act (1956), which improved women's rights in matters like divorce and inheritance. This shows that personal law reform is possible without imposing a UCC.
3. **Triple Talaq Ban (2019):** The Indian government banned the practice of triple talaq, which allowed Muslim men to divorce their wives instantly by saying "talaq" three times. This reform was seen as a step toward gender justice within the Muslim community, without imposing a UCC.

V. Conclusion

India faces a tough choice between adopting a Uniform Civil Code or continuing with secular civil codes that reform existing personal laws. A UCC promises equality, simplicity, and national unity, but it risks undermining religious diversity and alienating minority communities. Secular civil codes, on the other hand, offer a gradual, community-specific approach to reform, respecting India's pluralism while ensuring justice.

In the long run, a UCC could be a goal to strive for, but for now, secular civil codes seem like a more practical and less contentious solution, especially given India's cultural and religious diversity. Reforming personal laws in line with constitutional principles would ensure justice for all without erasing the country's rich religious and cultural heritage.



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