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# **JUDICIAL RESPONSE TO THE PHILOSOPHY OF UNIFORM CIVIL CODE**

AUTHORED BY - MANI ANEJA & SUPARNA VENAİK

## ABSTRACT

The present research study formulated the research problem, “How far the need for implementation of Uniform Civil Code is necessary in a fast-globalizing world and what are the constraints involved”?

The research endeavors delved into a meticulous exploration of the evolutionary trajectory of diverse personal laws through a historical lens. India, with its expansive geographical and demographic expanse, is imbued with a rich tapestry of multiculturalism, multilingualism, multireligiosity, and multiracial diversity. While this amalgamation of unity amidst diversity stands as a hallmark of our nation, it is also safe to say that there is a wide variety of personal laws, as well as a wide variety of tribal laws that are being followed, which are directly related to the sentiments of the people. Thus, UCC raises a great problem as well as a great blessing for the nation. It is a fact that the framers of the Constitution with full faith and heart always wanted to give equal rights and opportunities in every aspect of life. It concurrently presents a plethora of intricacies necessitating harmonious resolution within the constitutional framework of India. Moreover, the research extended its purview to scrutinize the legislative endeavors undertaken by the legislature post-independence towards the pursuit of a Uniform Civil Code. The study also scrutinized the judicial inclinations evident in the diverse pronouncements of the Supreme Court, particularly concerning the intricate terrain of conflicting issues within Personal Laws. It unveiled instances where the Court has underscored the desirability of enacting a Uniform Civil Code (UCC). Furthermore, the investigation highlighted that in the contemporary landscape of our democratic society, the preservation of fundamental rights, gender equality, and the eradication of all forms of discrimination serve as pivotal elements for fostering national cohesion.

“Hence, there exists an opportune moment to explore the nexus between diversity and uniformity within our Personal Laws. Through concerted and inclusive endeavors aimed at upholding fundamental rights, this exploration could pave the path towards the realization of a Uniform Civil Code, thereby enhancing societal harmony and cohesion.”



## INTRODUCTION

“Uniform Civil Code” has been one of the most talked about discussions for over 10 years. But, with the help of the Government, the revolution of UCC has started but the hurdles are very severe in nature. There are a lot of Cultural, sentimental, and personal diversity prevailing between the communities in India. The Uniform Civil Code provides a legal mechanism and a strict framework pertaining to matters like marriage, adoption, and succession. The heart of UCC has been enriched in Article 44 of DPSP which forces the Government to act in a specified manner. Thus, the UCC in India once implemented will promote equality to another extent, fill the gap between gender parity, accommodate between the hurdles of personal laws. Also, support One Nation, One Law.

Since the post-colonial era, the judiciary has assumed a pivotal role in advancing the cause of a Uniform Civil Code through its diverse pronouncements. Despite India's enduring struggle with caste and religion-based politics, even after seven decades of independence, the realization of desired legislation has remained elusive, partly due to the lingering absence of a truly democratic ethos in the Indian psyche. However, the judiciary has emerged as a beacon of hope, leveraging its interpretative prowess to harmonize the disparate personal laws of various communities, thereby paving the path towards a Uniform Civil Code. It is the collective wisdom of judges, spanning from the High Courts across the nation to the distinguished members of the Apex Court, that holds the potential to effectuate the necessary legal evolution conducive to the implementation of a Uniform Civil Code.

“The Directive Principles of State Policy, delineated in Articles 37 to 51 of the Constitution of India, possess two distinctive characteristics.” “Firstly, these principles are non-justiciable, meaning they cannot be enforced by courts, thus denying recourse to judicial remedies for aggrieved parties. Secondly, they are foundational to the governance of the nation, mandating that the State incorporate these principles into the legislative process.”

Within Part IV of the Constitution of India lies a constitutional obligation for the State to strive towards implementing a Uniform Civil Code uniformly across the nation. The UCC cannot be directly introduced in the India Society. The only problem in India is that the law relates to the sentiments of the people, thus, changing the laws abruptly will create a mess in the personal law system. Also, it is highly important to note that the customs and traditions also act as an uncodified law system, governing the tribal areas as well as other castes, religion in the India Society. On certain occasions, courts have spontaneously expressed the desirability of enacting a Uniform Civil Code.

From over 2 decades, there was a great debate that upon any occurrence which is related to



law, why the punishment is according to the personal law only? In many of the cases under which it is written under IPC but there is no punishment written in the personal law.

For example, “polygamy.”

DPSPs have gained a lot of attention when it comes to the topic of the UCC. Thus, the only article which supports the code and secures the code throughout the territory of India. The constitutional validity of UCC has been challenged in many courts of law.

But the judicial efforts have been right to support the UCC.

## RESEARCH METHODOLOGY

The ongoing research is predominantly doctrinal in essence, characterized by a meticulous examination of international instruments, provisions within the Constitution of India, and diverse Personal Laws affiliated with various religions. The Researcher engages in thorough scrutiny and analysis of the legal landscape, drawing insights from comparative studies of countries where family laws have been standardized. This involves a comprehensive investigation into the experiences and societal impacts witnessed in such nations, as documented in a plethora of national and international journals.

Moreover, the research journey encompasses a thorough exploration of pertinent literature, with a focus on books addressing the subject matter and related issues. Where necessary, relevant citations are incorporated to enrich the scholarly discourse.

“Embracing a philosophical approach, the research method adopts a dual strategy of analysis and synthesis. The analytical aspect entails deconstructing complex legal frameworks and dissecting them into comprehensible components, while synthesis involves the harmonization of diverse perspectives and insights gleaned from the extensive research endeavor.”

- Making a structure and converting them into parts for better theoretical understanding.
- Legal Interpretations of different meanings of practical as well as theoretical terminologies.
- Clear identification of pre disposition assumptions by underlining the legal aspects at recourse.

- Comparing, relating, contrasting, characterising

“On the other hand, synthesis comprises of:”

- The basis of this critical synthesis is deriving deemed conclusions and also finding out the implications of the same.
- Keen observation on generalizing from very specific instances.
- Correlation and translation from one form to another form factor.
- Application of specific, particular, theoretical topic on application on specific practical situations.

“The research meticulously integrates relevant judgments rendered by the Apex Court and various High Courts across different states at appropriate junctures. Furthermore, a distinct chapter is devoted to elucidating the judicial perspectives on the Uniform Civil Code (UCC), thereby enriching the discourse with authoritative legal insights.”

“The Researcher's comprehensive approach ensures a thorough examination of the subject matter from all angles. Various personal laws are scrutinized exhaustively, with a discerning eye towards identifying optimal provisions. From this extensive analysis, the Researcher curates a model draft of the Uniform Civil Code, synthesizing the most effective elements gleaned from diverse legal frameworks.”

## **RESEARCH OBJECTIVE**

An edict enshrined within the nation's Constitution may not be surrendered to the whims of political pragmatism. Each inhabitant of India is granted the fundamental right to equality as a safeguard against prejudice based on gender, caste, creed, or sex. Consequently, this foundational principle permeates into personal laws and fosters the concept of a Uniform Civil Code (UCC). Individuals adhering to any personal law must abide by the country's legal framework. Those who advocate for equality should, therefore, exert concerted efforts to influence all political entities in reaching a consensus on a unified civil code.<sup>5</sup>

The basic enriched framework which works behind the UCC and also further governs the personal

law is to give each and every person of India an equal chance in the eyes of not just law but also standing in Courts. Furthermore, the UCC will do work as an aiding agent and not just replace the personal law which governs the interpersonal matters of the nation's citizens. Thus the framers' mindset was clear even before the stone of the Constitution was set on the ground.

There was only one thing in the mind of the framers which was to unify the Nation and create a sense of brotherhood.

It is prudent to know that this Code is at the utmost priority in sense of the Constitutional matters for securing utmost justice and equality for all the people. Furthermore, this Code is defined as the holy grail of secularism. In a country like India, where there are mixed ranges of personal laws, private laws, customs, hierarchical laws, scriptures, and various communities, this code will work as a common source of governance.

It is highly important to note that even after many codified systems and laws, the personal laws have intervened the most. On the basis of those personal laws, the solutions for those specific situations have been provided. Moreover, this research provides a comparative chart between the mindsets of the framers of the Indian Constitution and how they were paving the path to reach at an amicable solution.

This ongoing research is practically made keeping in mind all the theoretical situations as well as all the practical situations and to find positive solutions with the help of Constitution and exercising mind limitations on personal law.

With the help of this research, it is made clear that which of the aspects of the Constitutional Law are enriched by the customs and how the framers set a part and parcel of the combined personal laws on the Constitutional era. The objective is also to have a complete judicial pathway towards the real comparison as well as the similarity of how the personal law and the UCC will aid and abet each other and knowing the durability and sustainability of the UCC once it is imposed completely in the Indian society.

The last and major objective of this research synthesis is to find out and have a keen sight of FR and the provisions of the Constitution with the comparative statements of the personal and interpersonal scriptures and law. Also, it is highly important to know the role of different state Governments that how the step-by-step implementation of the Code is to be done.

## **Judicial Response to Polygamy**

The inaugural legal precedent grappling with the intersection of religious liberty and the obligation to comply with civil statutes is encapsulated in the landmark case of *Bombay v. Narasu Appa Mali*<sup>1</sup>. Herein, the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages

Act, 1946 was vigorously contested, ultimately being upheld as intra vires to the Constitution. This legislative measure imposed substantial penalties upon Hindus engaging in bigamous unions. Moreover, the justification for confining polygamous practices to specific communities was subjected to scrutiny. Eminent insights were offered by the esteemed Former Chief Justice M.C.

Chagla of the Bombay High Court, illuminating this seminal legal discourse.<sup>2</sup>

"One community might be prepared to accept and work with the required social reform; another may not be prepared for it yet, and Article 14 does not lay down that any legislation that the State may undertake must essentially be of an all acceptance character. The State may right choose to bring about social reform by stages and the stages may be territorial or they may be community wise. From these considerations it follows that there is a discrimination against the Hindus regarding the applicability of the Hindu Bigamous Marriage Act, where the discrimination is not based only upon grounds of bigamous marriages not being uniform, the difference and distinction is neither arbitrary nor capricious, but is based upon reasonable grounds."

<sup>3</sup>It was further opinionated that the sole purpose of Article 44 was to create India as a secular nation. Just like the blood is flowing inside the body, the framers of the Constitution wanted secularism to flow in the bloodstreams of the constitution. <sup>4</sup>Thus, this could act as a sort of reform and the same punishment to be given to Hindu as well as Muslim and not according to their personal laws. Chagla drew upon the precedent established in the case of *Davis v. Beason*<sup>5</sup> to underpin his ruling. This legal precedent scrutinized the constitutionality of the 1882 Idaho Statute, which prohibited bigamy. The contention arose over whether the Act in question infringed upon the religious liberties of Mormon Church adherents, thereby contravening the First Amendment of the U.S. Constitution, which prohibits Congress from enacting laws respecting the establishment of religion or hindering its free exercise. Members of the Mormon Church traditionally espoused polygamy as a fundamental tenet of their religious convictions.

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<sup>1</sup> *State of Bomabyv.NarasuAppaMali* ,AIR 1952 Bom. 86

<sup>2</sup> *State of Bomabyv.NarasuAppaMali* ,AIR 1952 Bom. 86

<sup>3</sup> *State of Bomabyv.NarasuAppaMali* ,AIR 1952 Bom. 86.

<sup>4</sup> The Spirit of Article 44.

<sup>5</sup> (1989) 133 US 637.

Justice Field, who presented the Supreme Court's opinion, dismissed the argument, stating: "Regardless of the freedom to practice religion, it may be subject to the criminal laws of the country concerning actions commonly deemed appropriate for punitive measures by general consensus."<sup>6</sup>

In his separate judgment, Justice Gajendragadkar concurred with Chief Justice Chagla's perspective. Justice Gajendragadkar articulated that the differentiation between Hindus and Muslims for legislative purposes was rational and did not contravene the equality provisions outlined in Article 14 of the Constitution of India.<sup>7</sup> He noted that the validity of the "Bombay Prevention of Hindu Bigamous Marriage Act, XXV of 1946", was principally challenged on two grounds. The initial contention is that the personal laws governing Hindus and Muslims must adhere to the provisions outlined in Part III of the I.C.<sup>8</sup> Consequently, they would be considered invalid if any of their provisions are inconsistent with the fundamental rights provided by Part III of I.C. The subsequent argument posits that since both these personal laws permit polygamy but prohibit polyandry, they discriminate against women solely based on their gender. It is purely safe to say that this kind of discrimination by both the laws are done on the grounds of gender and sex only. Thus, the law upholding "UCC" is a great step with regards to these kinds of traditional and degraded mindsets. Thus, also, totally against the framers of I.C. to create a law which has keen sight to weight each caste, gender, creed as equal. Also, degrading a very important aspect of Article 14. In furtherance to this, with the upholding of "UCC", this kind of heinous act would be just as penalized for other "**personal laws**" as to be treated in IPC in the general court of law. But this kind of general code would only and only jab Hindus and not Muslims.<sup>9</sup> Thus, "UCC" following the Article 44 of I.C. is a sharp step for the citizens to see the nation move towards a long gone dream which was to create a secular India.

<sup>10</sup>In light of this, the provisions within the personal law permitting polygamy are considered to be in violation of the provisions outlined in Article 15(1) and are therefore void to the extent specified under Article 13(1). Essentially, following the enactment of the Constitution, bigamous marriages among Hindus and Muslims were rendered invalid, and individuals from both communities who entered into such marriages became subject to penalties under Section 494 of the Penal Code, however, the challenged Act explicitly prescribes punishment solely for Hindus, thereby exhibiting discrimination against Hindus exclusively on religious grounds<sup>11</sup>.

<sup>6</sup> Davis v. Beason, (1989) 133 US 640

<sup>7</sup> AIR 1952 Mad. 193

<sup>8</sup> AIR 1957 All 411

<sup>9</sup> (1989) A.P. I HLR 183; (1989) 1 DMC 109

<sup>10</sup> (1970) KLT 4

<sup>11</sup> State of Bomabyv.NarasuAppaMali; AIR 1952 Bom. 84



## Judicial Response to Property and Succession

In the case of *Gurdial Kaur v. Mangal*<sup>12</sup>, the custom against Jats in the Patiala district and the Hindu Succession Act of 1956 were contested before the Punjab and Haryana High Court. The circumstances of the case were as follows: On May 5, 1956, a young unmarried man named Sandhu passed away, leaving behind some land. Mangal Singh, the respondent in this case and a distant relative of the deceased, took possession of the land. The appellant, Gurdial Kaur<sup>13</sup> widowed mother of the deceased, filed a suit on 3rd March, 1958, to claim possession of the land left by her son, who was her sole heir. To exempt herself from the prevailing custom and avail the benefits of the Hindu Succession Act of 1956, she argued that Sandhu had died in 1956, in the month of June. However, the court, basing its decision on the lower court's ruling regarding the date of Sandhu's death, rejected Smt. Gurdial Kaur's contention and upheld the date of death as May 5, 1956. The judgment in this case was rendered by Chief Justice Mehar Singh and Justice R.S. Narula.

Following deliberation of arguments from both sides, they observed:<sup>8</sup>

"The custom against Jats of Punjab prevailing prior to enactment of Hindu Succession Act under which a mother was disinherited on her remarriage was a valid custom. Jats faced no discrimination solely due to caste/race unlike other Hindus who follow their own personal law<sup>14</sup>. Furthermore, the fact that it disinherited only the mother upon remarriage and not the father, who remained an heir to the estate of his predeceased son even after remarrying, did not render it discriminatory based solely on gender. Indeed, the determination of the right of succession, which varies between heirs of different sexes, must be based on the personal law or customs governing the party involved.<sup>15</sup> Therefore, the prevailing custom is not in violation of Article 15 of the I.C."

"The court went further, stating that if the argument of discrimination based on caste, creed, or race were deemed valid, it would become impractical to maintain different personal laws in the

country pertaining to various matters and covering all castes, creeds, or communities, while still remaining

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<sup>12</sup> AIR 1968 Punj 396

<sup>13</sup> Smt. GurdialKuar v. Mangal Singh, AIR 1968 Punj. pp. 398-99.

<sup>14</sup> AIR 1976 Pat. 198

<sup>15</sup> AIR 1972, Ker. 27



constitutional.<sup>16</sup>”

Thus, for matters like this, where there is a tuffle between a personal law, the UCC follows its own soul machinery, focusing mainly on interstate and thus, completely disregards the “earlier class of successors,” i.e., <sup>17</sup>class 1, 2 and 3 heirs, which is already being followed as it is being codified in Hindu laws. Also, this is pertinent to mention that the “UCC” will also be implemented where a human dies natural or unnatural death without even making a will for his heirs, but, on the other hand, if there is preexistence of a will, “UCC laws” on distribution of property as inheritance will clearly not be applicable.

In another case brought before the Allahabad High Court, Md. A.Z.M. Ibrahim vs. Ahmad<sup>18</sup>, the primary issue was whether a person who is a bhumidhar under the "U.P. ZLAR Act" can lawfully and legally create a Waqf of his respective rights in the specific land. A contesting opinion arose between the sitting judges on the matter, prompting this case to proceed to a second appeal before Justice S.N. Singh. <sup>19</sup>In this case, the argument put forth was that the Waqf was initially created in favor of the mosque primarily to protect the land from the provisions of the “Zamindari Abolition Act”, to safeguard the land from the sections and it persisted as a fraudulent transaction. Thus, this kind of case and matter would be considered better if dealt with the relevant sections of “TP Act”, in accordance with Article 44 of the I.C. <sup>20</sup>Also, throwing a light on prudent article of the IC. However, during the course of arguments, the plaintiff respondent asserted that since Waqf is not a transfer inter vivos, it is not governed by the Transfer of Property Act but rather by the tenets of Muslim Law.

It was also contended that principles of Hindu law should not be applied in interpreting the provisions of the "U.P. ZLAR Act", the Act in question also authorizes bhumidar to transfer interests in the land, but subject to the provisions and conditions contained in the Act. <sup>21</sup>It is also prudent to note that the Hindu Law should not be taken care or should be exempted while taking in consideration the provisions settled under U.P. ZLAR, Section 52 of the same Act also gives capacity to the Bhumidar, to give away or refrain from giving away any kind of rights which are vested in the specific land. But it is only possible according to the allowed provisions which are

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<sup>16</sup> Smt. GurdialKuar v. Mangal Singh, AIR 1968 Punj. pp. 398-99.

<sup>17</sup> Senior Advocate Supreme Court, supporting the appellant before the court

<sup>18</sup> AIR 1917 All. 366

<sup>19</sup> *Mst. ZohraKhatoon v. Mohd. Ibrahim* , AIR 1981 SC 1251

<sup>20</sup> Sections 125 to 127 of Cr. P.C. 1973

<sup>21</sup> AIR 1985 SC 945



being upheld in the Act. Thus, the counsel submitted and observed as follows:<sup>22</sup>

“This is to say that there is no kind of stoppage or refrainment in the Act from creating a gift which is without any cost of one’s rights vested in the land which can be also known as Bhumidari in the favor of the God. It is also safe to say if there is any omission to any refrainment, in the clear view of Section 152, that there are no Prima Facie rights while making a Waqf of his Bhumidari rights.”

Upon closer cross connection between the articles of I.C, further this opinion was given, that there is nothing in the Act that must contravene with the provisions of I.C.<sup>23</sup> But the clear intention is to state how the law would be further developed. The Hon’ble Constitution of India respects the sovereignty in the utmost belief. <sup>24</sup>It purely provides religion freedom to each citizen of the nation. Thus, there is no question that the I.C. provides the people utmost freedom to propagate and follow his religious beliefs. Moreover, the person has full freedom to transfer any kind of property, being agricultural or non-agricultural property purely for his religious as well as sentimental beliefs.

Thus, there is completely new regime, which is followed by the “UCC.” It greatly establishes a more clear and general provisions of successions relating to estate of a Muslim who dies intestate. Moreover, the rules will clearly apply to the relationship of the deceased as particularly and specifically stated in different categories of schedule II of the New Regime. <sup>25</sup>Also, under the Islamic Law, the distribution and inheritance will be malleable and will not follow the provisions of shares. As we talk of Christians, there would be a complete change in the widow’s shares as earlier, it was governed by “Indian Succession Act,” the law which was codified, the widows had a right to the  $\frac{1}{3}^{\text{rd}}$  of the property of the deceased while the other  $\frac{2}{3}^{\text{rd}}$  was left for lineal descendants.<sup>26</sup> In case, there are no family members of the deceased, the full and final property would be settled in the name of widow. But, now, in the new mechanisms, the widow would be put in priority and would be classified as Class I heir. Also, there is a prudent change in the specific rights of the parents over the property of the deceased. At first, a lot of discrimination was done, as the parents were not given any kind of share unless there were no lineal descendants<sup>27</sup>. But, with the establishment of “UCC,” they were given a priority and were added in class I heirs.

## **Judicial Response to Divorce and Maintenance**

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<sup>22</sup> Mohammad Abu Zafar Mohammad Ibrahim v. Israr Ahmad and others , AIR 1917 All. pp. 368-69.

<sup>23</sup> Paras Diwan, *Muslim Law in Modern India*, (1982) p. 130bano

<sup>24</sup> AIR 1985 SC 935

<sup>25</sup> Manu, IX, 10, 106.

<sup>26</sup> AIR 1993 Ort. 176

<sup>27</sup> Act XXV (25) of 1946.



In *A. vs. Sowram*,<sup>28</sup> a case concerning the Muslim law of divorce, Justice K conducted a thorough analysis of the traditional law on the functionalities. In this particular case, the fact where a wife who had deserted her husband with no relevance to any reasonable cause was not being specifically maintained as per the laws for a period of more than 2 years.

The Hon'ble Court clearly upheld and said as per Section 2 of the specified Act which was "DMMA 1939" the wife had rights to come to the court and approach the right bench for permanent dissolution of the marriage on the clear fact that her husband was not maintaining her for a reasonable period which was 2 years regardless of any kind of justification or reasonable cause for the husband's failure to do the same. Justice specifically held that there is no kind of relationship that binds husband and wife which further wears out the wife to get maintenance by the husband. As the refusal had no reasonable cause and was not to be justified by nonpayment of dower or leaving the husband on a clear cruelty basis or any kind of condition under which the situation can be deemed necessary. Thus, it is clearly held that under "DMMA 1939" this kind of right was clearly not available to her but only a right to approach the court on dissolution of marriage was given as an inherent right by the law<sup>29</sup>. Also, following the personal law as well of the Muslims, the tradition also shows that there is no kind of pathway for the wife to get maintenance under any circumstance.<sup>30</sup>

Now, the new regime of "UCC" while not following any kind of personal law makes a prudent point of registration of marriage compulsory, but also makes divorce registration compulsory. In simpler words, it can be said that divorces are also to be lawfully legalized. First, via court's decree: Second, by a registry. Also, it is highly important to note that this provision of registering a decree cannot be omitted as there is a heavy penalty on it.<sup>31</sup> "UCC" makes great changes in the specific field of marriage and divorce. "UCC" also provides specific shares for matrimonial settlements. Moreover, it is safe to say that the "UCC" follows the pathways paved by the "Special Marriage Act, 1954" where all kinds of aspects like maintenance, desertion, cruelty, adultery, has been taken care of.<sup>32</sup>

In the case of *Haji v. Mamu*<sup>33</sup>, brought before the Honorable High Court of Kerala, "the facts revolved around a young woman who, allegedly influenced by her orthodox father, sought divorce from her heterodox husband. She claimed that her life with her husband had become unbearable due

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<sup>28</sup> AIR 1971 Ker 261

<sup>29</sup> Namely taking of a second wife and by taking of a mistress as contemplated by the Explanation to the sub-section (3) of section 125.

<sup>30</sup> AIR 1980 SC 1730

<sup>31</sup> AIR 1980 SC 362

<sup>32</sup> Section 18, 19, and 22 of the Act

<sup>33</sup> 1971 K.L.T. 663



to neglect and cruelty, prompting her desire to end the marriage. Justice Krishna Iyer not only ruled that judicial divorce could be granted in India under Section 2(ii) of the Dissolution of Muslim Marriage Act, even if a husband neglects or fails to provide maintenance for his wife, even when he is not legally obliged to support her—an interpretation I find to be entirely unjustifiable.<sup>34</sup>”

In *Dutt v. Kamal*<sup>35</sup>, the problems that came up before the judges of Supreme Court was with regards to the “Scope of Section 488 of Criminal Procedure Code, 1898,” and “Section 23 of Hindu HAMA, 1956.”

“Section 488” which clearly codifies the maintenance of the wife which can be claimed from the husband.<sup>36</sup>In this case, the main issue which was raised was whether the earning of the wife who was asking for maintenance shall be covered while giving the maintenance or not. There was a tuffle between the opinions of the district court and the high court, thus the apex court came in between.<sup>37</sup>

“<sup>38</sup>Section 488 is intended to serve a social purpose and to prevent vagrancy and destitution and to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. <sup>39</sup>The needs and necessities of the wife for such moderate living can be justly determined, only if her separate income, is too taken into consideration together with the incomes of husband and his obligations.”

<sup>40</sup>The apex court also commented on the keen relationship which was further established between both the sections provided that Section 488 merrily provides a machinery so that it does not create any hazard in the society. But the Section 23 of <sup>41</sup>HAMA provides for a strict fixing of allowances for rights of Hindu wives, thus, both of the laws of the Section work in different spheres but provide the same benefit to the society and bridge the gap between the general provisions of law and the personal law.

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<sup>34</sup> AIR 1987 SC 1103

<sup>35</sup> AIR 1975 SC 83

<sup>36</sup> AIR 1992 Cal. p. 92

<sup>37</sup> BhagwanDutt v. Smt. Kamal Devi, AIR 1975 SC 86

<sup>38</sup> AIR 1993 Ker. 21

<sup>39</sup> AIR 1981 SC 1243

<sup>40</sup> BhagwanDutt v. Smt. Kamal Devi, AIR 1975 SC 87.

<sup>41</sup> AIR 1992 AP 190





## CONCLUSION AND SUGGESTIONS

Before I conclude my study, I would like to throw light upon every practical solution for the problem that has been highlighted by the implementation of the “UCC.” As India has wide variety of cultures, practices, notions, beliefs and sentiments, the applicability of UCC becomes very difficult in India when thrown a light upon other countries. Various studies have been conducted by various research houses and legal scholars and in every aspect, Article 44 was supposed to be the most important part in this framework.

I would also like to throw light on the mindset of the framers which were highly keen on solving each and every problem of the diversity present in India by just enriching the aspect of secularism. Even before UCC became mainstream, the aspects of treating each and every citizen of India with equal rights was deeply fixed and formulated in the basic structure of the Constitution. Thus, each and every judicial decision that has been passed regarding any matter relating to family law, maintenance, succession, hierarchy was to be taken care by equal rights and opportunities.

Thus, all the set of fundamental rights were specifically formulated to create a free and fair nation. It can be clearly seen in the fundamental rights that it was clear that India was required to be a secular nation.

But, with the propagation of different diversities in India, forced the delay of introduction of UCC. Thus, according to each and every community, their faith, sentiments and beliefs are at utmost purity and importance. Thus, to reform this traditional status and to make laws clear and comparative, UCC was introduced.

Moreover, the huge problem of mixing of the sentiments and beliefs of the community with the political agenda of the people ultimately complicated each and every step of the social strata.

A long battle was fought to introduce UCC as the status of divide and rule was never removed from India. Rather, at each and every step, the customs and the sentiments were hurt just to please their political benefits. Now, with the introduction of UCC, equality in punishments can be solved regardless of the personal law.

It is safe to say that the introduction of UCC is a great step towards the enhancement of the nationhood and between different ideologies into a singular law. With the introduction of UCC, no more political ideologies can be fulfilled by utilizing emotional issue. Personal laws have miserably failed to treat every person following with dignity and faithful respect. There are a lot of discriminations in the personal law system. But with the introduction of the code, national unity can be easily protected and justice, peace can be easily solved. Though, there are very much challenges that have to be faced by the Government to implement the code, but the Central Government is determined to introduce it in a phased manner. One of the major hurdles in the application of this Code is clearly seemed as Communal political ratio, which would be directly conflicting with Article 14 of the I.C.

