

Feasibility of Uniform Civil Code: A Study

NaveedNaseem¹&ShaheelaKhurshid²

Abstract

Uniform civil code a constitutional directive is not practically feasible keeping in view the religious diversity and plural ethos of India. The focus of this study is to analyse various impediments serving as a road block to this constitutional mandate enshrined in Article 44 of Constitution of India.

¹Student, LL.M Research Scholar, School of Legal Studies, Central University of Kashmir.

²Student, LL.M Research Scholar, School of Legal Studies, Central University of Kashmir.

Introduction

The primary idea behind the empirical research is to ascertain the opinion of, general public from different walks of life on the understanding Uniform Civil Code and it's feasibility in present society. UCC is such an issue which is highly debated in absence of a model law, without knowing 'what' of UCC. In fact, none of the secular countries have such directive, so there is a complete cluelessness so far UCC is concerned. Thus, in view of such critique, researcher made an attempt to know the opinions from people.

Considering the hypotheses, the researcher conducted an empirical study to have the opinions of people on the feasibility of UCC in India. The focus of the study is to analyze the awareness among them about the personal laws and UCC. The researcher has considered the views, opinions and ideas of respondents. As everyone has his/her own views and reasons pertaining to a particular issue. Due regard has been given to the views and opinions of the respondents in this research.

Survey Area

With an objective of having opinion of people for academic purposes on this sensitive issue, universe selected was residents of Delhi NCR, from both, legal and non-legal backgrounds irrespective of their religion.

In the study, views from people of J&K have been omitted owing to its special status in the Constitution of India. Under Article 44, the Indian state is under an obligation to pursue for enactment of Uniform Civil Code throughout India. But Article 370 of the Constitution puts the State of Jammu and Kashmir under special position and restricts the law making power of Parliament over the state. Article 370 further exempted the State from the complete applicability of the Constitution of India and allowed the State to have its own Constitution. The Central legislative powers over the State are also limited. Moreover, State of Jammu and Kashmir has its own set of directive principles provided within its Constitution and they are at variance with directive principles provided within part fourth of Indian Constitution. Indian State is thus under no obligation to enact a Uniform Civil Code for Jammu and Kashmir the way it is in relation to other states.

Research Tool and Technique

To carry out the study, stratified random sampling method has been employed. The sample consists of 120 respondents and data has been collected through questionnaire method consisting of total 15 mostly closed ended questions in the category of 'Yes' or 'No' to know their awareness of personal laws and general concepts of UCC through Google Doc medium.

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Further, an attempt has been made to retrieve data from different categories of people of both genders, with different religious background. However in view of collection of data only few respondents could be contacted as many of them were unwilling give their viewpoints.

The data received has been analysed statistically by preparing pie charts against each question, since pie charts are visually effective and at the same time are also easily understandable.

Data Interpretation and Analysis

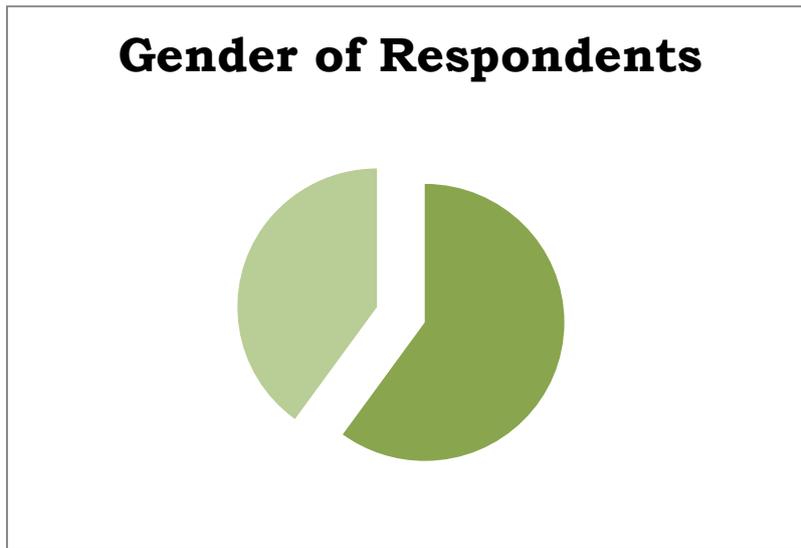


Figure 1: Distribution of Gender

Since equality demands social justice i.e. a holistic development of both man and woman so for the study an attempt was made to analyze data on the basis of gender to know their opinion on the issue of UCC.

In the present study 40% are females whereas 60% are males.

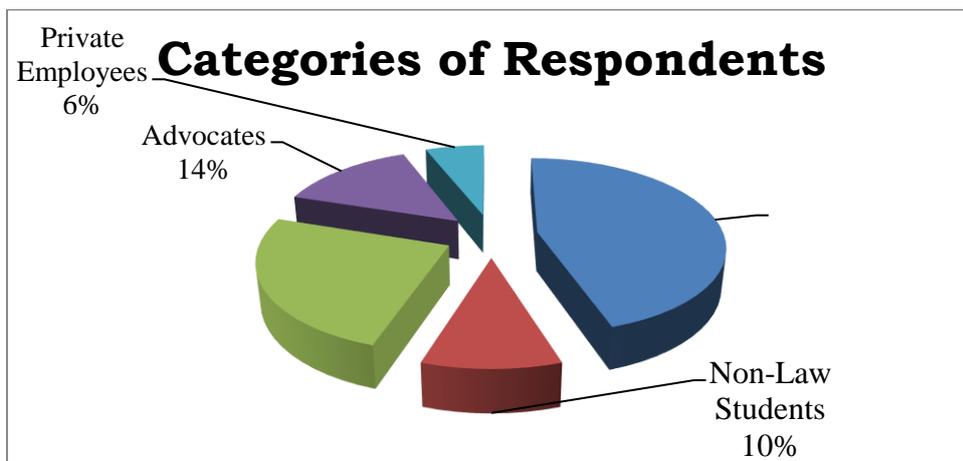


Figure 2: Distribution of categories of the respondents.

In all 120 respondents, data has been collected from different categories of persons from different fields.

India is a country where each community has its personal laws and the application of UCC means uniform personal laws for the members of all the religious communities. Religion forms a most important aspect when it comes to applicability of UCC. Therefore an effort is made to include the representatives of various religious communities in the study.

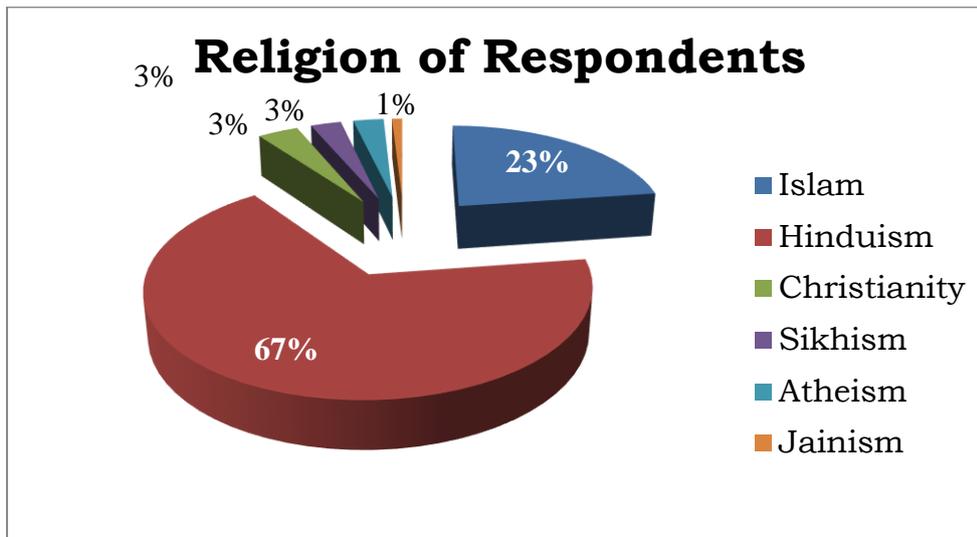


Figure 3: Distribution of religion

The figure indicates that majority of respondents are from the majority community i.e. Hindus comprising of 67% and 23% of Muslims.

Awareness and Satisfaction over Existence of Different Personal Laws in India

The aim of this question is to identify whether the respondents are aware of different religious or personal laws in India so as to ascertain their consciousness towards current scenario of laws in India.

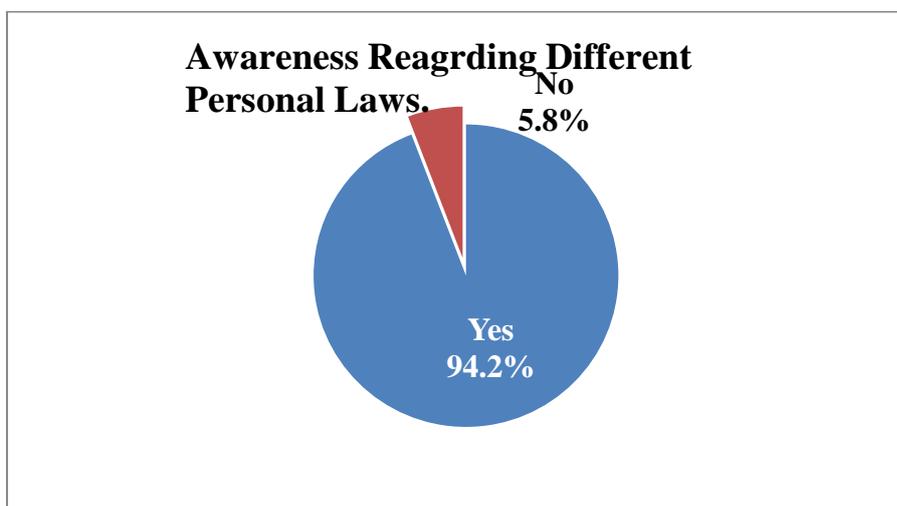


Figure 4

Interpretation

Out of the sample of 120 respondents, a good percentage i.e.94.2% of people are aware of the existence of different personal laws, while only 5.8% are unaware of their existence. It shows that people are aware of various religious laws. It is important to be well known towards these laws because only then can a person make his view point about the “Have” or “Have Not” of UCC.

Whether Current Scenario of Personal Laws is Beneficial for the Country and should be continued as such

The aim of this question is to ascertain from the sample the validity of personal laws in contemporary era, to know whether they are satisfied with the existing personal laws or need some modifications.

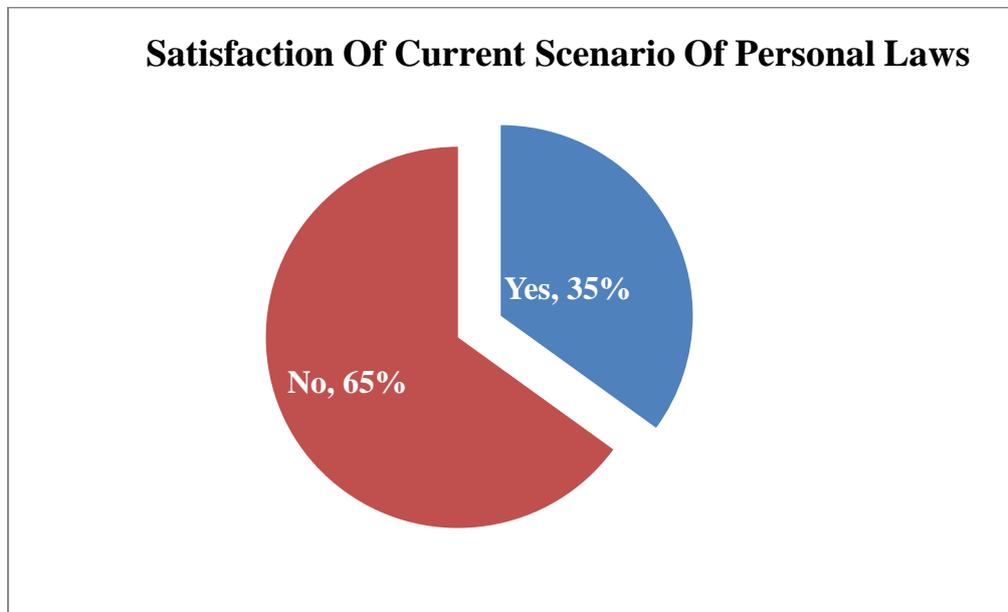


Figure 5

Interpretation

The above figure reveals that out of the total respondents, 65% believe that present position of personal laws is not beneficial for country and should not be continued as such, while 35% still hold that religious or personal laws are of prime importance and hence should be continued as they are.

Awareness Regarding Article 44 of Indian Constitution Which Provides That the State Shall Endeavour to Secure for The Citizens a Uniform Civil Code throughout the Territory of India

The aim of this question is to gauge the general knowledge of the public on the question of UCC. It is to see whether or not people are conversant of the basic idea of UCC.

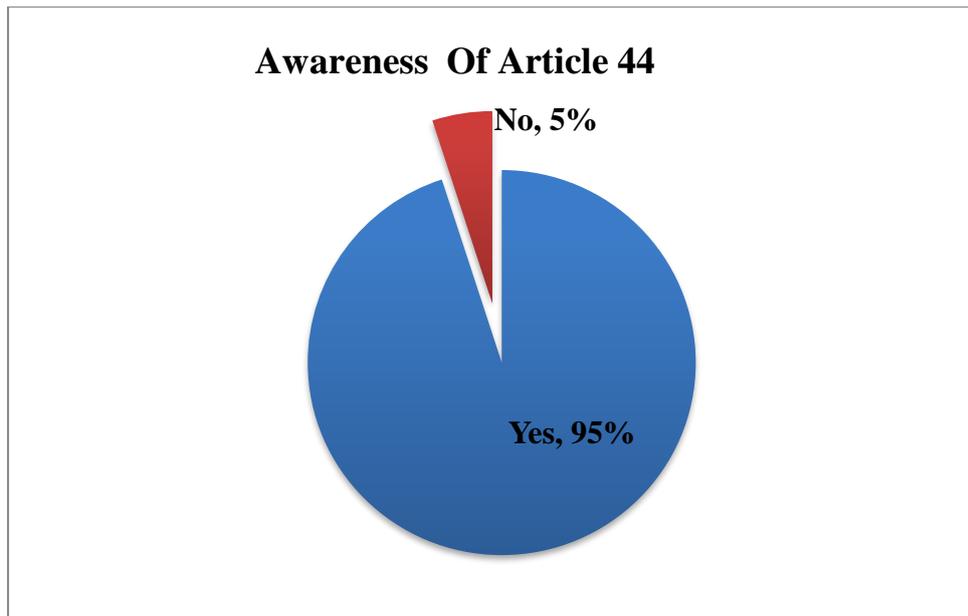


Figure 6

Interpretation

The figure reveals that a good percentage of people i.e. 95% are known to the basic idea of UCC provided under Article 44 of Constitution. However 5% are such who do not possess even the ground knowledge of UCC.

Whether There Is Really the Need Of Uniform Civil Code In India

This question was asked to know the opinion of people as to what they hold about the 'Have' or 'Have not' of UCC. It was to see what numbers of people think that UCC is needed.

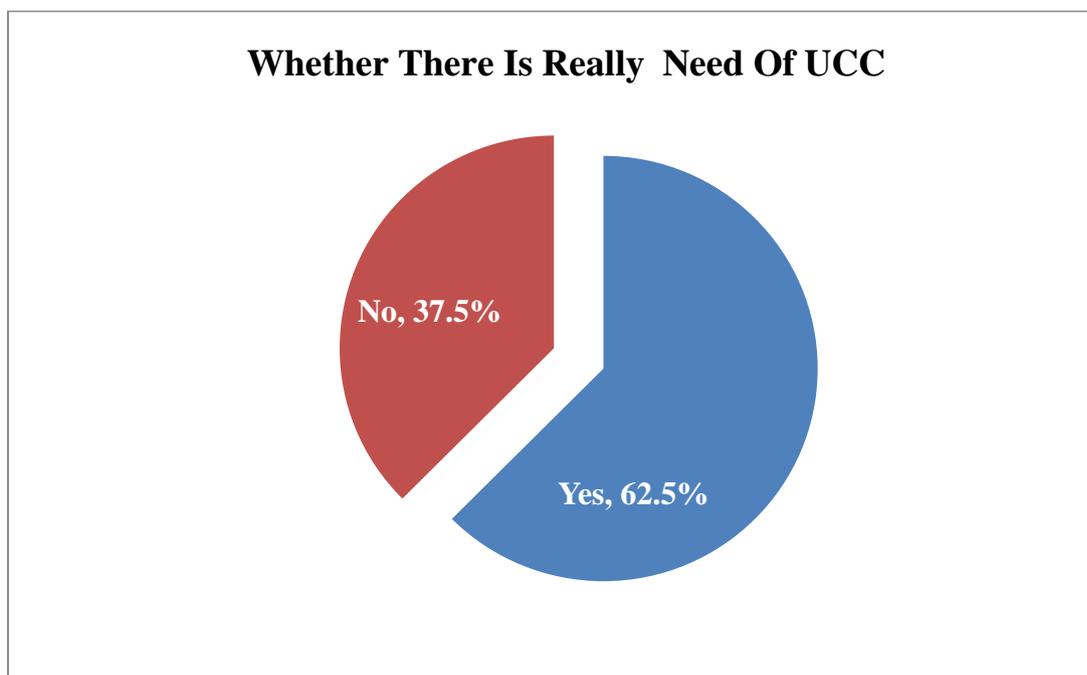


Figure 7

Interpretation

According to the data of above figure, 62.5% of total respondents hold that UCC is really needed in India however 37.5 % people are those who still hold that UCC is not needed in India.

The Below Figure Represents the Reasons Opted By Those Respondents Who Have Responded Positively To the Above Question of Whether UCC is Really Needed in India

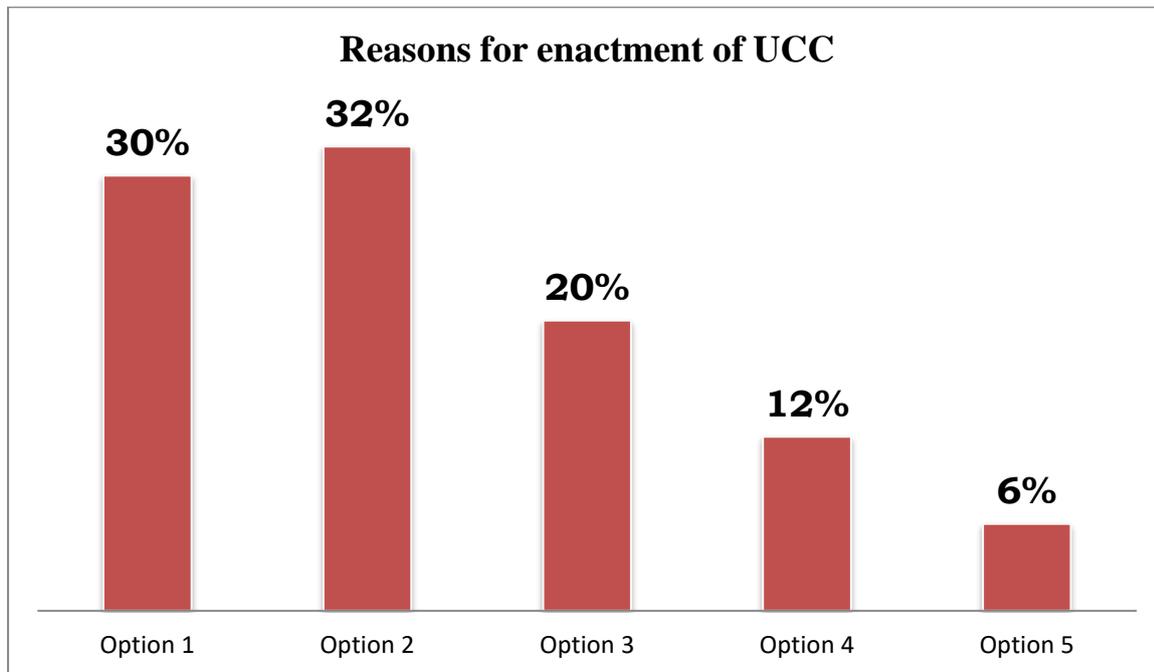


Figure 8

Option 1: It is essential to bring about uniformity in matters viz. marriage, divorce, succession, etc.

Option 2: It will ensure equality to all irrespective of their religion.

Option 3: To achieve unity and solidarity in the country.

Option 4: It is juristic solution to the communal problems.

Option 5: It will be a progressive measure on the part of the country.

The figure reveals that out of 62.5% who answered positively to above question, 32% of respondents hold that enactment of UCC will ensure equality to all irrespective of their religion.

Secondly, out of 62.5%, 30% hold that enactment of UCC is essential to bring about uniformity in matters of marriage, divorce, succession etc.

Thirdly, out of 62.5%, 20% hold that enactment of UCC is important to achieve unity and solidarity in the country.

Fourthly, out of 62.5%, 12% believe that enactment of UCC is a juristic solution to communal problems.

Lastly, only 6% hold that it will be a progressive measure on the part of the country.

Fig. 9: The below figure represents the reasons opted by those respondents who have responded negatively to the question of whether UCC is really needed in India

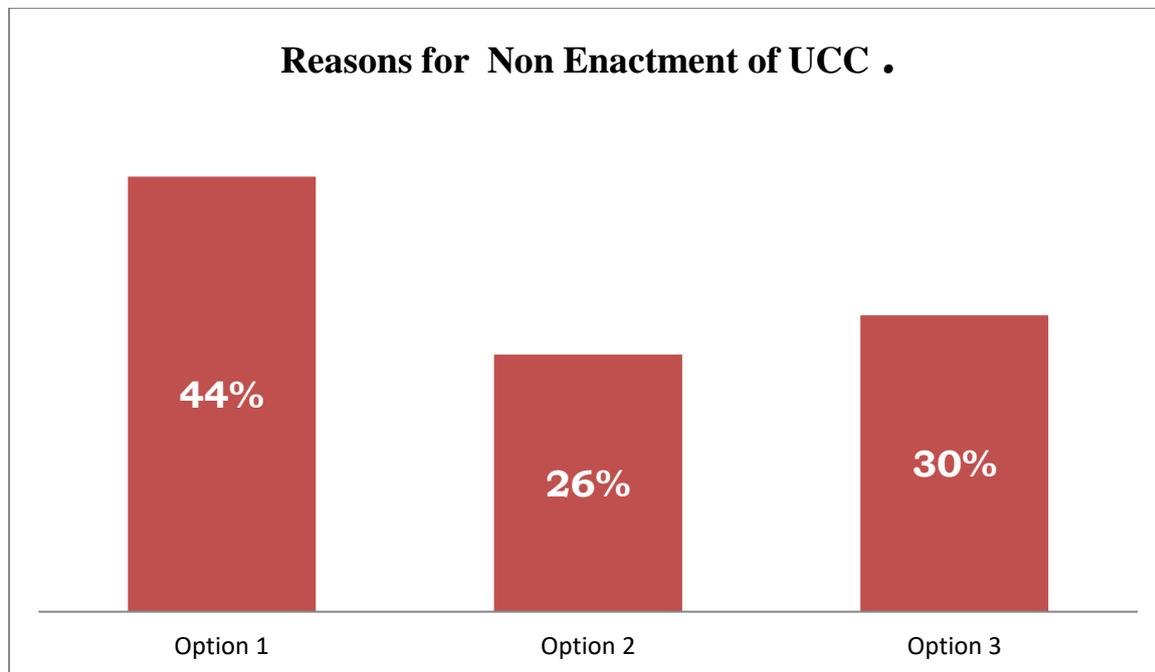


Figure 9

Option 1: It is not feasible for a diverse country like India.

Option 2: It is interference in the personal matters of different religions.

Option 3: No consensus can ever be reached on this issue between the different religious communities.

The figure reveals that out of 37.5% /45 respondents who held that UCC is not needed, 44% of them reasoned their opinion on the ground that it is not feasible for a diverse country like India.

While 30% hold that UCC is not possible since no consensus can ever be reached on this issue between the different religious communities.

And only 26% hold that UCC would be interference in the personal matters of different religions.

Whether Common Code Unifying Different Religious Family Laws Will Be Beneficial To All Its Citizens

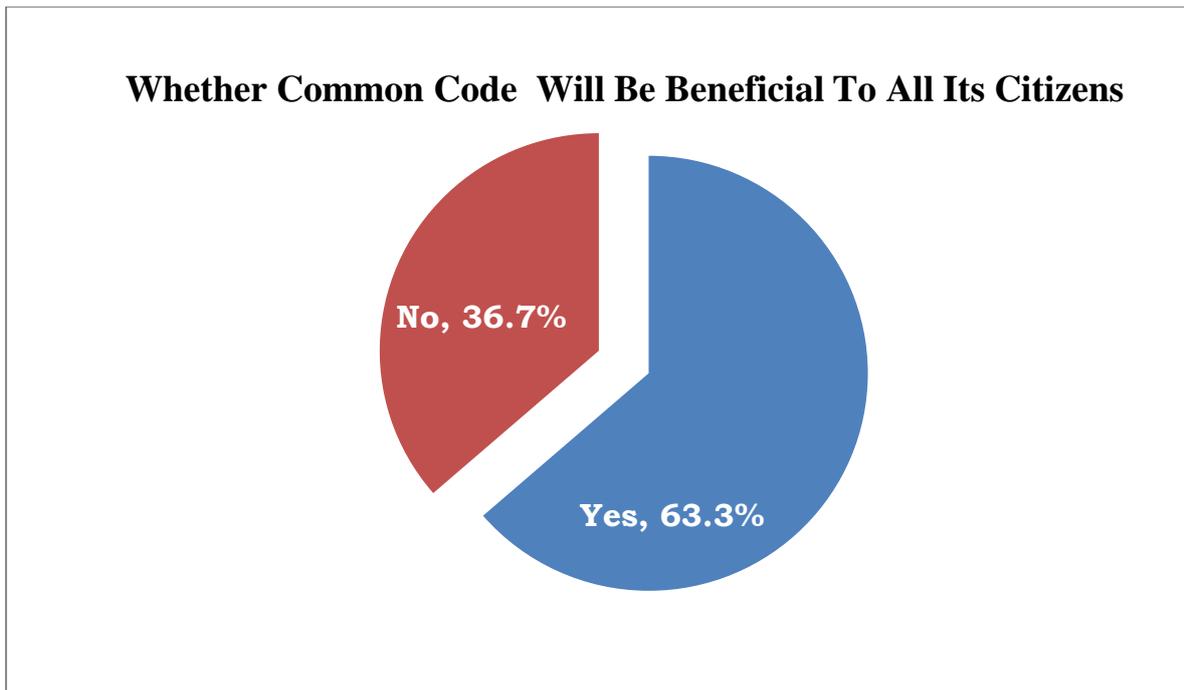


Figure 10

The object of this question is to see if people believe that having a UCC will prove beneficial for the citizens.

The figure indicates that out of the total respondents, 63.3% believe that UCC will be beneficial for all the citizens irrespective of their religion. On the other hand, 36.7% believe otherwise.

Would Uniform Civil Code Violate An Individual's Right To Freedom Of Religion Guaranteed Under Article 25 Of Indian Constitution

The aim of asking this question was to know people's viewpoint of whether they see UCC as an infringement to their religious rights as guaranteed under A-25 Of Constitution since good number of people already know about the what and why of UCC.

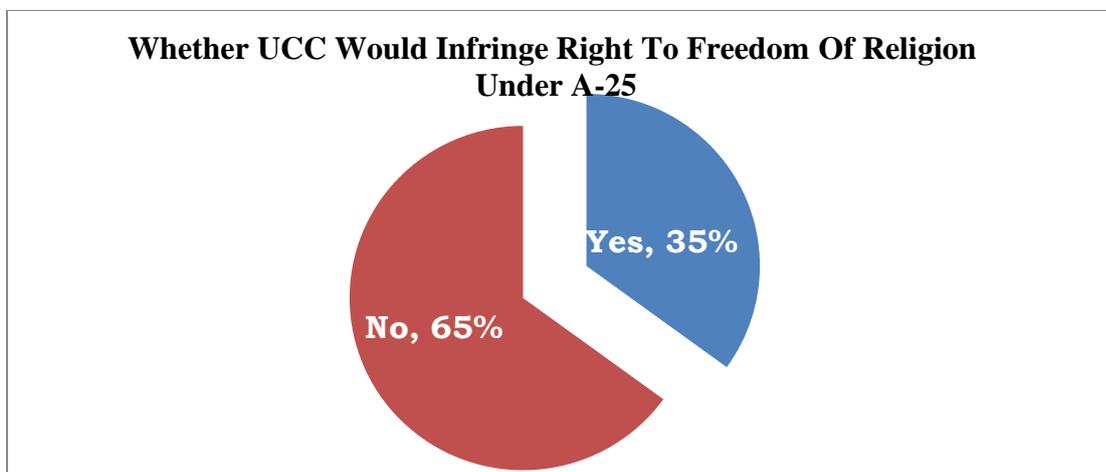


Figure 11

Interpretation

Out of 120 respondents, 65% replied negatively to this question that means maximum are of the view that UCC is not in violation of right to religion. While 35% answered in affirmative, holding that such a move would infringe their right to freedom of religion.

If UCC Fiddles With Freedom of Religion, Would People React To It

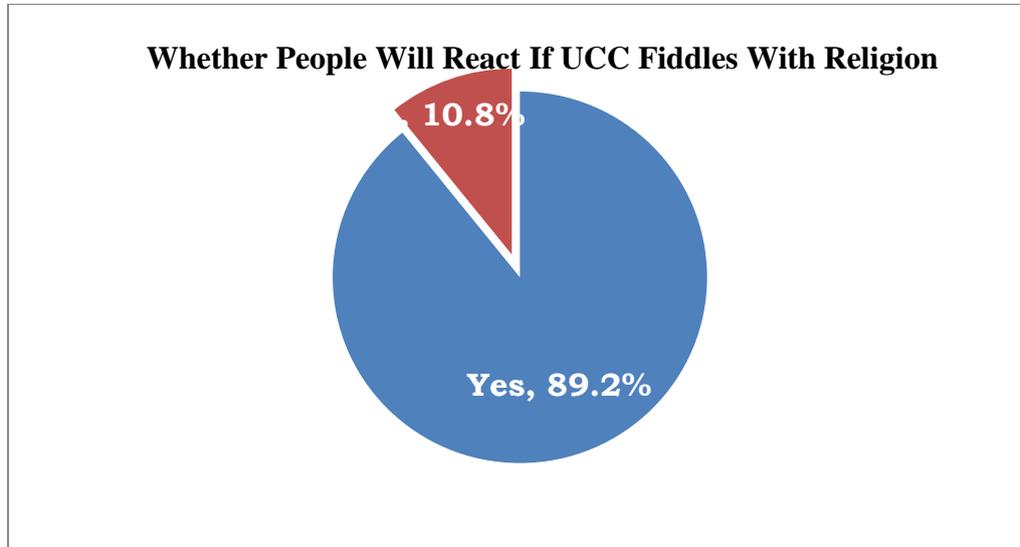


Figure 12

Since UCC is shapeless, colourless and tasteless meaning thereby till date such a code has not been drafted, so no one knows what UCC would be. Therefore the aim of this question was to put situation before respondents that if UCC fiddles with religion would they react to it.

Interpretation

The data reveals that 89.2% of total respondents would definitely react if UCC fiddles with their religion (religious practices). Only 10.8% hold otherwise.

Whether UCC Will Run Counter To The Notions Of Indian Secularism

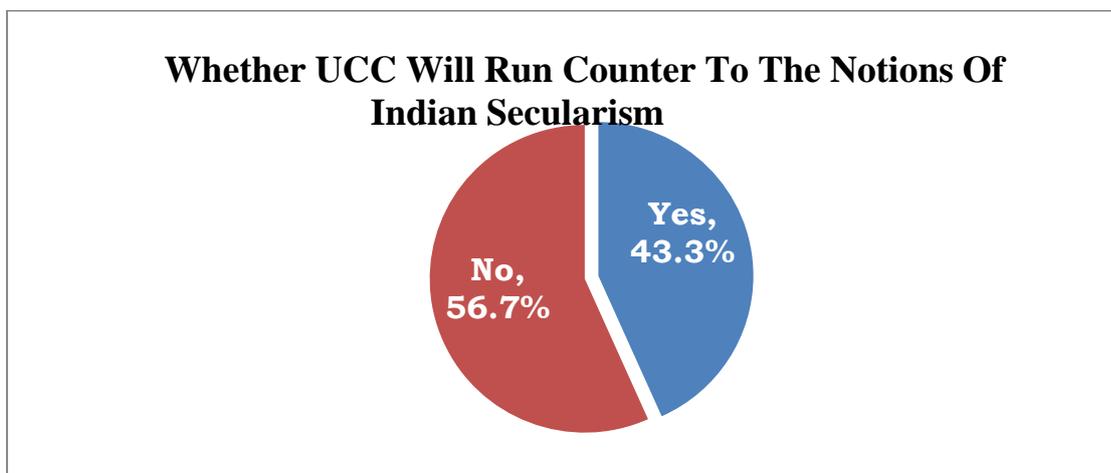


Figure 13

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Secularism is the basic feature of the Constitution, but Constitution hasn't defined it, so there are various concepts prevailing regarding Secularism in world, but India has adopted a unique version of secularism which does not provide for complete separation of State and religion and hence under such notion of secularism peaceful co-existence of varied cultures and religions is allowed. Therefore the enactment of UCC will violate the Indian notion of secularism. So the aim of this question was to know people's view regarding UCC being against Secularism.

Interpretation

Out of the revealed data, 56% hold that UCC will not run counter to secularism. While 43.3% hold otherwise.

Constitution Under Article 29 Provides Right To Minorities To Conserve Their Culture. If Uniform Civil Code Is Introduced, The Culture Of The Minorities Will Mix Up With That Of Majority

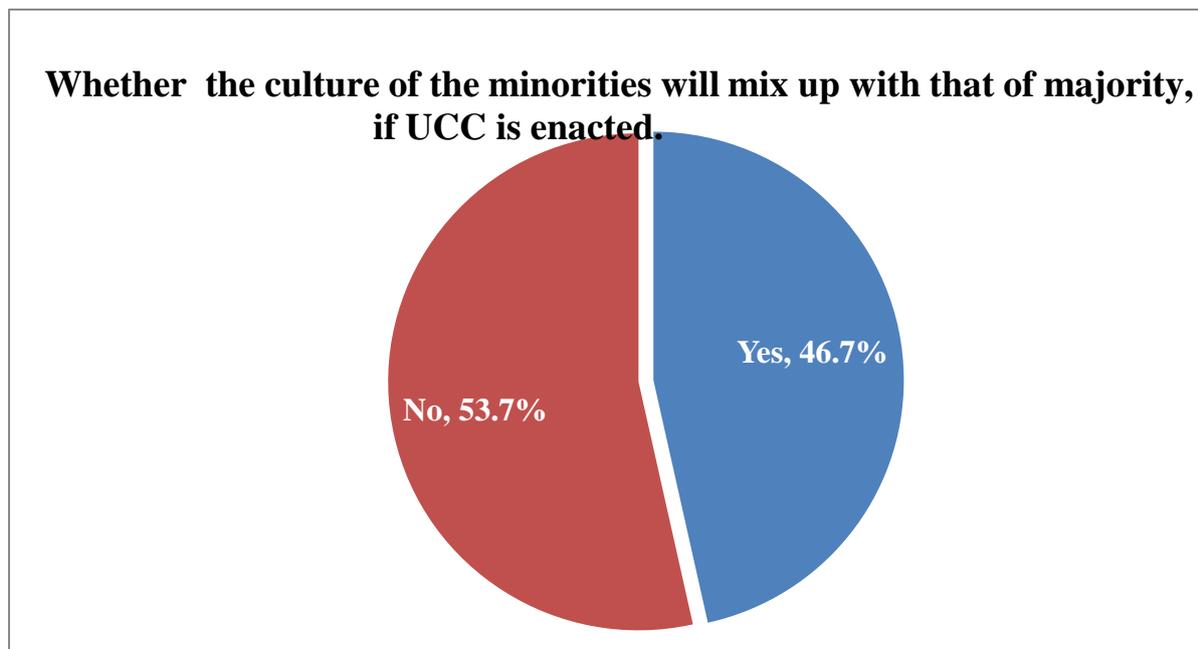


Figure 14

The aim of this question was to know whether people are aware of the constitutional guarantee of the right to minorities to conserve their culture and what they think of UCC vis a vis this protection.

The figure indicates that 53.7% hold that enactment of UCC will result in mixing of minority's culture with that of majority's. On the other hand, 46.7% hold that it will not have these consequences.

Whether Muslim Personal Law Is The Only Stumbling Block Towards UCC

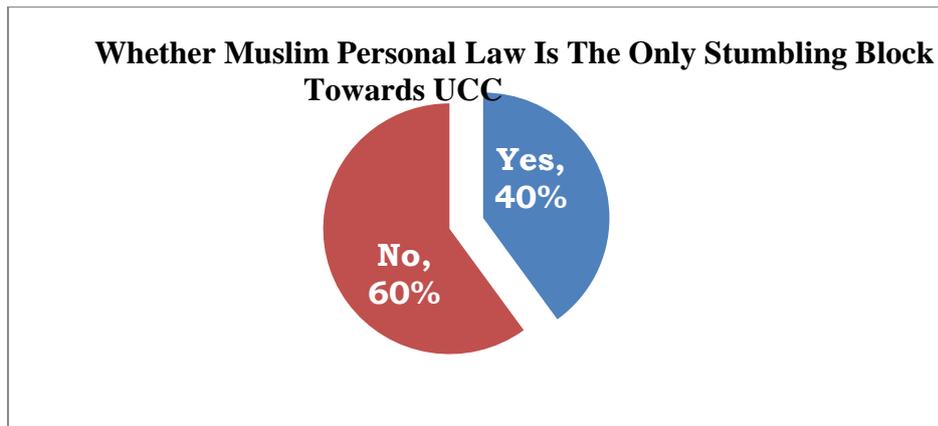


Figure 15

Muslims are often blamed that if UCC is drafted in India it will not be welcomed by Muslim community on the reason that they do not want to forego their personal laws, but little do they know that other minority communities too do not want to forgo their personal laws e.g. Tribal people. So the aim of this question was to get the views of people if they believe that MPL is a hurdle towards UCC.

Interpretation

60% hold that MPL is not a stumbling block towards enactment of UCC. On the other, for 40% MPL is a concern so far as enactment of UCC is concerned.

Whether Majority Community Is More Willing To Modernize Its Personal Law Because Neither Is Its Cultural Identity In Question Nor Is It Under Threat, Perceived Or Otherwise

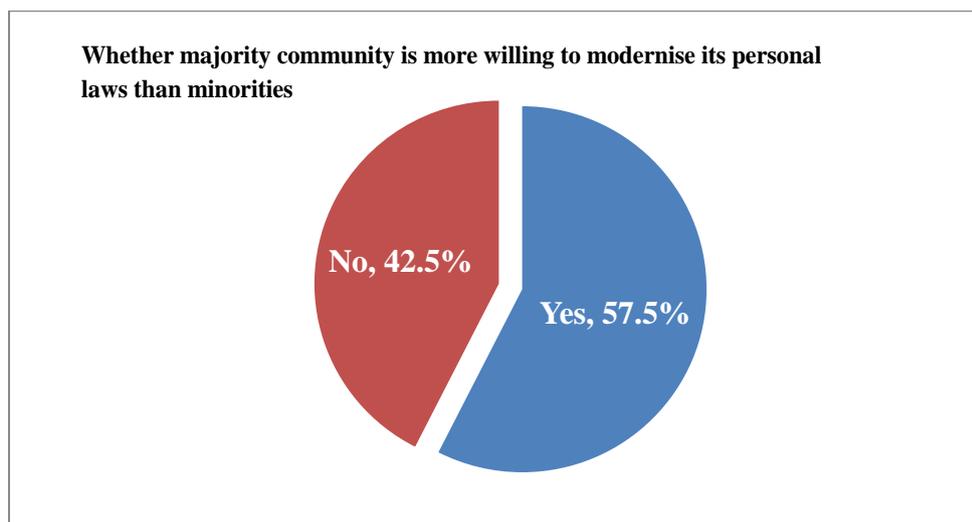


Figure 16

In a democracy, the cultural or religious identity of majority community is never under threat with the result majority community can readily agree towards any change in their

personallaws or accept a common code if enacted. The reason being that democracy always submits to the leverage of the majority community.

Interpretation

The data indicates that out of total respondents, 57.5% agree with this view. The majority hold that if a UCC is enacted in India it will be tilted towards the religious laws of majority community with the result neither its cultural identity will be in question nor will it be under threat. On the other hand, 42.5% of the respondents hold the contrary view.

Under Article 371-A & 371-G Of Constitution, There Is A Special Provision For Nagaland And Mizoram Respectively For The Protection Of Their Customs And Religious Practices. If Uniform Civil Code Is Introduced, It Will Nullify These Articles. Do You Think That People Of These States Will Accept This?

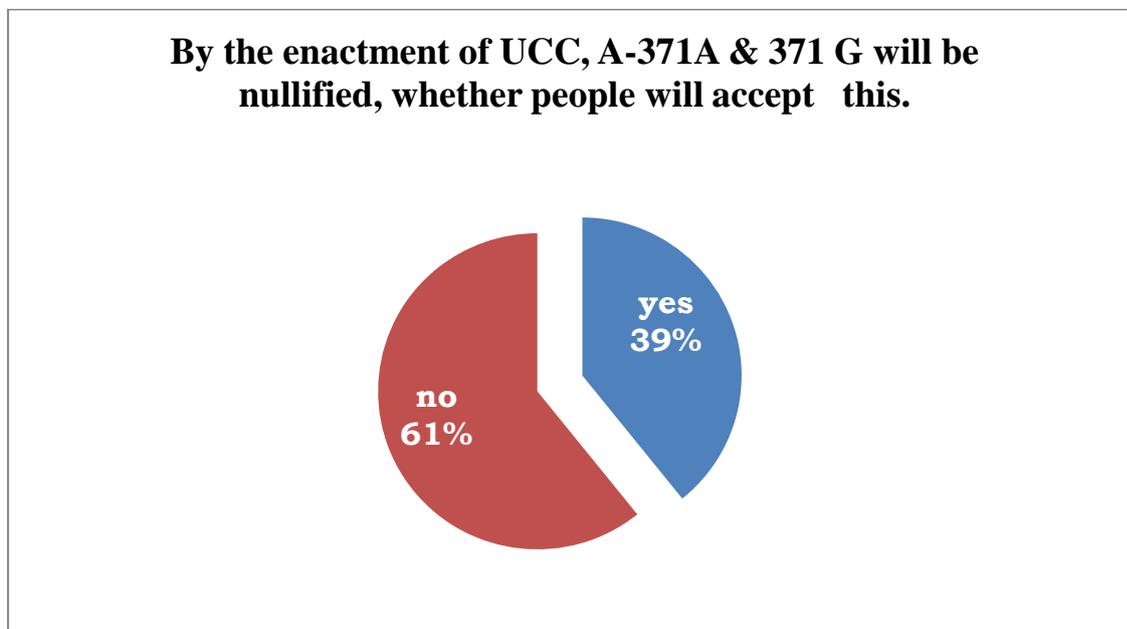


Figure 17

At one point, Nagas had picked up weapons against India who were demanding Naga Sovereignty. Similarly there was a long armed struggle in Mizoram in 1960's. Subsequently an agreement was formed by Indian Government with these two states and thereafter Article 371-A & 371-G was inserted in the Constitution which provides special protection to the customs and religious practices of Nagaland and Mizoram respectively. Here the aim of asking this question was to ascertain the opinion of people whether or not they will be ready to accept the replacement of their customary and religious practices with that of UCC.

Interpretation

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60.8% of total respondents are of the view that if UCC is enacted it will not be acceptable to the people of Nagaland and Mizoram owing to their special position in the Constitution. On the other hand, 39.2% hold that it will be acceptable by these people.

If Uniform Civil Code Directs That People Should Give Up Religious Rites In Marriage And Other Personal Matters And Be Replaced By A Common Code, Do You Think They Will Observe This Direction?

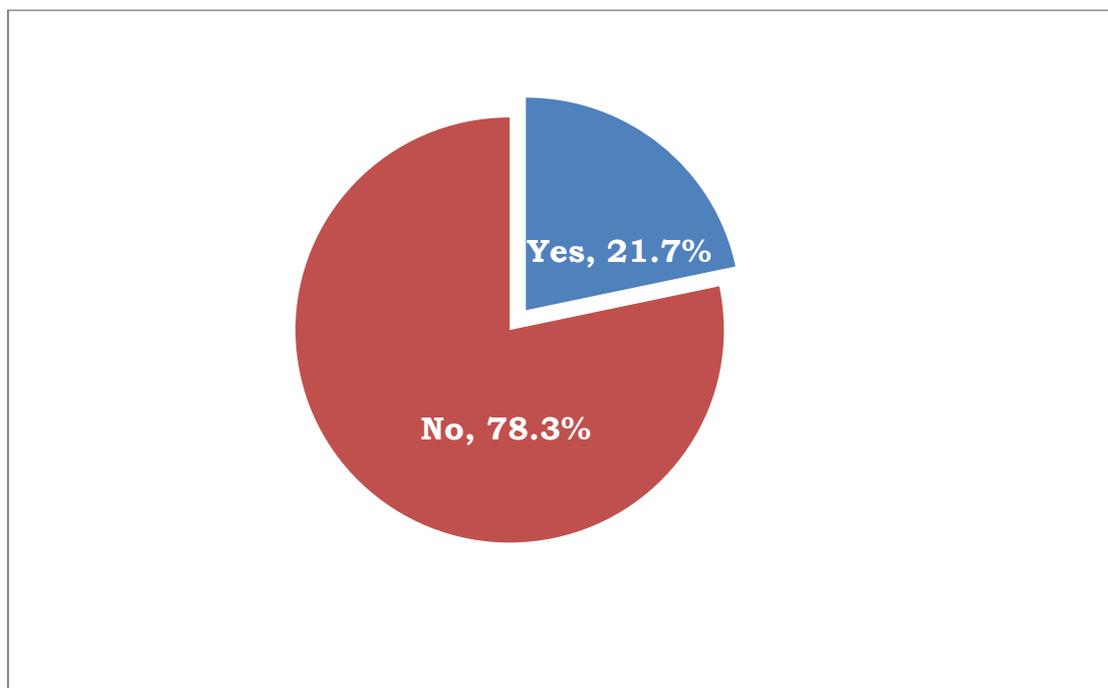


Figure 18

The aim of asking this question was to ascertain the views of sample whether they are ready to replace their religious rites and ceremonies in marriages and other personal matters by a would be secular code which presumably will not give any recognition to the religious rituals and ceremonies of different communities.

Interpretation

Majority of respondents i.e. 78.3% are of the view that people will sharply react against any such directive. While 21.7% hold that people will accept such directive.

Whether Or Not They Agree With Recent Statement Made By Chairman Law Commission J. B. S. Chauhan That Uniform Civil Code Is Not Possible In India

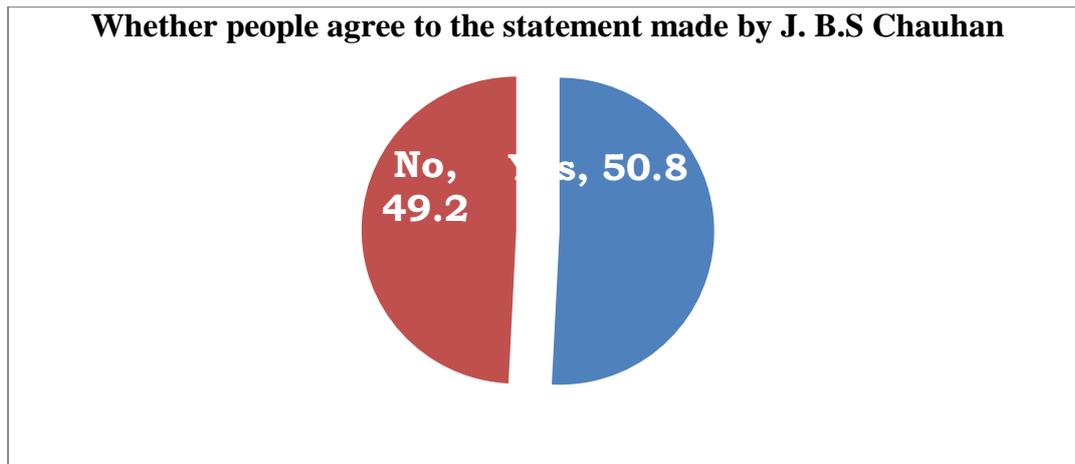


Figure 19

On 5th December, 2017 Chairman of 21st Law Commission, J.B.S Chauhan made a statement that the prospects of UCC is difficult to frame and impossible to implement owing to diversity in personal laws in India. Rather than this we will try to recommend religion-wise amendments in family laws that will target the problems of each religion and deal with them accordingly. Now the question was asked whether people submit to the view of J. Chauhan. The data reveals that 50.8% of the respondents agree with this statement and want their personal laws to be reformed or codified at their respective level rather than having a common code. On the other hand, 49.2% do not agree with J. Chauhan's view.

Practical Challenges towards the Enactment of Uniform Civil Code

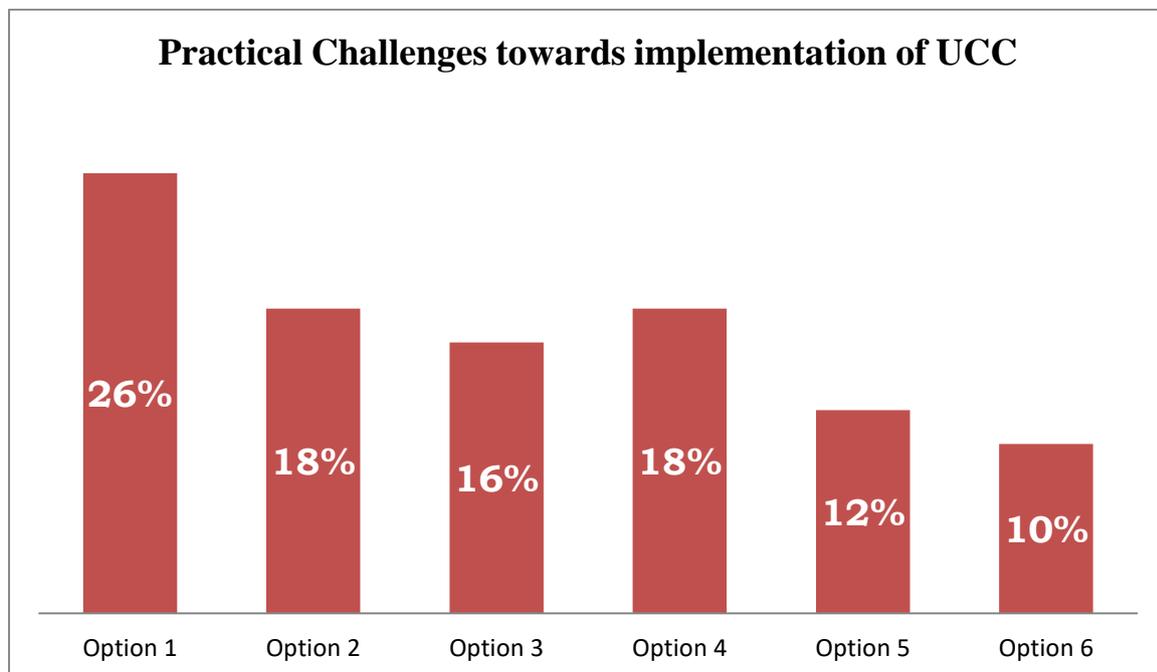


Figure 20

Option 1: Diversity in India is the major towards the implementation of UCC.

Option 2: Absence of Political will.

Option 3: Sanctity of religious and cultural identity.

Option 4: Lack of consensus among people.

Option 5: Minority fear of losing their identity.

Option 6: Lack of awareness of benefits of UCC.

Findings Of The Research

Out of the survey conducted among various communities existing in India, researcher got to know certain facts revolving round the 'have' or 'have not' of UCC.

1. It is understood from the data collected and analysed that there is a lot of familiarity awareness among the respondents about the personal laws and idea of UCC.
2. Majority of the respondents are in support of UCC as they believe that it will ensure equality to all irrespective of their religion. But the point of difference could be sensed from the responses received i.e. conceptually people support enactment of UCC but when they are confronted with various complexities like constitutional protection to people of Nagas, Mizoram, etc. they abruptly change their view that is in support of UCC.
3. Majority of those who are against the UCC opine that Diversity in India is the major challenge towards the implementation of UCC.
4. India has the largest majority of Hindus consisting of 80% of total population and majority community is willing to modernize its personal law because they believe that neither their cultural identity is in question nor is it under threat.
5. Diversity of every kind whether that is in the nature of culture, or special protection to people of Naga or Mizoram is the major challenge towards the enactment of UCC and Muslim Personal Law is not sole hindrance so far as enactment of UCC is concerned.
6. 50.8% of the respondents agree with the statement of J. B.S.Chauhan that prospects of UCC is difficult to frame and impossible to implement owing to diversity in personal laws in India.