

**UNIFORM CIVIL CODE IN INDIA: AN EXPERIMENTAL RESEARCH****Dr. B. Jaipal Reddy**

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Abstract

The Constitution of India has specified certain Directive Principles of State Policy (DPSP) with a view to achieve amelioration of the socio-economic condition of the masses. In this period, these policies reinforce and promote this concept by seeking to lay down some welfare goals to promote the welfare of the people and achieve economic democratic system. One such directive principle is the Constitutionally enshrined Uniform Civil Code (UCC). 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 foundation could anticipate the issues related to such legislation. Hence, the word "ratify" was avoided and instead, words like "attempt" and "struggle" 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 UCC however 70 years of independent India have not helped achieve this goal.

Keywords: India, Personal laws, Religion, Secularism, Survey, UCC

1. Introduction

India is famously dubbed as the Land of Cultural Diversity (LCD), with multiple languages, cultures and religions. While the variety is appreciated, it often leads to problems of incorporation and supremacy 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 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 passionate appeal 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 Legal Assembly Debates (LAD). The



Judiciary has played a very lively role in trying to enforce the same, through several judgements and opinions. While there has been disapproval alleging it to be 'legal overreach', there has also been welcome support for the change being created, labeling it 'legal activism' instead. Very recently, the Supreme Court asked the central government whether it was willing to bring a UCC to ride over inconsistent personal laws in different religions [3]. There was "total uncertainty" 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 UCC: 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 UCC has been debated, no one would dispute the proposition that a provision in personal law that offends fundamental rights must be struck down as unauthorized. The discrepancy 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 narrow-mindedness 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** (GCC) collectively called 'Family Laws' was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the freedom of Goa in 1961, the Indian State scrapped all the royal laws and extended the central laws to the country but made the exception of retaining the Family Laws because all the communities in Goa wanted it. [5] The most important condition 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 (PCC) was to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for integral safeguard against injustice by one spouse against the other.

Commenting that the dream of a UCC in the country finds its realization in Goa, former Chief Justice of India, Y.V. Chandrachud had once expressed hope that it would one day "awaken the rest of intolerant India." [6] There are different views from different people on issues like UCC for marriage, divorce, series and inheritance, maintenance. There comes a need for codification of a civil code. In a country like India where unity in variety is the first hand need, there is a need to codify the UCC which will be applicable to all and will remove all the biasness and imprecision of the old personal laws. [7]

This experiential 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 experiential 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 UCC. 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 purpose 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 among 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 *SDR* 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 faith 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 barrier 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 legal 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 compulsory 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 UCC is performed and implemented:

- 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]

2. 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 survey is an instrument which is often used to conduct investigations. 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-

UCC 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.

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. 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.

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