



UNIFORM CIVIL CODE: WITHSTANDING THE TEST OF TIME

Keshav Mittal And Priya Agarwal

ABSTRACT

The personal laws of the citizens have played a major role in helping and supporting the secular feature of our nation. This secular aspect of the Preamble allows its citizens to practice, profess, and propagate the religion of their choice as enumerated in the fundamental rights thereby creating a constant rise in need for a homogenous law for all so that no person shall feel deprived of a right.

The Uniform Civil Code finds its place under Article 44 in Part IV of the Constitution of India, 1950 as a Directive Principle of State Policy which provides that it is the duty of the state to secure a Uniform Civil Code throughout the country. To bring a uniform civil code the aim is to change the personal laws of various religious communities. The personal laws include marriage, divorce, inheritance, adoption, maintenance, and succession which form the main domain to bring about requisite change in the societal norms to enact UCC. The said code differentiates between public laws and private laws. The theme of this paper revolves around the UCC being an ancient concept that has evolved into the notion of codification of a Uniform Civil Code. The main objective of the lawmakers has always been to foster harmony and equality amongst all but the question lies in whether the administration will be able to do so while retaining the title of being secular; whether the need to ratify an enactment which decrees the equal personal rights to all, is recurring and if so, what measures have been taken by the respective leaderships to satiate the said need.

The prime objective of this paper is to crystallize the real essence of UCC by discussing variegated strands of the Uniform Civil Code including but not restricted to the existence of the Uniform Civil Code in the radicle of the Indian realm, the compelling need and requisite for the said code to be structured and tabulated by virtue of profound judgments postulated by the learned judges of the Hon'ble Supreme Court.

INTRODUCTION

The Constitution of India, 1950 (hereinafter referred to as “Constitution”) begins with the words “We the people of India” which clearly signifies that India is a nation formed by its people and will run according to the needs, desires, and challenges of the Indian people as a whole. The government of India possesses the features of a Parliamentary form of government, which, clearly reflects the will of its people by way of elections, thereby justifying the insights of the 16th President of the United States, Abraham Lincoln, in the words “that government of the people, by the people, for the people, shall not perish from the earth” spoken at Gettysburg, aimed to highlight the entire structure of government.¹ In the present scenario, one must not state that the Uniform Civil Code (hereinafter referred to as “UCC”) under Article 44 as a Directive Principle of State Policy (hereinafter referred to as “DPSP”) would be in derogation or inconsistent with the Fundamental Rights (hereinafter referred to as “FR”) guaranteed under Article 25-28 of the Constitution which states that the citizens shall have the freedom to practice, propagate, and profess any religion of their choice. The UCC shall not work in a manner that would deprive the citizens and the people of this FR and a perfect balance needs to be there which protects the statutory as well as the customary laws and works by upholding the interests of justice, equity, and fair play. Section 494 of the Indian Penal Code, 1860 is remarkable in this regard as it provides punishment for bigamy while also allowing bigamy up to four degrees to a Muslim man thereby respecting the Islamic religious practices². Another remarkable feature of the uniform criminal code is Section 125 of The Code of Criminal Procedure, 1973 wherein any woman, child, or parent may claim maintenance from the husband, father, or son and an express provision has been made for the Muslim women while keeping in mind their religious practices that a joint petition is required to proceed if they wish to institute a suit for the purposes of receiving maintenance from their husband.³ Section 7 of the Hindu Marriage Act, 1955 is another fine example that maintains a fine balance between personal laws and the statutory laws wherein the parties to a marriage are only required to perform the rituals and ceremonies which are a long-standing custom in that regard and has not laid down a straight-jacket formula along with principles to be followed while performing the ceremony of marriage. In India, it is the will of Indians, which forms the main source of energy for contributory and challenging decisions of the society. India has been under the rule and kingdom of Mughals and Britishers, from the time, when the entire world was setup on the path of achieving success, India was still fighting to breakthrough and fly from the chains of misery and suffering, to make wonderful achievements, and attain **SWARAJ**. After attaining independence on 15th of August 1947, India kicked on the pedal to make the first move towards success by forming a constituent assembly which was completely devoted to the formation and construction of **THE CONSTITUTION OF INDIA**. After since the enactment of The Constitution of India, time and again, it has been expressed by prominent leaders, majority governments, people in authority, jurists, judges, and people with reasonable mind and calibre, that, it is we who follow and respect the will of the constitution

¹ The Gettysburg Address by Abraham Lincoln available at:

<<https://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>> (last visited September 11, 2023)

² Pujari Dharani, Section 494 IPC punishment, July 17, 2023, available at: <https://blog.ipleaders.in/section-494-ipc-punishment/#:~:text=Bigamy%2C%20which%20means%20marrying%20a,seven%20years%20with%20a%20fine>. (last visited on September 11, 2023)

³ Rajnesh vs Neha & Anr 2020 INSC 631

makers, the farmers of the constitution. Those very makers of our constitution, being farsighted, created a picture of India with a timeline of 100 years beyond, by keeping in mind both the present and future needs. The people who wrongly suggest that the constitution of India is a bag of borrowings, must in all totality and critical approach, acknowledge the fact that the makers took into consideration the policies which have been a huge success in other nations, amended them according to the needs and wants of the Indian society, thereby creating a realistic society and not an idealistic one.⁴

The point of saturation after the applicability of the UCC, is going to be its impact on the prevailing personal laws of the people, specifically customs. Customs are a major part of the Indian mainland, as people follow them and live by them each and every day, and any such amendment in the current situation related to personal laws might lead to a catastrophic situation, wherein a total deprivation of fundamental rights will take place, which can result in a communal war, as this code will unbiasedly and unwantedly upgrade one's personal law, thereby degrading and negatively impacting the others. The Supreme Court of India, and the constituent assembly, kept the DPSP on the same pedestal as that of FR, and hence making them equivalent to each other.

ADJUDICATION OF PERSONAL LAWS IN CLASSICAL ERA

The Judicial system of India in ancient times used to comprise the Sovereign, the Judge, the local administrators, and the jury. The Sovereign was the highest-level authority to adjudicate upon a dispute and the same consisted of a formal court sitting wherein a judge, jury, and the Sovereign used to sit and listen to the litigators at hand very carefully and patiently. The three of them had been vested with different powers and were bound by the rule of dharma. The Jury (sabhasada) were 12 assessors who were proficient with the text of the law which is quite contrary to the present date jury which consists of simple laymen. It was the responsibility of the jury to provide honest and lawful opinion to the case at hand even if the view goes against the wishes of the Sovereign. If the jury were unsuccessful in performing their lawful and societal obligations, they would have to face the consequences in hell. Similarly, the Judge had the same moral and lawful obligations to guide the Sovereign in the matters at hand towards the path of justice, equity, and good conscience. The Sovereign was also bound by the text of the law and had to always follow the written law except in cases wherein the law would be unjust and unfair. All these three worked together like a clock to deliver justice to all. During this period, the law was the same for all, in all matters, in all realms. There was an express provision that worked to safeguard the customs of certain minority groups wherein the prior seal and stamp of the Sovereign was required for obtaining legal validity of a custom and at the time a proper record was maintained. These customs were further required to be in alignment with societal norms and practices. It may be said that the Uniform Civil Code was thus followed during the ancient period though not codified and well-defined.⁵

⁴ Ananya Rai, "WHETHER CONSTITUTION OF INDIA IS BORROWED OR NOT", VI International Journal of Creative Research Thoughts, page 405, 2018.

⁵ Mr. Justice S. S. Dhavan, The Indian Judicial System - A Historical Survey, (Allahabad High Court) available at: <https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html#sdfootnote24anc> (last visited September 11, 2023.)

PRESENCE OF UCC DURING THE MEDIEVAL ERA (1526 – 1947)

During the pre-constitutional era, there was a judicial system established since the time of Akbar the Great, he took the responsibility of administering justice as necessary and of the highest regard. The judicial courts had been set up from the time when Akbar revolutionalised the system. During that time, the Qazi's verdict was final and binding upon all the subjects, and only the court of Akbar (diwan-e-aam) was considered the court of highest appeal. At that time, Akbar too had various jurists and learned Qazis to guide him to the path of justice, equity, and good conscience⁶ but at the same time, the whole system lacked a proper structure in the form of codification and therefore it may be stated that since the pre-constitutional era, there has been a need for a Uniform Civil Code in the minds of the people of India and the same is in a dire need of being materialized. During this period, there were a lot of princely states and countries that had been successful in introducing a uniform code of civil laws and the same was readily available to the colony of the Portuguese, currently known as Goa, as the Goa Civil Code has been in effect since 1867 and has worked to uplift the society in more ways than one can imagine. The Goa Civil Code, of 1867 was an enactment of the then King of Portugal, Dom Luiz, and the said enactment further originated the idea of a uniform civil code in the minds of the freedom fighters of the nation.⁷ This may be reflected from the fact that the idea of a uniform civil code had been presented at the time of making the Constitution.

On 23rd November 1948, in the Constitution Hall at Ten O'clock, Mr. H. C. Mookerjee presented the idea of introducing the need to develop a uniform civil code to the constituent assembly, and at the same time, there were numerous objections raised by the members favouring the view that it must not be adopted.⁸ The UCC later formed Article 44 of the Constitution of India, 1950 as we know it today and thereby forming part of the DPSP whereby the state be directed in the future to formulate the policies keeping in mind these principles as these principles have been long thought and much deliberated upon by the farmers of the Constitution.⁹ While keeping in mind the above ideology, it is in the best interest of the state to implement a uniform civil code that works so harmoniously with the secular aspect of the nation so as to provide benefit to the whole of India.

UCC – THE HON'BLE SUPREME COURT'S OUTLOOK

The need for a UCC arose in front of both the judicial and legislative organs of the Indian Government, in the form of numerous petitions and affidavits. The same being a question of law, has been considered by various justices and significant representatives of people in power and has been a topic of ultimate deliberation. It is an inherent concept which begs the question of its validity whenever there is discrimination in personal laws. Fundamental rights are also such groups of rights which have been cast and provided to all the people irrespective of their background and religion. The same is the standing of the UCC. A uniform

⁶ Shivali Srivastava, Judicial system during the time of Mughals in India, October 18, 2020, available at: <https://blog.ipleaders.in/judicial-system-time-mughals-india/> last visited September 11, 2023

⁷ Portuguese Civil Code, 1867

⁸ Constituent Assembly Debates on November 23, 1948, available at: <https://www.constitutionofindia.net/debates/23-nov-1948/> (last visited on September 11, 2023)

⁹ Richa Singh, Directive Principles of State Policy, August 9, 2019, available at: <https://blog.ipleaders.in/directive-principles-state-policy/> last visited September 11, 2023

civil law is not a new concept but rather has been a partaker in the backdrop of Indian Civilisation, and now the need is to codify the same, making it a justiciable enactment.

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*¹⁰ wherein the question of law was twofold, first arising out of the basic grounds and clutches of Muhammadan Law, and the other arising out of the fundamental rights leading to grave injustice faced by the Muslim women at the hands of their own personal laws and religion. The Honourable Supreme Court took into consideration these questions of law and gave a landmark judgment to protect, promote, and facilitate the rights of Muslim women, and to maintain “equality before the law and equal protection of law”¹¹ as a golden rule enshrined under Article 14 of the Constitution of India. The apex court deliberated on the topic and touched upon UCC, and its presence in the present case, wherein, the UCC as articulated in the Constitution under 44th Article as “The state shall endeavour to secure for citizens a uniform civil code throughout the territory of India.”¹² was referred by the court as being a “dead letter”.

The apex court emphasised firstly, that the Parliament's duty to form, amend and repeal laws in order to keep up with the dynamics of society, must be exercised by the legislature in the footings of Article 44 of the Constitution thereby articulating and enacting a UCC. Secondly, the need for a change or modification, that too positive and unanimous in character, for all the religions specifically amongst the Muslims, has arisen and the state must act on the same. Thirdly and most importantly, the said judgment contains citation of Dr. Tahir Mahmood's appeal to the Muslim community, to shift their vision from unnecessary political debates over theological aspects of Muslim law, to the basic essence of the same and to make Muslim Law free from anachronistic interpretations.

The obiter dicta as laid down in order to understand the flexibility of change which the Muslim law withholds, one must refer to the changing practices of the said religion all over the world, and the same was rightly cited by Y.V. Chandrachud, the Chief Justice of India, D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah and Ranganath Misra, JJ., as a Report of the Commission of Marriage and Family Laws, Pakistan on August 4, 1955, wherein the most prominent area of trouble which requires a reasonable change under the Muslim Law is that of the rights of Muslim Women. The Report highlighted the need to bring an evolution under Muslim law, which surely is possible as the answer stands in affirmative with the core issue being extending help and formulating rights for the women who are being divorced without any rhyme and reason, must not be left out without any roof over their heads and without any sort of means for sustaining themselves and their children.¹³

We submit that at the time of the formation of the Constitution of India, the makers rightly thought that enacting a UCC throughout the country at this stage, would crush the legs of Indians and hamper their ability to walk, as during such a fragile time people are full with reminiscence and support for each other, and applicability of a UCC will tear apart all the pieces brought together thereby leading to a complete

¹⁰ (1985) 2 Supreme Court Cases 556

¹¹ Art. 14 of the Constitution of India, 1950

¹² Art. 44 of the Constitution of India, 1950

¹³ (1985) 2 Supreme Court Cases 556

failure of government machinery and injustice will be served to the one's making gratuitous concessions for the said purpose, and for the same reasons the same was substituted under the Directive Principles of State Policy, and leaving it upon the future situations to materialise it.

In the case of *Ms. Jorden Diengdeh v. S.S Chopra*,¹⁴ the apex court again deliberated on the urgent need for to legislature to enact a UCC and highlighted firstly, that after carefully examining the facts of the case and detailed analysis of acts including Indian Divorce Act 1869, Hindu Marriage Act 1955, Special Marriage Act 1954, Parsi Marriage and Divorce Act 1936, Dissolution of Muslim Marriages Act 1939, concluded that neither of the above-mentioned acts contained any provision for mutual consent and irretrievable breakdown of marriage as grounds for divorce. Secondly, O. Chinnappa Reddy and R.B. Misra, JJ., highlighted the inconsistency of the said acts, thereby making it profoundly clear that such lacking enactments are forcing the couple to stay in a such a marital tie which is better untied, and the lack of purpose to pass a decree for continuance of any such marriage wherein the basic love and affection is completely lost making the marriage significantly broken. Finally, the urgency to enact a Uniform Law for marriage and divorce was devolved and directed by the Supreme Court to the legislature, in terms, to finally assume the role of reformer and bring the necessary laws together in the form of a UCC with a common marriage and divorce act as its primary domain.

It is to be noted here that the need for a UCC is not a religion-related issue, rather it must consider the basic rights that are not being granted both to a male as well as a female, which includes reasonable grounds for divorce, and common grounds for entering into marriage with a special designation provided to customs and recommend major reformation area to be Marriage and Divorce Laws.

In the case of *Sarla Mudgal v. Union of India*¹⁵ the apex courts' judgment as propounded by Kuldip Singh and R.M. Sahai, JJ., revolved around the fact that in a civilised society religion is always divested from personal laws, as Article 25, 26 and 27 guarantees the right to freedom of religion, whereas Article 44 focuses on Uniformity in such laws which are common to the society with due respect to all religions, in order to make all such personal laws in alignment with fundamental rights. The most common example of making uniform laws for everyone includes bigamy which has been made punishable amongst Christians, Parsis, Hindus, Buddhists, Sikhs, and Jains and the uprising needs to make it uniform amongst all the sections of the society including Muslims as it promotes bigamy.

The Hon'ble Court enumerated that the provisions which allow a man to follow the religion of his choice were being misused and it is again to be noted here that the same would not even have happened if a UCC had been in effect. Hence, the need arose once again while the above judgment was being delivered.

From the above views of the Hon'ble Supreme Court, it has been seen on numerous occasions in different communities such as the Muslims, Christians, and Hindus that a need has arisen for the development of a UCC which governs all the citizens of the nation equally. The scope of the UCC goes beyond the communal

¹⁴ (1985) 3 Supreme Court Cases 62

¹⁵ (1995) 3 Supreme Court Cases 635

tensions, wherein allegedly one specific religion is expected to bring major reforms in their religion, rather the opposite is preferred, wherein practices which have their roots grounded in India for a very long time, but, now are not in alignment with the Fundamental Rights, have to be either repealed or amended, such as Sati Pratha in Hindu Law and Triple Talaq in Muhammadan Law. But rather than bringing changes and providing justice from case to case, a secular and uniform law governing all the civil aspects will suffice and equal justice will be served to all.

FUNDAMENTAL RIGHTS – CHALLENGE TO UCC

On one part, we have the FR guaranteed under Part – III of the Constitution of India, 1950, and on the other hand, there are the DPSP which have been treasured under Part – IV of the Constitution of India, 1950. The UCC has time and again faced the challenge of being inconsistent with the FR and the same conflict has been dealt with by the apex court. The State has always had a problem in dealing with the supremacy of the two aspects as one part is guaranteed whereas the other is the aim of the society. To overcome this, Article 31C has been added to the fold which creates a door for the Parliament to enact laws for the actualisation of the DPSP wherein the latter shall not be held void on the sole basis of being in derogation with Articles 14, 19 and 21 of the Constitution.¹⁶

The FR has been termed as the heart and soul of the constitution whereas the directive principles of state policy may be said to be the path that guides this heart of the constitution. **In the case of Olga Tellis v. Bombay Municipal Corpn.**¹⁷ the bench comprising Y.V. Chandrachud, S. Murtaza Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy, and Varadarajan, JJ. laid down that the DPSP is important and fundamental to govern the nation in good faith and as such shall retain the same importance as that of FR. In the case of **Dalmia Cement (Bharat) Ltd. v. Union of India**¹⁸, K. Ramaswamy, S. Saghir Ahmad, and G.B. Pattanaik, JJ. held that the FR, DPSP, and the preamble shall be read in such a way as to construct a bridge so that all the rights, privileges, and interests of society work together harmoniously to fulfill the needs of all. In the case of **Ashoka Kumar Thakur v. Union of India**¹⁹, while dealing with another issue regarding the supremacy of Part – III or IV of the Constitution, the apex court held that the FR are individual rights and that the DPSP are social rights. Whereas the former is enforceable, and the latter is not, it does not signify that the one is lesser than the other.

The above-decided issues have stated in bold letters that Part – III and IV of the Indian Constitution are working harmoniously together and one cannot be said to have more importance than the other. Hence, it is most respectfully submitted that the enactment of a UCC shall not be held in derogation with a FR and the same can be inserted by virtue of Article 31C of the Constitution.

¹⁶ Sujai Shukla, "Relationship between Directive Principles of State Policy and Fundamental Rights", January 19, 2021, available at: <https://blog.ipleaders.in/relationship-directive-principles-state-policy-fundamental-rights/> (last visited on September 11, 2023)

¹⁷ (1985) 3 SCC 545

¹⁸ (1996) 10 SCC 104

¹⁹ (2008) 6 SCC 1

WHETHER THE PRESENT TIMES CALL FOR UCC OR NOT

Presently, with the onset of the wave of Gender Justice and the evolving of new laws so as to conform with the rights of all the citizens of the nation, in light of the recent philosophy of the youth, adults and the coming generations, a transformation is required in all aspects of personal law as has also been iterated by the apex judicial body that it is up to the Parliament to formulate laws upon the concept of personal laws giving due recognition to the rights of the upcoming minority community of LGBTQ+²⁰ also. This new ideology has allowed the parliamentarians and various jurists to look at the personal laws from a new point of view and as such everyone is of the view that reforms need to be made in the present statutory laws.²¹

Various questions such as whether the marital laws should be gender neutral or not, and whether the inheritance and endowment rights must be gender neutral or not but the major step before answering these questions is to make a law uniform for all so that even one amendment in a single law shall allow all the smooth transitioning of all the subjects. If however, the laws are not uniform for all and then even if the above issue is addressed for a single community, then the others from different communities might feel discriminated against by the state. For instance, in Muslim Law, where bigamy is allowed for a Sunni Male up to 4 degrees may be granted the right to marry another man, and while exercising this right, if he marries 4 different men the people who are not being entitled to marry even once, might feel so discriminated that the other communities may raise voice and come together or may develop a threat to nation by disrupting the peace in the society.

Various personal laws of different communities allow for different provisions but all of them have one major thing in common – Justice, Equity, and Good Conscience. The present need for the development of a Uniform Civil Code has been seen time and again since the formulation of the Constitution of India.

In recent times, the 22nd Law Commission of India has invited various opinions and views from the citizens of the nation belonging to the different communities regarding the need, requirements, and development of the UCC for all of India. The Law Commission of India submitted a consultation paper back in 2018 wherein it re-iterated the need for the codification of a Uniform Civil Law primarily focusing upon areas including but not restricted to personal laws, marriage, adoption, divorce, maintenance, inheritance, succession, and so on.²²

While dealing with the question of whether the UCC be enacted or not and whether it would be in conformity with the fundamental rights or not, the lawmakers may rely upon the GOA CIVIL CODE which has been in force since 1867 wherein the subjects or the people domiciled in goa are governed by their respective civil code and the same civil code has benefitted the union territory of goa exponentially. The said law works in such a way as to provide for a system that deals with personal laws and divests the same from religion which

²⁰ Lesbian, Gay, Bisexual, Transsexual, Queer +

²¹ M. Venkaiah Naidu, "India Needs a Uniform Civil Code" The Hindu, July 07, 2023.

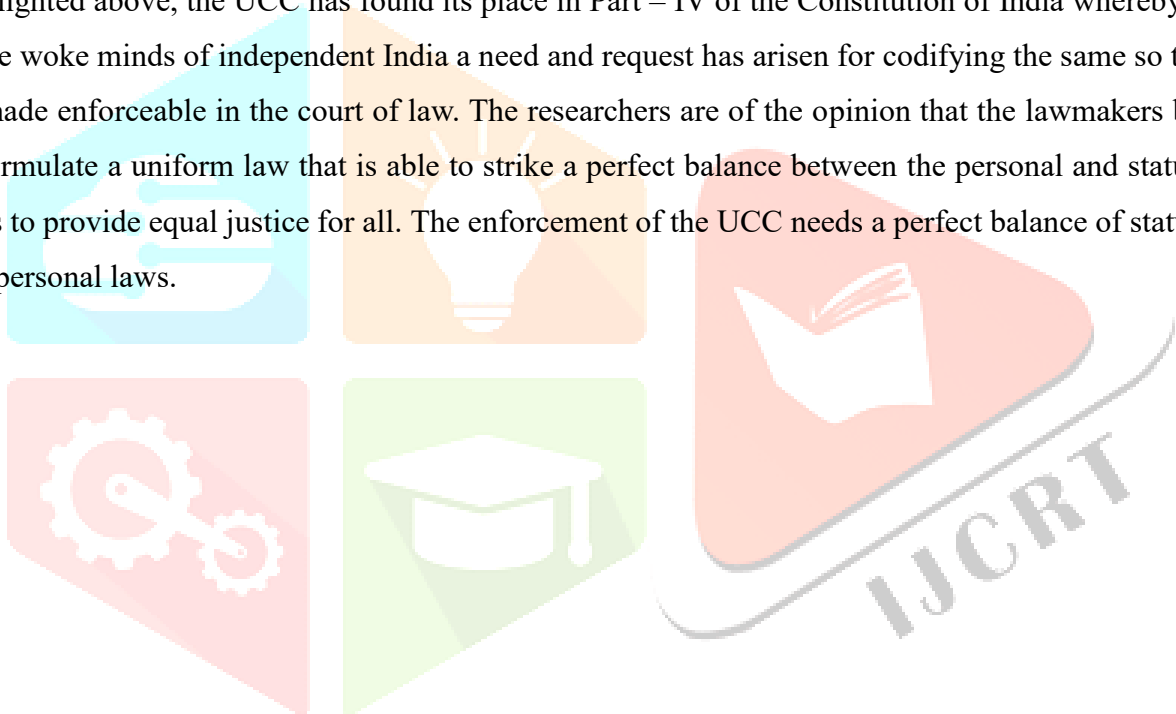
²² Law Commission of India, "Consultation Paper of Reform of Family Law" August 31, 2018.

has been the sole purpose of Article 44 of the Constitution, and the same was propounded in the judgment of *Sarla Mudgal v. Union of India*.²³

The Goa Civil Code of 1867 provided for such a remedy which put an end to the communal tensions and inequality amongst different religion-specific groups and provided aid to all the citizens residing therein, to exercise the rights that have been provided equally to each and every person overcoming all the caste, gender, race, religion barrier and social stigmas, thereby working together to focus on the grey areas of the society and work towards creating such a society whose pillars rests proudly on the basic principles enshrined in the Preamble.

CONCLUSION

To conclude, a Uniform Civil Code is not a new concept but has been prevalent since time immemorial beginning from ancient times having its roots since the very inception of time and *Dharma*. As has been highlighted above, the UCC has found its place in Part – IV of the Constitution of India whereby presently in the woke minds of independent India a need and request has arisen for codifying the same so that it may be made enforceable in the court of law. The researchers are of the opinion that the lawmakers be pleased to formulate a uniform law that is able to strike a perfect balance between the personal and statutory laws so as to provide equal justice for all. The enforcement of the UCC needs a perfect balance of statutory laws and personal laws.



²³ (1995) 3 Supreme Court Cases 635