

CAN UCC COMPLETELY OVERLAP PERSONAL LAWS IN INDIA?**- Priya Wadhwa¹**

ABSTRACT –

The idea of Uniform Civil Code (hereinafter “UCC”) is undoubtedly an integral part of our constitutional values, a future envisioned by our constitution framers. Its capability of forming a common ground for the diverse population of the country instilled hope of greater fraternity and communal bond. After years of judicial stress on its formulation and adoption, the tenacious political will seems to be tilted towards it, necessitating the legal community to delve deep into the concept of the UCC and analyse its viability in India. While the UCC has immense benefits and element of greater social integration, many roadblocks lie in its way before it can be applicable to the citizens of India.

Treading on the idea that adoption of UCC in India is not only the need of the hour, but also quintessential for enhancing judicial efficacy, this paper will discuss how the current system of application of personal laws is heaping challenges and disconnecting the citizens.

However, the biggest challenge posed against UCC is not just garnering public sentiment, but its effectiveness in courts, and its effect on prevailing customary practices. Customs are practices being continued for generations and cannot be expected to be derecognized even after application of UCC. However, with their continued application, the doubts and vividness in applicable principles will remain.

The prospective application of UCC, being substantive in nature, would, before relieving the judiciary would, on the contrary leave the currently overburdened judiciary in a greater flux. Repeated determination of the question of its applicability or non-applicability will not only add to the time taken for judicial determination, but also lead to rise in challenges to such orders, escalating instability of legal relations.

Thus, is the applicability of UCC in India an absolute necessity requiring a buffer period after which its true effect will emerge, or will it smoothly take over the procedure of

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enforcing remedies that are currently governed by personal laws is the question that remains, which depends on the drafting and formulation of UCC. Upon deliberating on the various aspects stated above, the paper concludes with the suggestions of what should the UCC look like in India for it to be smoothly functional.

INTRODUCTION TO UCC -

We have often come across, and even participated in debates regarding whether the time is ripe for India to adopt Uniform Civil Code (hereinafter 'UCC'). The conclusiveness or inconclusiveness of such debates are immaterial, as such intellectual discussions introduce facts, deliberate over possible impacts and does not let the issue be perceived as a distant dream, but an impending state of affairs. They contribute to create a conducive environment for its introduction by broadening the horizons of minds oblivious to the idea.

The Uniform Civil Code is a peculiar and a pressing issue in the current times, often finding itself to be the focal point of debates, whenever personal laws are challenged or the judiciary advocates for its implementation. Its significance has grown with every passing year, and the legislature is finding itself in a flux with regard to its introduction in India. The legal system in India is complex and judicial functions tough to carry out, and the issue of whether UCC should be adopted in India cannot be stated without going into the depths of its aspects and effects. Irrespective of that, UCC is widely considered to be a panacea, not only for strengthening the secular fabric of the nation, but also to give a new lease of life to the ailing and overburdened judicial system of the nation.

This paper will be going over the contours of UCC in context of the legal system in India, and while comparing it with the currently applicable Personal laws, will try to bring forth the framework of UCC that would be ideal for India.

DISSECTING THE WORD UCC

The name of UCC itself suggests its characteristic of applicability in a uniform manner. Uniformity stands on the bedrock of equality and secularism. It furthers itself by covering within its ambit every individual irrespective of their unique peculiarities like gender, religion, ethnicity, caste, creed etc. The classifications and classes formed on the basis of such individual traits are, as a consequence, done away with, and one body containing a set of legal provisions remains applicable on every person. Hence, every person stands at an equal footing, truly making the embodiment of law, with her vision restricted by tying a cloth over her eyes, come to life.

Civilised societies stand tall declaring their citizens to have equal status before legal forums by application of laws recognising them as equals. Physical, mental, intellectual differences between citizens have no consideration in such matters, and the value of life of one person is similar to the other. This principle is seen to be manifest when every citizen over a particular age is given the right to vote and choose its political representative, when no criminal is treated differently, and when the state aims at giving every child the same quality of education to improve their quality of life and prospects.

Uniformity of application also correlates to the secular nature of law, roots of which are deeply entrenched in constitutionalism. Hence it would not be conjectural to find Uniform civil code to be extension of the constitutional principles and values.

CIVIL

Civil law is the sphere encompassing within itself the interpersonal relations between citizens, whether formed through socio- religious acts, or contracts. Often, civil law is categorised negatively, i.e., encompassing within itself every law other than those specifically dealing with criminal law, both substantive and procedural. Civil law dictates basic norms to be followed and enforced in case of violation. The rights and liabilities imposed by such law are personal in nature, since the impact is limited to such individuals while the society at large remains unaffected. However, the dichotomy that lies here is though civil rights are perceived to have a limited impact upon individuals, such individuals, being an indispensable part of the society, do in a manner affect the societal relationship, because no person lives in isolation, but is surrounded by the society in all aspects.

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Stability of legal relationships plays an important role in society. The sum total of individual efforts, social and legal relationships, proprietary rights, economic activities shape the society and economy. Thus, the role of civil law and its enforcement cannot be neglected.

Under modern law, rights and liabilities relating to marriage, divorce, guardianship, adoption, commercial relationships based on contracts, property and goods related transactions etc. form the basic cluster of civil laws, coupled with adjective or procedural laws like Code of Civil Procedure, 1908 (hereinafter 'C.P.C.') and Indian Evidence Act 1872 (hereinafter 'I.E.A.'). The majority of substantive civil law relating to contracts, property (except gift), remedies like declaration, injunction etc are already secular, thus the only aspect of civil law having application based on religion, caste, sect etc is one relating to marriage, divorce and other incidental remedies. These matters are currently governed by personal law, i.e., codified or uncoded principles applicable on a person on the basis of their religious affiliation. Hence, the only aspect of civil law that remains to be distant from the idealistic 'secular' nature are these, and the only ones referred to when the issue of UCC is deliberated upon.

CODE

A legislation is often referred to as an Act or statute, rarely a code. There might seem a slight or even negligible difference between an Act and a Code, both having been drafted and passed by the legislature, both containing legal provisions and regulations applicable on individuals covered within its ambit.

Despite the same, there is a notable distinction between a legislation called an Act, and one called a Code, which lies in the nature of the legislation. Particularly, a legislation is termed 'Code' when the matters covered by it are exhaustively dealt with, such as the procedure for enforcement of civil and criminal rights and liabilities under the C.P.C., and Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') respectively.

The question as to whether the legislation exhaustively deals with a subject matter is extracted from the preamble to the legislation, which, if it does, contains the word 'consolidate'.

Hence, when UCC is considered as a whole, it will be a compilation of exhaustively formulated principles dealing with specific civil matters like marriage, divorce, guardianship, adoption, inheritance and maintenance and having uniform application over all individuals

irrespective of religion, caste, creed etc. A Uniform civil code would retain the customary diversity of all communities by providing a uniform base of constitutional values.²

ORIGIN OF THE CONCEPT OF UCC

Under the pre-colonial Indian legal regime, legal principles were varied, implementation of which was highly decentralised. Local customs and traditions were the determining factors. Communities were held together by way of such local customs and usages, violation of which was taken up before royal courts, and determined thereof.

The British had a hard time dealing with such varied, decentralised and non- uniform structure of legal principles, making the tasks on their hands multiply manifold. Hence, attempts were made to compile the existing principles to bring uniformity, and while such attempts were successful, making way for various laws having uniform implementation, the private sphere having close proximity with religious ideals and philosophies were kept untouched to keep opposition and retaliation at bay.

Cautiously treading on the path of beneficial legislations, the British introduced important legislations like Hindu Widow Remarriage Act, 1856, Hindu Inheritance (Removal of Disabilities) Act, 1928 and Married Woman's Property Act, 1923, granting proprietary rights to Hindu women. Though, similar legislations were not passed as for Muslim women due to harsh opposition and conservatism.

This was succeeded by the demand of UCC by The All-India Women's Conference, to further gender equality in the nation.³ Consequently **B.N. Rau Committee** was formed in 1941, which recommended the introduction of a Uniform Civil Code which gives equal rights to women, though it is pertinent to note that the focus of the committee was on Hindu laws. It was reconstituted in 1944, and the recommendations finally materialised into the four main laws governing Hindu personal laws, though after considerable delay.

The Special Marriage Act, 1954 read along with the Indian Succession Act, 1925 also gave a voluntary option for individuals belonging to any religion, to adopt secular, egalitarian principles and abandoning personal laws.

² Razia Patel, *Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice*, 44 ECONOMIC AND POLITICAL WEEKLY, 44, 2009.

³ Nandini Chavan Et Al., PERSONAL LAW REFORMS AND GENDER EMPOWERMENT: A DEBATE ON UNIFORM CIVIL CODE 84 (Hope India Publications 2006).

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It can be stated that the UCC is, in part, given effect as the Special Marriage Act, 1954 read with the Indian Succession Act, 1925. The extent of its application is, though, very limited.

UCC AND THE LEGAL REGIME IN INDIA

Independence of India brought the assurance of self-governance and with it, the unfulfilled aspirations, hopes and dreams of Indians seemed to be at the brink of realisation. The institutional suppression of Indians was sought to be done away with, by adoption of a constitution that, as of a modern state, would guarantee basic rights to its citizens.

The Constituent Assembly was formed on 9th December 1946, which sought to draft the Indian Constitution. With 22 Committees working under it, the draft was completed and adopted in part on 26th November 1949, and came into force as a whole on 26th January 1950, taking a total of 2 years 11 months and 18 days.

The Constitution of India is, what reputed jurist Kelsen stated, the *Grundnorm*. Having such stature, no law in force in India, whether a pre-independence or post-independence law, can be violative of the constitutional provisions, as is stated under Article 13 read with Article 372 of the Constitution. With the passage of time, the interpretation of the Constitutional provisions shifted from the literal interpretation of the words of the provision, to the essence of the same, which was ultimately sufficed in the *Kesavananda Bharati Case*⁴. The Basic Structure of the Constitution, coined in this judgment was not a compilation of provisions, rather, principles that were considered to be omnipresent in the Constitution, cutting across every provision. Principles like equity, justice, reasonableness, non-arbitrariness are recognised as a part of the Basic Structure.

Article 44 of the Constitution of India is a Directive Principle for State Policy (hereinafter 'DPSP'). The DPSP were formulated in a separate part, i.e., Part IV of the Indian constitution and provides for certain principles that act as a societal goal for our nation, which at the apt time could be adopted and implemented. These societal goals or the summation of the goals and aspirations of Indians at the time of independence and undoubtedly fundamental in governance, though forming an important part under the constitution, are not justiciable, i.e., are non-enforceable, as has been clarified under Article 37 of the Constitution.

⁴ Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr. (1973) 4 SCC 225.

Article 44 of the Constitution has been in the midst of debates quite often, and a focal point of discussion and deliberation in the constitutional courts in the country.

Reproduction of Article 44 is as follows: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. Here, the state will refer to the Central government only, since it is only the Parliament which is empowered to make law that applies throughout the territory of India. The words ‘the state shall endeavour’ imposes a positive duty on the state to implement UCC when the societal conditions are thought conducive to it.

While Article 44 uses the words “State shall endeavour”, other Articles in the ‘Directive Principles’ chapter use words such as “in particular strive”; “shall in particular direct its policy”; “shall be obligation of the state” etc. Article 43 mentions “State shall endeavour by suitable legislation” while the phrase “by suitable legislation” is absent in Article 44. All this implies that the duty of the state is greater in other directive principles than in Article 44.⁵

If the framers of the Constitution had intended to have a Uniform Civil Code, they would have given exclusive jurisdiction to Parliament in respect of personal laws, by including this subject in the Union List. But “personal laws” are mentioned in the Concurrent List. Last year, the Law Commission concluded that a Uniform Civil Code is neither feasible nor desirable.⁶

The Hon’ble Supreme Court also shed light on the relationship between UCC and Fundamental right under Articles 25-27 of the constitution of India as below:

“Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other

⁵ Faizan Mustafa, Explained: Uniform Civil code—the debate, the status, THE INDIAN EXPRESS (Sept. 18, 2019), <https://indianexpress.com/article/explained/explained-uniform-civil-code-the-debate-the-status-6004396/>.

⁶ Id.

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*communities would not, though the Constitution enjoins the establishment of a "common civil Code" for the whole of India."*⁷

The constitutional courts in India have repeatedly iterated the urgent need for implementation of UCC. The judiciary maintains a close connection with the society, and is a witness to its current state, and also to its needs and requirements. As is well known, the more the laws, the more are the loopholes left to be exploited, same is the state with personal laws, which are often misused by individuals to their own advantage, and in utter negligence towards the society. To close the gaps left open under various personal law related statutes and principles, the courts have urged the legislature to analyse the situation and bring forth the UCC.

In the landmark judgment of *Mohd. Ahmed Khan v. Shah Bano Begum*⁸, before concluding the judgment, the Constitution bench of the Hon'ble Apex court observed:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter... A common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge the gap between personal Laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

UCC AND PERSONAL LAWS

Personal laws play an important role in Indian society. While they obviously do their job in being the governing rules for both substantive and procedural rights and liabilities of disputed parties, they also act as a reassurance to people belonging to the distinct religions. This reassurance emanates from Article 25 of the Constitution, since being governed by personal laws is also viewed as a way of practicing one's religion. Personal laws govern and

⁷ Sarla Mudgal v Union of India, AIR 1995 SC 1531.

⁸ 1985 SCR (3) 844.

regulate relations arising out of certain factors connecting two persons or more than two persons. Those factors are Marriage, Blood, and Affinity. Moreover, personal law governs and regulates subjects or areas of personal sphere such as: Marriage, Divorce, Maintenance, Succession, Minority & Guardianship etc. Barring few, most of the personal laws in India are based on scriptural laws which are divided and based on religions.⁹

Though the personal laws were hailed during colonial times, as keeping the personal disputes under a veil and away from the colonial authorities, their application or implementation has grown to become more complex with the passing time.

The theological basis of the personal laws is carefully looked into by the legislature before enacting a statute. It is also quite often discussed in great detail by the constitutional courts while hearing myriad cases present before it.

Considering the fact that UCC aims to substitute the personal laws presently applicable in India, it is pertinent to examine in detail the various laws, the issues that have cropped up over the period of time and how UCC, if it would, correct or further deepen the cracks.

Some of the significant personal laws in India are as follows:

- Hindus (including Jains, Sikhs, Buddhists and all those who are not Muslims, Jews or Christians) are governed by Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, Hindu adoption and Maintenance Act
- Muslims are governed by Muslim Personal Law (Shariat) Application Act, 1937, The Muslim Women (Protection of Rights on Divorce) Act, 1986, Dissolution of Muslim Marriage Act, 1939 and The Muslim Women (Protection of Rights on Marriage) Act, 2019.
- Parsis are governed by Parsi Marriage and Divorce Act, 1936
- Christians are governed by Indian Christian Marriage Act, 1872, Indian Divorce Act and Indian Succession Act.

It is considered that the provisions in these legislations are founded on a respective scriptural basis. Indians have, since time immemorial, considered their religion, not just as one

⁹ Hrishikesh Jaiswal, *Development of Personal laws in Colonial India*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-5412-development-of-personal-laws-in-colonial-india.html>

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under which they are supposed to act in a definitive manner on certain specific occasions, rather, Indians consider and treat their religions as a way of life.

This broadens the horizons of religious affinity, making individuals feel a little more closer and in tune with their religions.

It is appropriate to note that 4 important legislations governing the Hindu law were enacted after independence, considering the need to bring homogeneity amongst Hindus as to applicable rules, irrespective of caste, sects, subsect etc. the common code for Hindus did not, in its entirety base itself on religious scripts, but brought the changes that were necessary to maintain a modern Indian society having constitutional values and guarantees. By ditching the old concepts and introducing completely opposite ones, like monogamy, the right of women to hold property and be recipients of inheritance, right to divorce, etc were introduced. It is repeatedly asserted that the Hindus, ultimately gave in to these new principles, and though reluctant, made way for a common code for governance. And the success of these laws should be one of the rationales for the UCC. Hindus, after some pacification as was needed at the time, embraced laws for their collective good.

Before these laws, Hindu women were considered much less empowered and independent, because unlike their Muslim counterparts, neither could they be property owners, nor could they walk away from their marriages. In fact, Hindu society was plagued by several social vices, ways out of which seemed impossible.

Gradually, the rights given to Hindu women, in particular under the Hindu Code have expanded by legislative actions or judicial interpretations, and true sense of equality has been achieved on paper. Though on the other hand Muslim, Christian women still seem to be restricted by practices or provisions that do not necessarily establish gender justice.

In the context of Hindu law, several landmark judgments have been passed by the Hon'ble Apex Court upholding the spirit of gender justice in India. The recent judgment of *Vineeta Sharma v. Rakesh Sharma*¹⁰ partly overruled the judgments of *Prakash v. Phulavati*¹¹ and *Danamma v. Amar*¹², which stated that for a Hindu Daughter to be a coparcener in a Hindu Undivided family, it is necessary that her father was alive on 9th September 2005, when the respective amendment came into effect. The court has in the recent judgment held that no such

¹⁰ (2020) 9 SCC 1.

¹¹ (2016) 2 SCC 36.

¹² (2018) 3 SCC 343.

criteria, which was not placed by the legislature, can be brought by the judiciary and restrict the rights of daughters in coparcenary.

Another judgment that valiantly introduced gender equality was *Githa Hariharan v. RBI*¹³ wherein Section 6(a)(2) of the Hindu Minority and Guardianship was challenged, since it mentioned only the father of the child to be its natural guardian, and mother was considered the guardian only in the father's absence. The Hon'ble Apex Court held that the words in absence of father' were to be applied even where the husband was unavailable, and hence mothers are also natural guardians of the child.

The case of *Sarla Mudgal v. Union of India*¹⁴ the Apex Court noted how Hindus often converted to Islam to avail the benefit of polygamy, and how Religion too is treated as a commodity and abused without extent. The Apex Court declared that such conversion and subsequent marriages while marriage prior to conversion subsists, would have the effect of making the marriage after conversion to be void, and such act would also be punishable under Section 494 of the Indian Penal Code. The judgment tried to strike a balance between the right to convert, and the rights of married women on conversion of husband. It declared that the marriage before conversion does not automatically dissolve on conversion.

Another peculiar judgment is that of *Isha Tyagi v. State of Uttar Pradesh*¹⁵ wherein the female descendants were not given benefit of the reservation for family of freedom fighters in the state of Uttar Pradesh. The Allahabad High Court, speaking through Hon'ble Chief Justice D.Y. Chandrachud (as he then was) held that there cannot be any distinction between the family of a married son or daughter, and members of both would be treated as family of freedom fighters.

The application of the distinct personal laws over individual citizens has caused many issues to crop up. These issues have majorly been regarding the alignment of the personal laws with the Constitution of India. Validity of certain provisions or practices on the touchstone of constitutional values like equality, non-discrimination, right to life and personal liberty, right to privacy have often come up before the judiciary. And the courts as well as the government have, for a long time tried to maintain a non- interference approach with regard to personal

¹³ 1999, 2. SCC 228.

¹⁴ AIR 1995 SC 1531.

¹⁵ 2014 (107) ALR 61.

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laws. Decisions in cases like *Krishna Singh v. Mathura Ahir*¹⁶ and *Maharshi Avadhesh v. Union of India*¹⁷, the Apex Court refused to interfere in matters of religion and simply stated that the legislature is the appropriate forum to decide whether such changes ought to be brought in the legal realm of personal laws. And this would ultimately fructify when there is a public consensus amongst the religious community to bring forth such changes.

Gradually the court started scrutinising the religious principles, usages, customs or provisions of personal laws against the backdrop of omnipresent constitutional values. Covering a long distance now, we have reached a stage where religious practices are kept at an inferior setting than **Constitutional Morality**. The best example is the *Sabrimala case*¹⁸ a decision given by a constitution bench wherein the Hon'ble bench of the Supreme Court held that restricting the entry of women in temples, due to them being in their 'menstruating age' is unconstitutional and violative of articles 14, 15, 21 and 25 of the Constitution.

Additionally, the *Shayara Bano judgment*¹⁹ held that triple talaq, or 'talaq-e-biddat' is arbitrary and hence violative of Article 14 read with Article 13(1) of the Constitution of India. It not being an essential practice under Islam and even condemned under it, is not afforded the protection of Article 25 of the Constitution.

This monumental shift in the approach of the highest court of our country is also indicative of the fact that the nation is at the brink of being conducive to the idea of UCC, since the judiciary, too, is a representation of the society. The spatio-temporal nature of law is witnessing a gradual and constant shift towards being a society more in line with constitutional morality, rather than social morality.

The vividness and wide distinctions between the different personal laws has not only proved difficult for the administration of justice but has also created a divide in the society. Gender justice is not equal amongst different religions, as is also the case with property rights.

The repeated call for UCC from the judiciary is in the context of it being helpless when it comes to the discriminatory laws, resulting in numerous individuals losing in court, or even unable to reach the court despite them being in an unjust and unequitable circumstances.

¹⁶ AIR 1980 SC 707.

¹⁷ 1994 (Supp) 1 SCC 713.

¹⁸ Indian Young Lawyers Association & Ors. v. State of Kerala, 2018 SCC Online SC 1690.

¹⁹ Shayara Bano v Union of India, AIR 2017 9 SCC 1.

Though, now the judiciary is taking bold decisions despite the public sentiment in disagreement with it, the measures will truly be successful only with legislation in place.

MODEL FRAMEWORK OF UCC IN INDIA

The UCC is, time and again, hailed as the **messiah of secularism**, i.e., secularism is considered the genus while UCC is its species. UCC falls within the broad umbrella of secularism due to the fact that those civil laws that are currently governed by personal laws would, upon the introduction of UCC, be of homogenous application upon the citizens.

Secularism is undoubtedly a part of the basic structure of our constitution. The interpretation of secularism is limited when it comes to western countries: separation of church and state, i.e., the state, or government having independent and uninfluenced working from the church. However, Indian society is far more complex, and so is the concept of secularism in India. Secularism here does not end at the state not having its religion, and keeping the state and religion separate. Rather, the ultimate goal of secularism in India is to advance the feeling of fraternity amongst citizens.

Indians, with their distinct religions, castes, dialects, scripts and languages, do, owing to human nature, find it harder to simply attach themselves to the sole identity of 'being Indian'. The conspicuous and glaring differences between them is a dividing factor, but the uniting factor of being Indian and **building the sense of fraternity** is what is sought to be achieved through efforts of the state. And this is the true need of secularism in India.

It is also ironic to note that UCC is also often considered an attack on the secular fabric of Indian society, with its effect on restricting application of principles emanating from respective religions. It is considered draconian, and a sharp attack on the fundamental right to freedom to profess one's religion.

In context of UCC, the father of Indian constitution and India's first Law Minister Dr. B.R. Ambedkar was of the view that UCC must have **voluntary application**, and not be coercive. This seems to be the perfect system to create a conducive atmosphere for UCC.

Researchers have also considered voluntary adoption of UCC as the way forward for India: *"It is perfectly possible that the future parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they*

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are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary.”²⁰

It is considered that though the non-implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy represents one side of the picture, then the other side claims that, logical probability appears to be that the code would cause dissatisfaction and disintegration than serve as a common umbrella to promote homogeneity and national solidarity'.²¹ Hence, to prevent the peril of creation of dissatisfaction and opposition or protests in the society having multi-fold impact on the society and the economy, having an option for adoption, left for individual choice would be appropriate. This would also test the willingness of the public to adopt the UCC.

Another ideal structure of family laws in India would be the **Goa Portuguese Civil code, 1867** (hereinafter ‘the code’), which the former Chief Justice of India, Hon’ble Justice S.A. Bobde (as he then was) called it a shining example of application of UCC in the country. The code has the same application for all religions; however it also allows for some deviations or particular applications for certain religions. The Code, though extensive, also includes some peculiar concepts, about which the majority of Indian population is unaware, like pre-nuptial agreements, joint ownership of assets by spouses, restriction on disposing more than 50 percent of property by will or 50 percent assets compulsorily to devolve to heirs in succession, bar on polygamy on Muslims married in Goa etc.

Public sentiment seems to be against the tide of UCC, because for the common man, it seems that adoption of UCC is equivalent to them losing their specific, religion-based practices, and being governed by the mechanical laws having no fundamental and reasonable foundation, and that it would create a further divide between their customary practices. The very bedrock of aversion in this context needs to be demystified by the state for **creating a public consensus** in its favour. The framework and its impact on the lives of citizens must be openly communicated and explained by audio-visual modes to ensure its acceptance by the citizens.

A roadblock in the way of UCC in India, though, is the **recognition of customs** in the Indian legal system. Customary practices are given due importance and weightage after they

²⁰ C.K. Mathew, Uniform Civil Code: The Importance of an Inclusive and Voluntary Approach, THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY (Oct. 26, 2019, 15:09 P.M.), <https://www.thehinducentre.com/publications/issue-brief/article29796731.ece>.

²¹ Sarla Mudgal v Union of India, AIR 1995 SC 153.

are duly proved to have been continuing in a family or community, which is quite difficult in itself. The only problem that remains is, on the implementation of UCC, what will be the status of such customs. If their status remains the same, it will continue to create hindrance in the functioning of the judiciary, which is one of the major causes for the implementation of UCC.

CONCLUSION

Concluding on the same note as at the inception of this paper, it is crucial that we continue to debate, to put our mind and energy on the idea which would help our nation progress in a sustainable direction. Our deliberations contribute to the creation of a common consciousness and awareness about an issue. Law, as we know cannot remain stagnant, it has to be dynamic to the needs of the society. And if it very validly seems that UCC will put an end to numerous lacunas in the legal regime in India, we as considerate members ought to put our minds onto the solution for its efficacious implementation. We must also step up and educate the citizens in any way possible, about such significant matters.

It is also necessary to keep in mind the wise words of Hon'ble Justice Abdul Nazeer, that efforts should be made to **Indianise the legal system**, since the European system of administration of justice has failed and choked the judicial structure. Lessons must be drawn from the ancient Indian jurists like Chanakya and Manu to implement principles that have withstood the test of time. An innovative solution must be drawn for the issue at hand, so the coming generation in the country witnesses a new India, with greater fraternity, unity, true equality in every sphere, and an overall enriched life. The UCC would indeed act as another spoke in the wheel of justice, providing greater support to it, contributing to the creation of stability of relations in Indian society.'