

UNIFORM CIVIL CODE: THE (UN) FULFILLED PROMISES OF THE INDIAN CONSTITUTION

Dr. Deepak Kumar Srivastava*
Dr. Balwinder Kaur**

ABSTRACT

A Constitution is continuously mutable. Implicit in a Constitution is its founder's vision, which unfolds itself in the very process of its fulfillment. In that sense, it is a mix of ideals and reality of what ought to be and what is. A constitutional document seeks to reckon with reality and reshape it in the mold of its aspirations. Constitution, certain norms are enforceable in courts of law, and certain norms, though fundamental in the country's governance, are not enforceable by the courts. Both sets of these constitutional norms have messages and mandates for the State, society, and individual, and those messages and mandates are the tasks that the Constitution entrusts to all branches of the State and the citizens for their progressive understanding. In other words, our Constitution gives us a basic structure, a set of primary goals, values, and norms, a body of mandatory and prohibitory injunctions, a quiver of constructive and declaratory arrows, and a manual of methodologies. All these are aligned with the teleology of the priority tasks of our Constitution.

In context with the above, one of the unfulfilled assurances of the Indian Constitution is the Uniform Civil Code (UCC). The Indian population is like a bunch of flowers in a vase. There is diversity in religious faith, customs, festivals, food, language, and culture; consequently, people are governed by their religious laws, also known as personal laws. The UCC, if enacted, will manage the personal laws of all religious communities relating to marriage, divorce, adoption, inheritance, succession, property, etc. The purpose of implementing UCC in India is to establish a set of laws that apply to all citizens, irrespective of their religion, community, race, sex, and caste. Implementing UCC will promote equality, ensure national integration, and eliminate discrimination among religious communities.

The framers of our Constitution could not hammer out a consensus on the UCC despite debating it extensively. From its original slot under Fundamental Rights, the pioneer lawmakers settled for a compromise and let the UCC be placed into the Directive Principles of State Policy. However, the provision is of concern that it is to be implemented in the future.

Many times, an attempt has been made to implement the UCC, but all goes in vain due to the non-cooperation of all the parties and not according to the ideologies of the ruling parties.

In 2018, the 22nd Law Commission issued a notification to elicit views on any issues about UCC. The commission has received the responses and has yet to conclude and make the recommendations. These initiatives are taken not only based on recommendations of the commission and the political parties' ideologies but also according to Article 44 itself and the rectification of international conventions. It has become the duty of the parliament to fulfill the constitutional promise.

KEYWORDS: *Constitution Assembly Debates; Constitutional Mandate; International obligations; Legislative Measures; Personal Laws; Uniform Civil Code.*

1. INTRODUCTION

“India i.e. Bharat is a country of diversities, and all diversified people are living in this country with their peculiarity. There is diversity in personal laws because

* Associate Professor, Hidayatullah National Law University, Raipur.

** Associate Professor of Law, B R Ambedkar National Law University, Sonapat.

of differences in religious beliefs, customs, ethnicity, language, and culture. In India, a significant portion of the people's lives are shaped by their religious beliefs. However, the laws of religions control issues related to marriage, adoption, succession, inheritance, property, division, custody, divorce, and other family-related matters.”¹

Hindu law governs the followers of that religion; similarly, Muslim law governs Muslims, Christian law governs Christians, and so forth. Separate communities have separate laws, which are regarded as their personal laws.²

The Uniform Civil Code (UCC) in India refers to a proposal to replace the personal laws, which are currently based on the religious scriptures and customs of different communities, with a common set of laws governing every citizen. These laws would cover various civil matters such as marriage, divorce, inheritance, adoption, and succession, irrespective of the individual's religion, community, race, sex, and caste.

Article 44 of the Indian Constitution, under the Directive Principles of State Policy, states that the government should attempt to implement a UCC across the country. However, it is important to note that the UCC is not enforceable by law but serves as a guiding principle for the state.³

The UCC aims to promote equality, national integration, and gender parity by ensuring that all citizens are subject to the same civil laws. It is a subject of serious concern due to the cultural and religious diversity in India, and the challenges it poses in terms of implementation and acceptance across different communities.

The Constitution's clauses emphasize the need to adopt the UCC and hold India accountable for upholding its vow to apply the code in accordance with international obligations.

“India must execute the pertinent provisions and guarantee gender equality under national laws since it has ratified the International Convention on Civil and Political Rights, 1966 (ICCPR) and the International Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).”⁴

¹ Laura Dudley Jenkins, *Personal Law and Reservations: Volition and Religion in Contemporary India* in RELIGION AND PERSONAL LAW IN SECULAR INDIA 104.

² P. DIWAN, FAMILY LAW (11th ed. Allahabad Law Agency 2018).

³ Ahmed, Shabbeer, and Shabeer Ahmed. *UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER* 67 (3) THE INDIAN JOURNAL OF POLITICAL SCIENCE 545-52 (2006) (Feb. 02, 2024, 11:25 PM), <http://www.jstor.org/stable/41856241>.

⁴ Jyoti Ratan, *Uniform Civil Code in India: A Binding Obligation Under International & Domestic Law*, 46 (4) JOURNAL OF THE INDIAN LAW INSTITUTE 577.

In addition, the Supreme Court has repeatedly held, citing Article 51⁵ of the Indian Constitution that commitments made on a global scale, including those to which India is a party or signatory, become a part of national law to the extent that there is no conflict between them. As a result, these treaties and conventions have made it necessary for the Parliament to pass laws implementing the amended agreements.

In the above context, the UCC is not only the directives given to the state but also a promise to be fulfilled in the line of the constituent assembly debate, constitution, international commitments, and the court's view regarding implementation of UCC.

1.1 OBJECTIVE OF STUDY

The objective of this paper is to examine the situation as to how the government will fulfill the promise of the Constitution. The analysis will be conducted considering the views of the Constitution Assembly members, the Constitution's existing provisions, and India's international commitments at different international platforms. After the above analysis, the views expressed by the Supreme Court and High Courts will be analysed to conclude that the implementation of UCC is not only a directive but is an obligation to the state to implement it.

2. RESEARCH METHODOLOGY

The literary work's research methodology is doctrinal and uses both exploratory and analytical approaches. Both primary and secondary sources of information is used to provide the basis for the initial assessment of the paper, which has since been broadened to include a deeper analysis of the literature, the method entails a thorough review of books, articles, newspapers, and judgments of the courts.

3. MEANING OF UCC

The civil code is a set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to proper etc.⁶

“The term ‘Uniform Civil Code’, therefore, denotes a very small field of civil law relating to marriage, succession, maintenance and adoption.”⁷ A Civil

⁵ INDIA CONST. art.51. Promotion of international peace and security- The State shall endeavour to--(a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and (d) settlement of international disputes by arbitration.

⁶ Ahmed, Shabbeer, *supra* note 3.

⁷ Krishnayan Sen, *Uniform Civil Code*, 39 EPW, 4196 (2004).

Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters.⁸ Uniform Civil Code therefore is understood to be an instrument that, would eliminate differences of personal laws and usher in uniformity in its application. As far as the uniform legislation is concerned, we have almost covered every aspect of law except matrimonial laws. There is no uniform civil code of law applicable to the marital relation of all, irrespective of ethnic or religious affiliations. So, through Article 44, the modern State is called upon to perform its onerous responsibility of giving uniform civil code on the above subject, applicable to all the citizens of India.⁹

UCC is not defined anywhere in the Constitution or elsewhere. Hence, there is not much guidance as to what it should precisely contain. Unfortunately, while our Constitution makers have set in a lofty ideal in the Constitution, all we find in our Constitutional debates is the discussion on whether UCC needs to be made part of the Constitution. Even the wide range of decisions of the Supreme Court touching upon the subject do not shed light on what is expected to be contained in the Uniform Civil Code. This has led to people drawing conclusions on constituents of Uniform Civil Code as per their own understanding and convenience.¹⁰

3.1 NEED FOR THE UCC

The UCC is a counter concept to the existing personal law system, according to which certain family and property matters (marriage, divorce, maintenance, guardianship, adoption, succession and inheritance) of Hindus, Muslims, Parsis and Christians as well as Jews are governed by their respective religious laws.¹¹

These laws are partly codified and partly uncodified and customary. The idea of replacing this system with a uniform Code has promised and seems to mean different things to different entities: Gender equality to the women's movement and national integration, secularism and modernity to the Supreme Court.¹²

The UCC remains a contentious issue, reflecting the challenge of balancing the uniformity of laws with the diversity of India's cultural and religious fabric. The need for a Uniform Civil Code (UCC) in India has recently been brought to the forefront due to several factors.

⁸ Shri Alladi Krishnaswamy Aiyer in Constituent Debates, Volume VIII, 545.

⁹ *Supra* note 7.

¹⁰ *Id.*

¹¹ Tanja Herklotz, *Dead Letters? The Uniform Civil Code through the Eyes of the Indian Women's Movement and the Indian Supreme Court*, 49(2) VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 148 - 74 (2016) (Mar.1, 2024, 10:00 PM), <http://www.jstor.org/stable/26160070>.

¹² *Id.*

“The UCC will focus on rights, leaving the rituals embodied personal law intact within the bounds of constitutional propriety.”¹³ Ours is a nation with a wide array of religions and belief systems. Therefore, personal laws are constantly in controversy and also the sole reason of communal distress within the territory. The constitution has been considered as a *grundnorm*, the Constitution is supreme and all the laws need to be in accordance to the constitution.¹⁴ Although UCC being fragment of DPSP is not enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply the principles in making laws.¹⁵ While the constitution, also, confers the right to manage its own religious affairs, on any religious denomination, in religious matters.¹⁶ Thereby, bringing in what seems to be somewhat contradictory provisions as there can't share uniform set of laws while also providing religious freedom at the same time, because in order to provide for a uniform set of laws some of the personal religious rights shall have to be curbed. This shall completely be against the totality of the society's outlook as yet being violative of Article 25¹⁷ of the fundamental rights. With multiple beliefs come numerous ideological conflicts and a responsibility on the State to ensure peaceful co-existence. To live concurrently with such vast diversity, it is essential to have uniformity and avoid conflicts. What we need is UCC imbibed in an erudite, coherent system of legal regulation that helps to maintain a balance and competently uses the input of personal laws to the greatest benefit achieving higher strata of uniformity. The code shall act as a mirror to the minds of the framers of the constitution of India as it shall in true essence work to achieve equity, justice and good conscience without any conflicts.¹⁸

3.2 ROLE OF CONSTITUENT ASSEMBLY DEBATES:

The Constituent Assembly debates on the UCC in India were intense and highlighted the diverse perspectives of the assembly members. The debates took place around Draft Article 35 and later Article 44 of the Constitution of 1950, which directed the State to bring about a UCC across India.

¹³ B. G. Verghese, *Who's Afraid of A Uniform Civil Code?* (Dec. 12, 2023, 10:00 AM), <http://www.thehindu.com/2003/08/13/stories/2003081300341000.html>.

¹⁴ Doctrine of Constitutional Supremacy; See also, *The Position of the Supreme Court under the Constitution of India* (Dec. 29, 2023, 10:00 PM), <http://www.yourarticlelibrary.com/indian-constitution/the-position-of-the-supreme-court-under-the-constitution-of-india/5539>.

¹⁵ INDIA CONST. art. 37.

¹⁶ INDIA CONST. art. 26.

¹⁷ INDIA CONST. art.25 “...all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”

¹⁸ Kriti Rathi & Aman Tolwani, *One Code, One Nation: Reality or A Speculation*, JOURNAL OF LAW AND PUBLIC POLICY UNIFORM CIVIL CODE (JLPP) 189 (2017) (Dec. 12, 2023, 10:00 PM), <https://ceerapub.nls.ac.in/journal-of-law-public-policy-vol-4/Page189>.

Dr. Ambedkar, the chief architect of the Indian Constitution, had made a strong case in the Constituent Assembly for framing a UCC. He stressed the importance of a UCC in ensuring gender equality and eradicating prevailing social evils.¹⁹

The impact of the Constituent Assembly debates as taken place in the course of framing the Constitution played an important role in the growth and development of the concept of UCC. The Constituent Assembly debates on the Uniform Civil Code reflect a range of perspectives and considerations. While proponents emphasized the need for gender equality, national unity, and modernisation of the legal system, opponents stressed the importance of religious autonomy, minority rights, and cultural diversity.²⁰

First time on November 23, 1948, the issue of UCC was raised in the Constituent Assembly. The idea of UCC was brought up in the Constituent assembly with the following wordings: The State shall attempt to secure for the citizens Uniform Civil Code.”²¹

4. ARGUMENTS IN FAVOUR OF UCC IN CONSTITUENT ASSEMBLY:

- **Promoting Gender Equality:** Implementing UCC would eliminate discriminatory practices prevalent in personal laws and establish equality between men and women. Personal laws often discriminate against women regarding inheritance, marriage, divorce, and maintenance rights. A UCC would ensure equal rights for women in these matters.
- **National Unity and Integration:** A UCC would foster national unity by transcending religious and community divisions, promoting a sense of common citizenship. Personal laws, based on religion or community, tend to perpetuate differences and divisions among citizens, hindering the nation's cohesive fabric.
- **Secularism and Individual Rights:** Implementing a UCC would uphold the principles of a secular state, where religious beliefs do not dictate civil matters. It would safeguard individual rights and freedom of choice, allowing citizens to opt for a civil law system, instead of being bound by religious laws.
- **Modernizing Legal System:** A UCC would bring India's legal system in line with global standards and contemporary values, reflecting the needs of a modern society. Personal laws, rooted in traditional practices, often

¹⁹ M. Venkaiah Naidu, *India needs a uniform civil code*, (Dec. 20, 2023, 10:05 PM), <https://www.thehindu.com/opinion/lead/india-needs-a-uniform-civil-code/article67050330.ece>.

²⁰ *Id.*

²¹ Article 39 of the draft Constitution

conflict with evolving social norms, necessitating a comprehensive and inclusive legal framework.

- **Harmonizing Diverse Traditions:** A UCC would strive to harmonise diverse cultural, regional, and religious practices, fostering social cohesion and national integration. By creating a common set of laws applicable to all citizens, a UCC would minimise conflicts arising from differences in personal laws.

4.1 ARGUMENTS TO OPPOSE UCC IN CONSTITUENT ASSEMBLY:

- **Protective Religious and Cultural Autonomy:** Opponents argued that implementing a UCC would infringe upon religious and cultural autonomy, diluting the diversity of India's society. Personal laws are deeply rooted in religious and cultural traditions, and their preservation was essential to protect minority communities' distinct identities.
- **Violation of Fundamental Rights:** Critics claim that enforcing a UCC would violate the fundamental right to freedom of religion, as citizens would be compelled to follow a common civil law. It was argued that personal laws provide individuals with the freedom to practice their religion without interference from the state.
- **Complexity and Practicality:** Skeptics argued that formulating a single comprehensive civil law that caters to the diverse needs of a vast country like India is a complex task. Implementing and enforcing a UCC would require significant administrative, legislative, and judicial efforts, raising concerns about its practicality.
- **Potential Social Unrest:** Opponents feared that imposing a UCC could trigger social unrest and resentment among religious communities, leading to societal divisions. Personal laws have long been ingrained in people's lives, and any sudden change could disrupt social harmony and communal relations.
- **Respect for Diversity and Pluralism:** Critics emphasised the importance of respecting and acknowledging India's diverse cultural and religious pluralism. Personal laws allow different communities to maintain their distinct identities and practices, fostering a multicultural society.

Even though the UCC had many merits but it has been strongly opposed on two grounds.²² First that it will violate the freedom of religion guaranteed under Article 25 of the Indian Constitution, and second it will amount to oppressive of the people of the minority community.

The framers of our Constitution were not in accord on the implementation of UCC. Although extensive discussion was conducted but it was not

²² D. C. Manooja, *Uniform Civil Code: A suggestion*, 42 JOURNAL OF INDIAN LAW INSTITUTE 448 (2000).

considered to be made as a part of fundamental rights. The members of the constituent assembly settled for a compromise and provided space to the UCC into the Directive Principles of State Policy.²³

4.2 INTERNATIONAL MANDATE

In context to international commitments the implementation of Uniform Civil Code has become mandatory. Indian government has shown their interest in the implementation of UCC through rectification of conventions and declarations resolved by the international organizations. Therefore, it has become mandatory and obligatory to implement Uniform Civil Code. Some of the important conventions and declarations are Universal Declaration of Human Rights (1948), Convention on the Political Rights of Women (1952), International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), Declaration on the Elimination of All Forms of Discrimination against Women (1967), Convention on the Elimination of All Forms of Discrimination against Women (1979), Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992), Declaration on the Elimination of Violence against Women (1993), Universal Declaration on Democracy (1997) and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999). All these international conventions and declarations self-confessedly declare that all forms of discrimination, exploitation and oppression of women and minorities is to be actively demotivated by all states, and effective national legislations are to be brought into force to ensure that human rights violators in this respect are prosecuted.

Especially, India has ratified the International Covenant on Civil and Political rights 1966 and International Covenant on the Elimination of all forms of Discrimination against Women, 1979 and is bound to enforce the relevant provisions and ensure gender equality under its laws. Prevalence of discrimination against women under the personnel laws of different communities was openly accepted by India in its periodic report before the United Nations Committee on the Elimination of the Discrimination against Women when it admitted, “The personal laws of the major religious communities had traditionally governed marital and family relations, with the Government maintaining a policy of non-interference in such laws in the absence of a demand for change from individual religious communities.”²⁴

²³ Ramesh Sharma, *what framers of our Constitution said about UCC and why they didn't implement it*, INDIA TODAY, New Delhi Jul. 31, 2023.

²⁴ United Nations, Report of the Committee on the Elimination of Discrimination against Women, Supp.No.38, A/55 /38, 22nd Session 17 Jan-4 Feb 2000 and 23rd Session 12-30th June 2000, General Assembly Official Records, New York, 2000 at 8.

In view of the above, we can summarise that it is not a political issue or a political parties resolution to implement Uniform Civil Code whereas it is necessary to implement due to international commitments and obligations.

4.3 CONSTITUTIONAL MANDATE

The Indian Constitution is often regarded as a modern constitution due to its comprehensive and forward-thinking nature. In Indian Constitution apart from provisions pertaining to different organs of the government the constitution also encapsulate within it the most important fundamental rights chapter to the citizens and others, as well as Directive Principles of State Policy for the direction to the states which is required to maintain I standard of living for the general public. Although in the background of religious discord, the subject of a Uniform Civil Code did not find place as a fundamental principle in the governance of the country.

Though the Constitution does say that directive principles are not enforceable by any court, it also makes it clear that the directive principles are “fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”²⁵

While the DPSPs provide a broader framework for the governance of the state, the UCC is a specific aspect related to personal laws. The directive to implement a UCC is derived from the DPSP, and it reflects the constitutional goal of achieving uniformity in personal laws for all citizens, irrespective of their religious affiliations.

Article 44 pertains to all citizens of India. The Constitution confers citizenship not on the basis of caste, creed, sex or religion, but on the basis of birth, domicile, choice, etc. Thus, it is the right of all citizens, and women in particular, to be treated equally and without being discriminated against; and the endeavour of the state to achieve this must be perpetual and paramount.²⁶

The Uniform Civil Code is not defined in the Constitution. Due to uncertainty of the scope of UCC, there is a dilemma that what it precisely contains. Even the large number of decisions of the Supreme Court touching upon the subject do not shed light on what is expected to be contained in the Uniform Civil Code. This has led to people drawing conclusions on constituents of Uniform Civil Code as per their own understanding and convenience.²⁷

²⁵ Leila Seth, *A Uniform Civil Code: Towards Gender Justice* 31 (4) INDIA INTERNATIONAL CENTRE QUARTERLY 40–54 (Mar. 01, 2024, 11:50 AM), <http://www.jstor.org/stable/23005979>.

²⁶ *Id.*

²⁷ Preethika Pilinja, *Uniform Civil Code, Constitution of India and Constitutionalism*, 4 JOURNAL OF LAW AND PUBLIC POLICY UNIFORM CIVIL CODE (JLPP) 115

India, being a country of different religions, considers the importance of the customs and traditions of the various communities. Due to these, few provisions have been included in the constitution to exclude the applicability of parliamentary law on customary practices.²⁸ The Sixth Schedule of the Constitution vests exclusive lawmaking power regarding customs and family law to the regional and district councils in tribal areas of Assam, Meghalaya, Tripura, and Mizoram.

Therefore, a UCC enacted by the union legislature can only be implemented in the north-eastern states once these provisions are removed. However, importance was given to Article 44 as a mandatory provision binding the government, and it is incumbent upon it to give effect to its provision.

The Constitution was enacted for the whole country, and it is expected that every section and community must accept its provision and directives.”²⁹ The preamble of the Constitution states that India is a “Secular state,” which means that there is no State religion. A secular State shall not discriminate against anyone on the grounds of religion. A State is only concerned with the relation between man and man.

Keeping into consideration the varying principles of personal laws dealing with the family matters of different communities practising different religions, the Constitution makers came across vibrant idea that there should be Uniform Civil Code for all the citizens of India irrespective of their religion. It is why they incorporated in the Constitution of India a distinct provision with regard to Uniform Civil Code under its Part IV with the head ‘Directive Principles of State Policy’ (DPSP). Art. 44 of the Constitution provides that State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. It is well settled that DPSP are though not binding on the State while Fundamental Rights under Part III are binding against the State, but the DPSP have no less force and effectiveness than the Fundamental Rights. It is because the DPSP have the aim and objective for securing welfare of the citizens of India. So, it becomes moral duty of the State to make every such endeavour to implement the DPSP with a view to making the concept of welfare State a reality. If ever fulfilled, Article 44 would almost certainly sound the end to religious personal law, requiring all Indians to be governed by one secular civil code.³⁰

(2017), (Mar. 01, 2024, 11:55 AM), <https://ceerapub.nls.ac.in/journal-of-law-public-policy-vol-4/ Page 115>.

²⁸ INDIA CONST. art. 371A and art. 371G

²⁹ M.C. Chagla, *Plea for Uniform Civil Code*, WEEKLY ROUND TABLE, Mar. 25, 1973. 7.

³⁰ Archana Parashar, *Women and Family Law Reform In India: Uniform Civil Code And Gender Equality* 158 (1992).

4.3 JUDICIAL APPROACH

Judiciary being the last organ of the government but strongest organ who has power to review any decision taken by the parliament and if it has been found inconsistent with the constitution then it can be held unconstitutional. In a number of cases over the last decades the Supreme Court has called for the introduction of a Uniform Civil Code. It refers to article 44 even in cases that do not deal in particular with the personal laws, frequently in obiter dicta, and reminds the legislature of its responsibility under the DPSP.³¹

While interpreting the provisions of the constitution the Courts have adopted two different approaches in context to the UCC, first the consideration of personal laws out of the purview of the judicial approach and expressing a view in favour of the enactment of the Uniform Civil Code in pursuance of Article 44 of the Indian Constitution.

Personal laws play a critical role in making the communities participate in the politico-socio-cultural milieu, but they must conform to the Constitution. The question is whether constitutional protection given to religious practices prescribed in personal laws should extend even to those not compliant with fundamental rights. The idea that personal laws of religions should be beyond the scope of judicial review and that they are not subject to the Constitution is inherently abhorrent.³²

Personal laws are, by and large, non-statutory, traditional systems of law having some affinity with the concerned religion.³³ Being ancient systems of law, there are several aspects of these systems of rules that are out of time with modern thinking and may even be incompatible with some fundamental rights. The courts have adopted the policy of non-interference, keeping in view the susceptibilities of the groups to which these laws apply. Courts have adopted two strategies.

One, the courts have ruled that the challenged features of personal laws are not incompatible with the fundamental Rights. This aspect is referenced in the following discussion on specific Fundamental Rights, especially under Articles 14, 15, 25, and 26. Two, the courts have denied that the personal laws fall within the coverage of Article 13, and thus, these laws cannot be challenged under the Fundamental Rights.³⁴

³¹ Tanja Herklotz, *supra* note 11.

³² Narasu Appa Mali v. State of Bombay A.I.R. 1952 S.C. 84 (India).

³³ M.P. JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. LexisNexis).

³⁴ Gajendragadkar, J., observed in Narasu Appa Mali cited above, that the framers of the Constitution wanted to leave the personal laws outside the ambit of part III of the Constitution. They did not wish that the provisions of the personal laws should be challenged by reasons of the fundamental Rights, and so, they did not intend to include these personal laws within the definition of the expression "laws in force" under article 13.

In case of *Mohd Ahmed Khan v. Shah Bano Begum*³⁵, first time the courts directed to the union government to enact uniform civil code in the interests of gender justice and national integration.³⁶

The same view was again expressed by the court in *Jordan Diengdoh v. S. S. Chopra*³⁷, in this case a Christian woman married to a Sikh man under the Indian Christian Marriage Act, 1872, sought nullification of her marriage under the Indian Divorce Act, 1869, but could only be granted a decree of separation due to lack of an enabling provision under the Indian Divorce Act prompting the Supreme Court to point once again to the UCC.³⁸

The Court urged the government to come up with a UCC once again a decade later in a public interest litigation seeking to outlaw the practice of Hindu men abandoning their wives, without lawfully divorcing them, and converting to Islam for the sole purpose of marrying a second time.³⁹ This time, the justification offered was to prevent Hindu men from converting to Islam for the sole purpose of getting married a second time. In the Sarla Mudgal case, the Court explicitly holds up the Hindu Code as the model on the basis of which the UCC should be drawn up.

This was clarified later by the Supreme Court to some extent in *Lily Thomas and others v. Union of India*⁴⁰ that “The desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statement amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change”. The word “uniform” should not mean the same law for all but it should mean similar laws for all and similarly should be regarding equality and gender justice. Although in Lily Thomas case⁴¹ the Court could not direct the Centre to introduce a UCC, but that did not stop the Supreme Court from once again encouraging the necessity and desirability of one in case of *John Vallamattom*⁴², Mr. John contended that Section 118 of Indian Succession Act

In Ahmedabad Women Action Group v. Union of India, 1997 SCC (3) 573 Public Interest Litigation was filed through a writ petition to declare the Muslim Personal laws, which allows polygamy, as void, as offending articles 14 and 15. The Supreme Court refused to take cognizance of the matter, observing that the issues raised involved questions of state policy with which the Court does not ordinarily have any concern.

³⁵ 1985 S.C.C. (2) 556 (India).

³⁶ Alok Prasanna Kumar, *Uniform Civil Code: A Heedless Quest?* 2(25) ECONOMIC & POLITICAL WEEKLY, Jun. 18, 2016.

³⁷ 1985 S.C.C. 3 (62) (India).

³⁸ (Mar. 23, 2024, 11:50 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/sc-support-for-legislation-on-ucc-prompted-by-cases-involving-gender-justice>.

³⁹ Sarla Mudgal, President, Kalyani and Others v. Union of India and Others 1995 S.C.C. (3) 635 (India).

⁴⁰ A.I.R. 2000 S.C. 1650 (India).

⁴¹ Lily Thomas and Others v. Union of India and Others 2000 S.C.C. (6) 224 (India).

⁴² John Vallamattom and Another v. Union of India 2003 S.C.C. (6) 611 (India).

1925 was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional. It called for the parliament to take concrete steps to enact a Uniform Civil Code. It was stated that a common civil code will help the cause of national integration by removing the contradictions based on ideologies.

In *Pannalal Bansilal v. State of Andhra Pradesh*⁴³ it held that a uniform law though highly desirable, the enactment thereof in one go maybe counter-productive to the unity and integrity of the nation. Gradual progressive change should be brought about. Similarly, in *Maharishi Avadhesh v. Union of India*⁴⁴ the Supreme Court dismissed a writ petition to introduce a common Civil Code on the ground that it was a matter for the legislature and in *Ahmadabad Women Action Group v. Union of India*⁴⁵ the Supreme Court showed reluctance to interfere in matters of personal law.

It is significant to note that while the courts have made annotations and commendations concerning the application of a uniform civil code, they have also recognized the intricacies and sensitivities involved. The courts have highlighted the necessity for a composed, sensible and measured approach, taking into account the varied sacred and social practices in India.

5. CONCLUSION AND SUGGESTIONS

In light of the above discussion, we can conclude that the due to non-inclusion of the UCC and the country's progress toward social harmony, economic justice and gender justice have been hampered by the absence of a Uniform Civil Code. India, being a diverse nation, is home to many religions, each with its distinct personal laws governing marriage, divorce, adoption, inheritance, and succession. The non application of a Uniform Civil Code has only perpetuated inequalities and inconsistencies in our land of rich diversity.

Implementation of a Uniform civil code is needed not only because a political party always has as an agenda in its manifesto but also because it is a mandate of the constituent assembly, international commitments, constitutional provisions, and also the need felt by the Indian judiciary in this regard. As quoted by former chief justice of India Y.V. Chandrachud, "A Uniform Civil Code will help the cause of national integration by removing desperate legalities of laws in which have conflicting ideologies."

So, the (un) fulfilled the constitution's promise, which can be fulfilled only after implementing the Uniform Civil Code.

⁴³ 1996 S.C.C. (2) 498 (India).

⁴⁴ 1994 S.C.C. Supl. (1) 713 (India).

⁴⁵ A.I.R. 1997 S.C. 573 (India).

REFERENCES

Books

- M.P. JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. LexisNexis).
- P. DIWAN, FAMILY LAW (11th ed. Allahabad Law Agency 2018).

Articles

- Ahmed, Shabbeer, and Shabeer Ahmed. *UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER* 67 (3) THE INDIAN JOURNAL OF POLITICAL SCIENCE 545-52 (2006).
- Alok Prasanna Kumar, *Uniform Civil Code: A Heedless Quest?* 2(25) ECONOMIC & POLITICAL WEEKLY, Jun. 18, 2016.
- Archana Parashar, *Women and Family Law Reform In India: Uniform Civil Code And Gender Equality* 158 (1992).
- D. C. Manooja, *Uniform Civil Code: A suggestion*, 42 JOURNAL OF INDIAN LAW INSTITUTE 448 (2000).
- Jyoti Ratan, *Uniform Civil Code in India: A Binding Obligation Under International & Domestic Law*, 46 (4) JOURNAL OF THE INDIAN LAW INSTITUTE 577
- Krishnayan Sen, *Uniform Civil Code*, 39 EPW, 4196 (2004).
- Kriti Rathi & Aman Tolwani, *One Code, One Nation: Reality or A Speculation*, JOURNAL OF LAW AND PUBLIC POLICY UNIFORM CIVIL CODE (JLPP) 189 (2017).
- Laura Dudley Jenkins, *Personal Law and Reservations: Volition and Religion in Contemporary India* in RELIGION AND PERSONAL LAW IN SECULAR INDIA 104.
- Leila Seth, *A Uniform Civil Code: Towards Gender Justice* 31 (4) INDIA INTERNATIONAL CENTRE QUARTERLY 40–54.
- M.C. Chagla, *Plea for Uniform Civil Code*, WEEKLY ROUND TABLE, Mar. 25, 1973. 7.
- Preethika Piliinja, *Uniform Civil Code, Constitution of India and Constitutionalism*, 4 JOURNAL OF LAW AND PUBLIC POLICY UNIFORM CIVIL CODE (JLPP) 115.
- Ramesh Sharma, *what framers of our Constitution said about UCC and why they didn't implement it*, INDIA TODAY, New Delhi Jul. 31, 2023.
- Tanja Herklotz, *Dead Letters? The Uniform Civil Code through the Eyes of the Indian Women's Movement and the Indian Supreme Court*, 49(2) VERFASSUNG UND RECHT IN ÜBERSEE / LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 148 - 74 (2016).

Reports/Debates

- Shri Alladi Krishnaswamy Aiyer in Constituent Debates, Volume VIII, 545.
- United Nations, Report of the Committee on the Elimination of Discrimination against Women.

Websites

- B. G. Verghese, *Who's Afraid of A Uniform Civil Code?* <http://www.thehindu.com/2003/08/13/stories/2003081300341000.html>.
- Doctrine of Constitutional Supremacy; <http://www.yourarticlelibrary.com/indian-constitution/the-position-of-the-supreme-court-under-the-constitution-of-India/5539>.
- <https://economictimes.indiatimes.com/news/politics-and-nation/sc-support-for-legislation-on-ucc-prompted-by-cases-involving-gender-justice>.
- India needs a uniform civil code, <https://www.thehindu.com/opinion/lead/india-needs-a-uniform-civil-code/article67050330.ece>.

List of Cases

- Ahmadabad Women Action Group v. Union of India A.I.R. 1997 S.C. 573
- John Vallamattom and Another v. Union of India 2003 S.C.C. (6) 611
- Jordan Diengdoh v. S. S. Chopra 1985 S.C.C. 3 (62)
- Lily Thomas and others v. Union of India 2000 S.C.C. (6) 224
- Maharishi Avadhesh v. Union of India 1994 S.C.C. Supl. (1) 713Mohd Ahmed Khan v. Shah Bano Begum 1985 S.C.C. (2) 556
- Narasu Appa Mali v. State of Bombay A.I.R. 1952 S.C. 84.
- Pannalal Bansilal v. State of Andhra Pradesh 1996 S.C.C. (2) 498
- Sarla Mudgal, President, Kalyani and Others v. Union of India and Others 1995 S.C.C. (3) 635

Statutes

- The Constitution of India, 1950