

## EMPIRICAL RESEARCH ON THE NEED FOR UNIFORM CIVIL CODE IN INDIA

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### **Abstract**

*The Constitution of India has enumerated certain Directive Principles of State Policy with a view to achieve amelioration of the socio-economic condition of the masses. In this era, these policies strengthen and promote this concept by seeking to lay down some welfare goals to promote the welfare of the people and achieve economic democracy. One such directive principle is the Constitutionally-enshrined Uniform Civil Code. Article 44 requires the state to strive to secure for the citizens of India a uniform civil code throughout India. This Article is considered fundamental to the governance of the country. The mandate of Article 44 is addressed to the "State" which includes the Government and Parliament of India and the Government and Legislatures of each of the states and all other local and municipal bodies, and other bodies under the Government of India. The founding fathers of our Constitution could anticipate the issues related to such legislation. Hence, the word "enact" was avoided and instead, words like "endeavor" and "strive" were placed in the provision. They wanted the Code to be enacted and enforced at the end of an evolutionary process, whereby each and every person is in a position to accept and actually practice the same in their everyday life. It was understood even then that to unite India further, there is a need for the Uniform Civil Code however 66 years of independent India have not helped achieve this goal.*

### *Keywords:*

*India, Personal laws, Religion, Secularism, Survey, Uniform Civil Code*

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## Introduction

India is famously dubbed as the Land of Cultural Diversity, with multiple languages, cultures and religions. While the diversity is appreciated, it often leads to problems of integration and governance over the citizens. There are specific codes governing these different communities and religions, supplemented by customs, traditions and usages.

The Constitution of India envisaged a Uniform Civil Code (*hereinafter*, UCC) under Article 44, which includes a large ambit of personal laws. As far as uniform legislation is concerned, India has achieved the same in all spheres (civil, contractual, constitutional etc.) except family and matrimonial laws. So through Article 44, an attempt was made, investing the State with this onerous responsibility. The term came under heavy scrutiny during the Constitutional Assembly Debates, with each community vehemently expressing its dissent on the same. [1] There was a failure to arrive at a common ground regarding the same hence the Article had been reduced to merely directive in nature, and not mandatory.

However, that did not diminish the scope of discussion on the topic of a UCC. Mr. M C Chagla made a vehement plea for the UCC, and stated, 'Article 44 is a mandatory provision binding the government, and it is incumbent upon it to give effect to its provision. The Constitution was enacted for the whole country, and every section and community must accept and apply its provisions and directives'. [2]

The talks of the UCC have been going on long since the Constitutional Assembly Debates. The Judiciary has played a very active role in trying to enforce the same, through several judgements and opinions. While there has been criticism alleging it to be 'judicial overreach', there has also been welcome support for the change being created, labelling it 'judicial activism' instead. Very recently, the Supreme Court asked the central government whether it was willing to bring a Uniform Civil Code to ride over inconsistent personal laws in different religions.[3] There was "total confusion" over the incoherent stipulations about marriage, divorce, adoption, maintenance and inheritance, the court said, and asked the Solicitor General of India to come back in three weeks with instructions on the government's view. This was the third time this year that the apex court had spoken on the Uniform Civil Code: on the previous two occasions, it had suggested there should be uniformity in personal law; this time it wanted a categorical answer from the government.

While the requirement of a uniform civil code has been debated, no one would dispute the proposition that a provision in personal law that offends fundamental rights must be struck down as unconstitutional. The inconsistency in personal laws has been challenged on the touchstone of Article 14, which ensures the right to equality, where litigants have claimed that their right to equality is being endangered by the different standards set for different personal laws, which can put them at a disadvantage.

But, despite active efforts from the Judiciary, the primary responsibility vests with the Parliament. The will of governments is often marred with political considerations, and is deterred by potential

communal intolerance that will ensue with such a move. While the UPA government decided to stay mum on the matter, the BJP on the other hand, kept the UCC in its 2014 Election manifesto. [4] The BJP and RSS, working in tandem on this front, cite the example of Goa, which is the only state to practice Article 44, called the Goa Civil Code.

The **Goa Civil Code** collectively called 'Family Laws', was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws because all the communities in Goa wanted it. [5] The most significant provision in this law is the pre-nuptial Public Deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony, both parents have a common right over the estate, but on dissolution, the property has to be divided equally; son and daughters have the equal right on the property. As the procedure involves compulsory registration of marriage, this effectively checks child and bigamous marriage. The philosophy behind the Portuguese Civil Code was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for inbuilt safeguard against injustice by one spouse against the other.

Commenting that the dream of a UCC in the country finds its realisation in Goa, former Chief Justice of India, Y.V. Chandrachud had once expressed hope that it would one day "awaken the rest of bigoted India." [6]

There are different views from different people on issues like Uniform Civil Code for marriage, divorce, succession and inheritance, maintenance. There comes a need for codification of a civil code. In a country like India where unity in diversity is the first hand need, there is a need to codify the Uniform Civil Code which will be applicable to all and will remove all the biasness and vagueness of the old personal laws. [7]

This empirical research and survey was conducted to find out whether the common man is aware of the different personal laws prevailing in our country and whether there arises a need for a UCC in India. We approached the people who are not related to law background and also we have tried to come across people of all the age groups, in an attempt to broaden the sample, in our report. This report is based entirely on a survey conducted amongst 100 people from ages of 18 till age of 50.

The primary idea behind the empirical research is to gauge the opinion of general public from different walks of life regarding basic matters like marriage, divorce, adoption, and understanding the outcomes of having a uniform civil code. In addition, this survey was conducted with an objective of generating awareness amongst the masses, and aiding the ultimate goal of communal integration in society. We have attempted to cover all major aspects under UCC and have arrived at a series of observations through statistical instruments like pie charts and diagrams. Each question is explained in detail with the aim and objective and has helped us to reach a conclusion based on the survey of 100 people.

We discovered various problems concerning UCC during the survey; regarding the relation between Secularism and UCC, different views about marriage and divorce, maintenance and the need for codification, etc. The spine of controversy revolving around UCC has been secularism and the freedom of religion enumerated in the Constitution of India. The preamble of the Constitution declares India to be a "*secular* democratic republic" This means that there is no State religion. A secular State shall not discriminate against anyone on the ground of religion. A State is only concerned with the relation between man and man. It is not concerned with the relation of man with God. While religion is often seen to impart the righteous way of life, in a diverse country like ours, the UCC can be created with the delicate balance between personal laws and customs and common law governing all citizens. [9]

However, the biggest obstacle in implementing the UCC, apart from obtaining a consensus, is the drafting. Should UCC be a blend of all the personal laws or should it be a new law adhering to the constitutional mandate? There is a lot of literature churned out on UCC but there is no model law drafted. Many think that under the guise of UCC, the Hindu law will be imposed on all. The possibility of UCC being only a repackaged Hindu law was ruled out by Prime Minister Atal Bihari Vajpayee when he said that there will be a new code based on gender equality and comprising the best elements in all the personal laws. [8]

The UCC should be a perceivable combination of fundamental rights guaranteed to all and religious dogmas practiced by nearly all. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious or political considerations. Creating awareness becomes paramount in this scenario. In order to be readily acceptable and to prevent social backlash, society needs to be more conscious and sensitive towards other communities, and a common law governing them all in personal matters, same as criminal or constitutional other matters.

If a Uniform Civil Code is enacted and enforced:

- 1) It would help and accelerate national integration;
- 2) Overlapping provisions of law could be avoided;
- 3) Litigation due to personal law would decrease;
- 4) Sense of oneness and the national spirit would be roused, and
- 5) The country would emerge with new force and power to face any odds finally defeating the communal and the divisionism forces. [10]

## Methodology

Research Methodology is the process used to collect information and data for the purpose of making business decisions. The methodology may include publication research, interviews, surveys and other research techniques, and could include both present and historical information. [11] To arrive at the conclusion, we have used the help of a survey as well as secondary sources like articles from the internet, books of law and law journals.

In the case of this research paper the sources which we have relied on can be divided into:

### 1) Primary Sources:

A questionnaire is an instrument which is often used to conduct surveys. It has a series of questions related to the aim of the research. To conduct the survey a questionnaire was designed keeping in mind the objectives of the study. Each question was inserted into the questionnaire keeping in mind a specific aim. Ten questions were designed in total. Nine of these were close ended questions while the last one was an open- ended question.

For the purpose of the survey, our universe was residents of Pune city, from both, legal and non-legal backgrounds. The sample of 100 people which we selected was at random. The reason for choosing to conduct the survey on a random sample was to get a better understanding of the opinions of the people and also to be able to cross analyze answers and opinions of people belonging to different age groups. We also conducted an analysis of comparing the differences in views of male respondents and female respondents.

Once we had collected all the responses we collated the total of the responses to each question and analyzed it statistically by preparing pie charts. We used this method because we believe that pie charts are visually effective and at the same time are also easy to read and understand. Moreover, with the help of the key and the various colours, it can be understood by even a layman.

On the basis of the analysis and our findings we reached a conclusion regarding our hypothesis- **Uniform Civil Code is the Need of the Hour.**

### 2) Secondary Sources:

We also used a number of secondary sources in order to validate the arguments put forward by us. We sourced books and law journals on the subject from libraries and online databases. Along with this we also referred to articles available on the internet as it supplemented the information we had found and helped us join the dots.

## Observations

The following are the observations upon analyzing the survey conducted. The observations shed light on the level of awareness of individuals, and the extent to which personal laws affect them, and on the interest and ability of a common man to make changes in the system.

The observations have been stated under each question, analysed thoroughly through statistical data.

### **Q1) Do you believe that religious unity can be achieved in a diverse country like India?**

The aim of the question is to gauge the general opinion regarding religion and the possibility of true secularism in a diverse country like India. This serves the purpose of engaging the respondents of the questionnaire and steering them towards the topic of the UCC.

Out of the survey conducted with 100 people merely 32% believe in the occurrence of religious unity in India. On the other hand up to 48% people believe that religious harmony is an altruistic notion, not applicable in a country like ours. The rest of the 20% of the sample are of the opinion that such unity can be achieved but not in the near future.

This question shows that UCC as a tool for religious unification, as necessary as it seems, will receive a great deal of backlash and negativity from the people. This is because of historic events of cultural riots, communal tension and religious differences which continue to persist over 70 years in Independent India. The reaction to this question clearly shows that the majority have lost faith in the legislature's capability of carrying out the directive principle enshrined in the constitution under Article 44.

### **Q2) Are you aware of the existence of different religious (personal) laws in India?**

The aim of this question is to identify the awareness about the existence of different personal laws among the chosen sample. This serves the purpose of getting a deeper understanding into whether or not the respondents are mindful and conscious of the current scenario of laws in India.

Out of the sample of 100 people a large percentage i.e. 88% are aware of the existing scenario of personal laws. Only 8% were not aware of the existence of these laws at all and a mere 4% have a vague idea of it.

The question reflects that the awareness of religious laws is high. This is a very positive and encouraging sign. It means that a large number of people have an interest in the way our legal system functions. It also shows that the respondents can formulate an opinion of the UCC which is backed by a thorough understanding of the matter. In the case of the respondents who aren't aware the reason could be lack of solid exposure to legal knowledge.

**Q3) Do you believe that in a country as religiously diverse as India a common law can govern all religions?**

The aim of the question is to judge how open the respondents are to the mere idea of having a UCC. This serves the purpose of delving further into the topic and gauging whether the respondents personally want a UCC or believe that or country needs one.

Out of the sample a majority of 46% people believe that our country does not require a Uniform Civil Code. Contrary to this 28% people are of the opinion the UCC is the need of the hour. 26% of the respondents are conflicted and are not sure if having implementing a UCC at the present time in India is a step in the right direction or not.

This question shows that many people are not open to even the idea of a Uniform Civil Code. A number of reasons can exist for such a response. It is a direct reflection of loss in faith not only in the unity of all religions (as was also reflected in the first question) but also a sense of disillusionment and a loss of hope in the judiciary and the legislative process as a whole.

**Q4) Do you believe that having different personal laws is violative of the right to equality guaranteed by the constitution?**

The aim of this question is to see whether or not the common man feels violation of his right to equality under the constitution due to the existence of different personal laws. This serves the purpose of finding out as to what people know about their rights and how different personal laws and fundamental rights are interconnected.

Out of a survey conducted of 100 people exact 50% of them strongly believe that personal laws are not violative of fundamental right of equality where as 42% of people feel that there is a clash between right to equality and personal laws. Further 8% people aren't sure of the opinion regarding the violation.

The question states the compelling need to study the personal religious laws from a human rights perspective. India has time and again pledged its commitment to upholding the normative regime of human rights in the provisions of the Constitution. The survey shows that there is almost equal no. of people who believe that personal laws does not violate right to equality to the people who think that there is a violation.

**Q5) Do you think that current scenario of personal laws regarding matters of marriage, divorce etc. is beneficial?**

The aim of the question is to identify the validity of personal laws in today's 21<sup>st</sup> century in matters regarding marriage and divorce. This serves the purpose of finding out about the thinking of people

of today's generation who are governed by ancient personal laws of different religions and also whether a uniform law should be there in matters of marriage and divorce.

Out of 100 samples, 42% of people aren't satisfied with the current scenario of personal law prevailing in the country regarding marriage and divorce. This raises a concern regarding the need for a uniform code for the matter. Further, 34% people feel that the religious beliefs should be continued and are beneficial too but there are 24% who are unaware of the condition of personal laws regarding marriage and divorce.

This question raises important issues regarding the UCC for marriage and divorce. There are different religious beliefs which may differ at some point or the other and; marriage and divorce are sensitive issues regarding each religion. People are not satisfied with the current situation and also they are not ready to leave their religious rituals and adopt a uniform code. Awareness for UCC is a serious concern.

#### **Q6) Do you believe that a common law unifying different religions will help reducing chaos and complexities?**

The aim of the question is to gauge the general opinion of the public regarding the unification of all the religious laws in the country. It is to see if the public believes that the UCC will be beneficial for the country in the long run or not.

Out of the survey conducted with 50 people 56% believe that the UCC will be beneficial for the country and that such a uniform law will reduce the chaos and the diversity between different religious minorities and majorities. On the other hand 26% people are apprehensive and don not believe in the idea of a uniform civil code. 18% people however, are not sure whether or not such a law will be helpful and if we need it.

This question shows that UCC as a tool for religious unification, as necessary as it seems, *may not* be accepted by almost 50% of the population in India and it may be received with a cynical approach. The possible reasons for this maybe that the religious minorities are scared of losing their identity and people maybe apprehensive about the autonomy that their religion will receive if such a law is enforced.

#### **Q7) Are you aware of the burden of pending cases on the family courts of India?**

The aim of the question is to gauge how many people are aware about the stockpile of cases in the Indian Judiciary and the increasing burden and pressure of the judicial system.



The survey shows that 82% of the people are aware that the Indian Judiciary is burdened with a huge pile of cases and that the cases need to be disposed of soon. On the other hand 18% of the public is oblivious to the current scenario.

The survey shows that the awareness about the Indian judiciary is high. People are aware that the rate of filing of cases is much more than the rate of their disposal. People are aware that there is a huge burden on the Indian judiciary and these cases need to be disposed of as soon as possible.

### **Q8) Do you believe that a Uniform Civil Code will help increase the efficiency of the judicial system?**

The aim of the question is to understand the opinion of the people regarding the judicial system, its level of efficiency and the UCC's role in the same. This serves the purpose of allowing the respondents to reflect on two main aspects, the working of the judiciary under status quo and the impact of the uniform set of laws on the same.

Out of 100 people who participated in this survey, up to 60% of them believe that such idea of uniform codified laws for all religions will surely help increase the efficiency of the judicial system in India, while around 18% of them seem to think that this will not be achieved in any scenario. Around 22% are of no strong opinion regarding the question and would not mind seeing the change in the judicial system, but are not completely positive about the same.

This reflection of the people shows that all hope for the UCC has not been lost yet. People believe that there are obvious merits resulting out of this move and one of them will be on the efficacy of the judiciary in India. The judiciary, which acts as the custodian of the rights of the citizen, needs to try and reduce the complexities with respect to laws and legislations, more specifically in matters of marriage, divorce, adoption etc.

### **Q9) For which of the following subject matters is there a dire need for a Uniform Civil Code? (You can check more than one option)**

- **Marriage**
- **Divorce**
- **Maintenance**
- **Adoption**
- **Surrogacy**

66 people among the 100 participants in the survey believe that there is a pressing need for a uniform law in the subject matters of divorce and adoption. A close third was maintenance with 52 people, following it was surrogacy with 50 people and lastly, marriage with 46 people. There were

also 4 non-proponents of the UCC who believed that neither matter could be covered under such a uniform law. The aim of this question was to simplify the work of the legislators, by highlighting the needs of the people towards a common legislation. The low response rate towards marriage actually showcases the positive effect of Special Marriage Act, the secular law on marriage and the benefit of the first step taken towards the UCC by the legislators of this country.

### **Gender-wise analysis of the responses to the survey on Uniform Civil Code**

This chart allows us to understand the opinion of males and females regarding the UCC. Out of the 100 partakers in the survey, 58 were female and 42 were males. Among the positive responses that were received with regards to the UCC, majority of the supporters were female. This goes to indicate that women are now more active than before, and are waiting on such change to be made in the legal system, so as to promote equality among both genders. The old personal laws regarding adoption, marriage etc, discriminate very heavily against the fairer sex. For eg, before any real codification of the adoptions law for Hindus, ancient practices disallowed the adoption of daughters and only focused on the adoption of a male child. With the passing of a uniform legislation, it will ensure equality and prevent such misogynistic ideas to percolate in society.

### **Age-wise analysis of the responses to the survey on Uniform Civil Code**

There were 100 participants in this survey about the Uniform Civil Code and its need. Of these, 48 of them belonged to the age group of 15-25 years, 30 were between 25-35 years of age. A meagre 8 were from 35-45 years and around 14 people were over 45 years of age. This majority clearly shows that there is an increased level of awareness among the younger sections of the population, and being well-informed, they seem to agree upon the need for a uniform legislation on all family matters, independent of religious affiliations. The numbers get fewer in the older age groups, indicating the loss of faith in the possibility of such UCC and the benefits accruing thereof. They seem to think that this move is going to cause more of a nuisance, backlash and riots among the people, especially in a place like India, where matters of religion are so volatile.

Irrespective of the age groups, or the gender or religion, there is a pressing need for a uniform law on family matters. Religion cannot cloud the benefits that can accrue from the UCC and the greater harmony and good that will be a consequence of the same. By making law common for all, in the long run, there will be no backlash. The trick before the legislature is to try and balance out the needs and demands of all the religious groups as a whole, and then pass a common law on these subject matters.

## Conclusion

After conducting extensive analysis of both primary and secondary sources, it can be seen that the UCC has been agreed to be the need of the hour in India, in as much as that, the current scenario is in need for a quick replacement. [12] The existence of different personal laws for the several religious communities is not a feasible option any longer, with greater awareness and importance given to women, and to ensure national integrity. Article 44 as a part of the Constitution enshrines the need for a uniform civil code to be codified and passed as a common law governing all aspects of family life for all the citizens in the country.

The complexity of modern life has had a tremendous impact on the institution of marriage, and the rights and obligations of the spouses as also their children. This has led to change, reform and amendment of various statutes governing family relationships, from time to time. [13] There is much speculation regarding the UCC. Since a democracy works for the people essentially, a public opinion of sorts, through surveys, questionnaires, public polls etc, will help gather the general point of view regarding various subject matters, directly governing the citizens.

The UCC in India is not an impossible dream, as has been proved by the passing of certain secular legislations such as the Special Marriage Act in 1954. This Act allows and governs the union of any two individuals, independent of their religious preferences. This move has benefitted more than caused backlash among different groups in the society. With matrimonial litigation on the rise, and the adverse effects arising out from the same upon the parties, their children and the entire family structure, there is a greater onus on the government to ensure there is legislation and law governing all these aspects of familial relations and that the same apply equally to all, in a secular fashion.

The UCC has been deemed to be the need of the hour, and is the opinion of most people in society. The government can no longer use communal backlash as an excuse to delay the move. If India wants to claim to be a 'secular' nation, as prescribed in the Preamble, then the Uniform Civil Code will be the only proof of the same.

## References

- [1] *Constitutional Assembly Debates*, Vol VII (1949) page 543
- [2] MC Chagla, *Plea for UCC*, Weekly Round Table, Mar 25, 1973, page 7
- [3] <http://indianexpress.com/article/explained/in-fact-equality-freedom-the-key-issues-in-continuing-uniform-civil-code-debate/> (last accessed on 20 Nov, 2015; 10:15 am)
- [4] <http://www.theguardian.com/world/2014/apr/07/india-bjp-election-manifesto-uniform-civil-code-legislation> (last accessed on 20 Nov, 2015; 11:00 am)
- [5] Carmo D'Souza, "Family Laws of Goa – Research and Reforms", available on <http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Souza-Carmo-Family-Laws-of-Goa-Research-And-Reforms.pdf> (last accessed on 20 Nov, 2015)
- [6] Mohammad Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945
- [7] K. Hingorani, "Do we need a Uniform Civil Code" The Economic Times, July 30, 2003 [http://articles.economictimes.indiatimes.com/2003-07-30/news/27512988\\_1\\_uniform-civil-code-personal-law-john-vallamattom](http://articles.economictimes.indiatimes.com/2003-07-30/news/27512988_1_uniform-civil-code-personal-law-john-vallamattom) (last accessed on 20 Nov, 2015; 12:30 pm)
- [8] Gandhi, B.M.(ed.), *V.D. Kulshrestha's Landmarks in Indian Legal and Constitutional History*, (8th ed., 2005)
- [9] <http://www.insightsonindia.com/2015/10/16/the-big-picture-uniform-civil-code-whats-the-agenda/> (last accessed on 20 Nov, 2015; 1:20 pm)
- [10] Law Commission of India, Fifteenth Report, 1960
- [11] <http://www.businessdictionary.com/definition/research-methodology.html> (last visited on 20 Nov, 2015; 1:45 pm)
- [12] MS Ratnaparkhi, *Uniform Civil Code: An Ignored Constitutional Imperative*, Atlantic Publishers and Distributers (1997)
- [13] Professor Kusum, *Family Law Lectures: Family Law I*, (3<sup>rd</sup>ed, 2012) page xi