

UNIFORM CIVIL CODE-IN INDIA

Indian Society

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Why in the news

Recently, the Supreme Court in a case concerning the question of whether succession and inheritance of a Goan domicile is governed by the Portuguese Civil Code, 1867 or the Indian Succession Act of 1925, held that:

- The Constitution in **Article 44** requires the State to strive to secure for its citizens a Uniform Civil Code(UCC) throughout India, but till date, no action has been taken in this regard.
- The **Hindu personal laws** were codified in the year 1956. However, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country.
- Despite exhortations of this Court in the case of **Shah Bano in 1985**, the government has done nothing to bring the Uniform Civil Code.
- The Supreme Court hailed the State of Goa as a “shining example” where “uniform civil code” is applicable to all, regardless of religion except while protecting certain limited rights.

Goa has a common civil code called Portuguese civil code 1867, whereby:

- A Muslim man whose marriage is registered in the State cannot practice polygamy.
- A married couple share property equally, pre-nuptial agreements are the order of the day and assets are divided equally between the man and woman on divorce.

Uniform Civil Code

- **Uniform Civil Code** seeks to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen.

Status of Personal Law in India

- Personal law subjects like marriage, divorce, inheritance come under Concurrent list.
- Hindu personal laws have been by and large **secularized and modernized** by statutory enactments.
 - The Hindu personal laws (that apply also to the Sikhs, Jains and Buddhists) have been codified by the Parliament in 1956
 - This Code Bill has been split into four parts:
 - The Hindu Marriage Act, 1955
 - The Hindu Succession Act, 1956
 - The Hindu Minority and Guardianship Act, 1956
 - The Hindu Adoption and Maintenance Act, 1956
- On the other hand, Muslim personal laws are still primarily unmodified and traditional in their content and approach.

- The Shariat law of 1937 governs the personal matters of all Indian Muslims in India.
- It clearly states that in matters of personal disputes, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith.
- Apart from it, Christians and Jews are also governed by different personal laws.

Need for a Uniform Civil Code

- Different personal laws **promote communalism** and it leads to discrimination at two levels:
 - First, between people of different religions.
 - Second, between the two sexes.
 - Uniform Civil Code will provide **women with the right to equality and justice in courts of law-** irrespective of their religion in matters pertaining to marriage, divorce, maintenance, custody of children, inheritance rights, adoption, etc.
- The Supreme Court for the first time directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum , popularly known as the **Shah Bano case**.
 - In this case, Shah Bano claimed for maintenance from her husband under **Section 125 of the Code of Criminal Procedure** after she was given triple talaq by him.
 - However, government overturned the Shah Bano case decision by way of **Muslim Women (Right to Protection on Divorce) Act, 1986** which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal Procedure.
- The Supreme Court in **Shayara Bano** case (2017) had declared the practise of Triple Talaq (talaq-e-bidat) as unconstitutional.

Challenges associated with UCC

Constitutional challenges

- **Freedom of religion gets into conflict with the right to equality.**
 - Article 25 lays down an individual's fundamental right to religion.
 - Article 26(b) upholds the right of each religious denomination or any section thereof to “manage its own affairs in matters of religion”
 - Article 29 defines the right to conserve distinctive culture.
 - These rights gets into conflict with the equality before law enshrined under article 14 and 15.
- Moreover, an individual's freedom of religion under Article 25 is subject to “**public order, health, morality**”.
- In 2018, a report by the Law Commission of India stated that the Uniform Civil Code is “**neither necessary nor desirable at this stage**” in the country. The Commission said secularism cannot contradict the plurality prevalent in the country.

Social-political challenges

- In the name of uniformity, the minorities fears that the culture of the majority is being imposed over them.

- Given vast cultural diversity in India, bringing uniformity among all such people will be a huge challenge.
- Patriarchal mindset of Indian society poses a big challenge in implementation of UCC.
 - This can be reflected by the fact that, the Hindu code bill has been already in place from mid-1950s, yet the quantum of land actually inherited by Hindu women is only a fraction of the land they are entitled.

Merits of Uniform Civil Code

- **National Integration**
 - A unified code is imperative, both for the protection of the vulnerable sections in Indian society (women and religious minorities) and for the promotion of national unity and solidarity.
- **Simplification of laws**
 - There exists so many personal laws like Hindu code bill, Shariat law, etc.
 - Presence of so many laws creates confusion, complexity and inconsistencies in the adjudication of personal matters, at times leading to delayed justice or no justice.
 - UCC will eliminate this overlapping of laws.
- **Simplification of Indian legal system:**
 - UCC will lead to reduction in litigation emanating from multiple personal laws.
- **Establishing a secular society:**
 - UCC will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society.
 - Moreover, it fulfills constitutional mandates under Article 44 of Directive Principles of State Policy.
- **Gender justice:**
 - The rights of women are usually limited under the patriarchal discourse through religious laws.
 - UCC will liberate women from patriarchal domination and provide them with right to equality and liberty.
- In the long term, UCC would lead to the defeat of the communal and the divisionist forces.

Way Forward

- The social transformation from diverse civil code to uniformity shall be gradual and cannot happen in a day. Therefore, the government must adopt a **“Piecemeal” approach**.
 - Government could bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages.
- Government must emulate Goan practice of a common civil code, which has been the law since 1867, when the state was under the Portuguese colonial rule.
- Moreover, when constitution espouses the cause of Uniform civil code in its Article 44, it shouldn't be misconstrued to be a “common law”.
 - The word uniform here means that all communities must be governed by uniform principles of gender justice and human justice.
 - It will mean modernization and humanization of each personal law.

- It would mean, not a common law, but different personal laws based on principles of equality, liberty and justice.
- Government has to take steps towards increasing the awareness among the public, especially minorities, about the importance of having a UCC.

The UCC must carve a balance between the protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious and political considerations.

UNIFORM CIVIL CODE-CURRENT AFFAIR

What to study?

For Prelims: Constitutional provisions related to Uniform Civil Code.

For Mains: UCC- need, concerns, challenges and is it suitable for India?

Context: Last week, while hearing a matter relating to properties of a Goan, the Supreme Court described Goa as a “shining example” with a Uniform Civil Code, observed that the founders of the Constitution had “hoped and expected” a Uniform Civil Code for India but there has been no attempt at framing one.

What is uniform civil code?

A generic set of governing laws for every citizen without taking into consideration the religion.

What the constitution says?

Article 44 of the Constitution says that there should be a Uniform Civil Code.

According to this article, “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. Since the Directive Principles are only guidelines, it is not mandatory to use them.

India needs a Uniform Civil Code for the following reasons:

1. A secular republic needs a common law for all citizens rather than differentiated rules based on religious practices.
2. Another reason why a uniform civil code is needed is gender justice. The rights of women are usually limited under religious law, be it Hindu or Muslim. The practice of triple talaq is a classic example.
3. Many practices governed by religious tradition are at odds with the fundamental rights guaranteed in the Indian Constitution.
4. Courts have also often said in their judgements that the government should move towards a uniform civil code including the judgement in the Shah Bano case.

Does India not already have a uniform code in civil matters?

1. **Indian laws do follow a uniform code in most civil matters** – Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Transfer of Property Act, Partnership Act, Evidence Act etc. States, however, have made hundreds of amendments and therefore in certain matters, there is diversity even under these secular civil laws. Recently, several states refused to be governed by the uniform Motor Vehicles Act, 2019.

2. If the framers of the Constitution had intended to have a Uniform Civil Code, they would have given exclusive jurisdiction to Parliament in respect of personal laws, by including this subject in the Union List. But **“personal laws” are mentioned in the Concurrent List.**

Last year, the Law Commission concluded that a Uniform Civil Code is neither feasible nor desirable.

Why is UCC may not desirable at this point?

Secularism cannot contradict the plurality prevalent in the country. Besides, cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation.

The term ‘secularism’ has meaning only if it assures the expression of any form of difference. This diversity, both religious and regional, should not get subsumed under the louder voice of the majority. At the same time, discriminatory practices within a religion should not hide behind the cloak of that faith to gain legitimacy.

How does the idea of a Uniform Civil Code relate to the fundamental right to religion?

Article 25 lays down an individual’s fundamental right to religion; **Article 26(b)** upholds the right of each religious denomination or any section thereof to “manage its own affairs in matters of religion”; **Article 29** defines the right to conserve distinctive culture.

An individual’s freedom of religion under Article 25 is **subject to “public order, health, morality” and other provisions relating to fundamental rights**, but a group’s freedom under Article 26 has not been subjected to other fundamental rights **In the Constituent Assembly**, there was division on the issue of putting Uniform Civil Code in the fundamental rights chapter. The matter was settled by a vote. By a 5:4 majority, the fundamental rights sub-committee headed by Sardar Vallabhbhai Patel held that **the provision was outside the scope of fundamental rights and therefore the Uniform Civil Code was made less important than freedom of religion.**

What is needed now?

Need of the hour is **the codification of all personal laws** so that prejudices and stereotypes in every one of them would come to light and can be tested on the anvil of fundamental rights of the Constitution. By codification of different personal laws, one can arrive at certain universal principles that prioritise equity rather than imposition of a Uniform Code, which would discourage many from using the law altogether, given that matters of marriage and divorce can also be settled extra-judicially.

Sources: the Hindu.

UNIFORM CIVIL CODE (UCC): PROS AND CONS IN A NUTSHELL

The issue of the **Uniform Civil Code** has emerged into India’s political discourse recently mainly because many Muslim women, affected adversely by the personal laws, have begun knocking on the doors of the Supreme Court to uphold their fundamental rights to equality and liberty in keeping with constitutional provisions. The **Union law ministry** has recently

asked the law commission to examine the matters in relation to the implementation of the uniform civil code.

What is Uniform Civil Code?

The **Uniform Civil Code (UCC)** in India proposes to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen.



Is there a provision in Indian constitution for Uniform Civil Code (UCC)?

The constitution has a provision for **Uniform Civil Code in Article 44** as a **Directive Principle of State Policy** which states that “**The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.**”

What are the Pros of the Uniform Civil Code?

To provide equal status to all citizens

In the modern era, a secular democratic republic should have a common civil and personal laws for its citizens irrespective of their religion, class, caste, gender etc.

To promote gender parity

It is commonly observed that personal laws of almost all religions are discriminatory towards women. Men are usually granted upper preferential status in matters of succession and inheritance. Uniform civil code will bring both men and women at par.

To accommodate the aspirations of the young population

A contemporary India is a totally new society with 55% of its population is below 25 years of age. Their social attitudes and aspirations are shaped by universal and global principles of equality, humanity, and modernity. Their view of shedding identity on the basis of any religion has to be given a serious consideration so as to utilize their full potential towards nation building.

To support the national integration

All Indian citizens are already equal before the court of law as the criminal laws and other civil laws (except personal laws) are same for all. With the implementation of Uniform Civil Code, all citizen will share the same set of personal laws. There will be no scope of politicization of issues of the discrimination or concessions or special privileges enjoyed by a particular community on the basis of their particular religious personal laws.

To bypass the contentious issue of reform of existing personal laws

Existing personal laws are mainly based on the upper-class patriarchal notions of the society in all religions. The demand of UCC is normally made by aggrieved women as a substitute

for existing personal laws as patriarchal orthodox people still deem the reforms in personal laws will destroy their sanctity and oppose it profusely.

The Pros and Cons of Uniform Civil Code (UCC)

The Pros of UCC

1. Provide equal status to all citizens.
2. Promote gender parity.
3. Accommodate the aspirations of the young population.
4. To support the national integration.
5. Bypass the issue of reform of existing personal laws.

The Cons of UCC

1. Practical difficulties due to diversity in India.
2. Perception of UCC as encroachment on religious freedom.
3. Interference of state in personal matters.
4. It is a sensitive and tough task to implement.
5. The Time is not yet suitable for this reform.



What are the Cons of Uniform Civil Code?

Practical difficulties due to diversity in India

It is practically tough to come up with a common and uniform set of rules for personal issues like marriage due to tremendous cultural diversity India across the religions, sects, castes, states etc.

Perception of UCC as encroachment on religious freedom

Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom. They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

Interference of state in personal matters

The constitution provides for the right to freedom of religion of one's choice. With codification of uniform rules and its compulsion, the scope of the freedom of religion will be reduced.

Sensitive and tough task

Such a code, in its true spirit, must be brought about by borrowing freely from different personal laws, making gradual changes in each, issuing judicial pronouncements assuring gender equality, and adopting expansive interpretations on marriage, maintenance, adoption, and succession by acknowledging the benefits that one community secures from the others. This task will be very demanding time and human resource wise. The government should be sensitive and unbiased at each step while dealing with the majority and minority

communities. Otherwise, it might turn out to be more disastrous in a form of communal violence.

Time is not yet suitable for this reform

Considering a major opposition from Muslim community in India over this issue overlapping with controversies over beef, saffronization of school and college curriculum, love jihad, and the silence emanating from the top leadership on these controversies, there needs to be given sufficient time for instilling confidence in the community. Otherwise, these efforts towards common will be counterproductive leaving minority class particularly Muslims more insecure and vulnerable to get attracted towards fundamentalist and extremist ideologies.

Conclusion

- At the end of the day, a UCC can only emerge through an evolutionary process, which preserves India's rich legal heritage, of which all the personal laws are equal constituents.
- The codification and implementation of UCC may not necessarily usher in the expected equality among genders and religions.
- Major sensitization efforts are needed to reform current personal law reforms which should first be initiated by the communities themselves.
- Current institutions need to be modernized, democratized and strengthened for this change. Sincere efforts towards women empowerment have to be taken for all women of all religions.
- The plural democracy is an identity of the modern India. Therefore, efforts should be focused on harmony in plurality than blanket uniformity for flourishing Indian democracy.

PRELIMS:

What is a Uniform Civil Code?

- A UCC is one that would provide for one law for the entire country, applicable to all religious communities in their personal matters such as marriage, divorce, inheritance, adoption etc.
- Article 44 of the Constitution lays down that the state shall endeavour to secure a UCC for the citizens throughout the territory of India.
- Article 44 is one of the directive principles. These, as defined in Article 37, are not justiciable (not enforceable by any court) but the principles laid down therein are fundamental in governance.
- Fundamental rights are enforceable in a court of law. While Article 44 uses the words “state shall endeavour”, other Articles in the ‘Directive Principles’ chapter use words such as “in particular strive”; “shall in particular direct its policy”; “shall be obligation of the state” etc.
- Article 43 mentions “state shall endeavour by suitable legislation” while the phrase “by suitable legislation” is absent in Article 44.
- All this implies that the duty of the state is greater in other directive principles than in Article 44.

What are more important — fundamental rights or directive principles?

- There is no doubt that fundamental rights are more important.
- The Supreme Court held in *Minerva Mills* (1980): “Indian Constitution is founded on the bed-rock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles).
- To give absolute primacy to one over the other is to disturb the harmony of the Constitution”.
- Article 31C inserted by the 42nd Amendment in 1976, however, lays down that if a law is made to implement any directive principle, it cannot be challenged on the ground of being violative of the fundamental rights under Articles 14 and 19.

Does India not already have a uniform code in civil matters?

- Indian laws do follow a uniform code in most civil matters – Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Transfer of Property Act, Partnership Act, Evidence Act etc.
- States, however, have made hundreds of amendments and therefore in certain matters, there is diversity even under these secular civil laws.
- Recently, several states refused to be governed by the uniform Motor Vehicles Act, 2019.
- If the framers of the Constitution had intended to have a Uniform Civil Code, they would have given exclusive jurisdiction to Parliament in respect of personal laws, by including this subject in the Union List.
- But “*personal laws*” are mentioned in the *Concurrent List*. Last year, the Law Commission concluded that a Uniform Civil Code is neither feasible nor desirable.

Is there one common personal law for any religious community governing all its members?

- All Hindus of the country are not governed by one law, nor are all Muslims or all Christians.
- Not only British legal traditions, even those of the Portuguese and the French remain operative in some parts.
- In Jammu and Kashmir until August 5, 2019, local Hindu law statutes differed from central enactments.
- The Shariat Act of 1937 was extended to J&K a few years ago but has now been repealed.
- Muslims of Kashmir were thus governed by a customary law, which in many ways was at variance with Muslim Personal Law in the rest of the country and was, in fact, closer to Hindu law.
- Even on registration of marriage among Muslims, laws differ from place to place. It was compulsory in J&K (1981 Act), and is optional in Bengal, Bihar (both under 1876 Act), Assam (1935 Act) and Odisha (1949 Act).
- In the Northeast, there are more than 200 tribes with their own varied customary laws.
- The Constitution itself protects local customs in Nagaland. Similar protections are enjoyed by Meghalaya and Mizoram. Even reformed Hindu law, in spite of codification, protects customary practices.

How does the idea of a UCC relate to the fundamental right to religion?

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- An individual's freedom of religion under Article 25 is subject to "public order, health, morality" and other provisions relating to fundamental rights, but a group's freedom under Article 26 has not been subjected to other fundamental rights
- In the Constituent Assembly, there was division on the issue of putting Uniform Civil Code in the fundamental rights chapter.
- The matter was settled by a vote. By a 5:4 majority, the fundamental rights sub-committee headed by Sardar Patel held that the provision was outside the scope of fundamental rights and therefore the UCC was made less important than freedom of religion.

What was the view of Muslim members in the Constituent Assembly?

- Some members sought to immunise Muslim Personal Law from state regulation.
- Mohammed Ismail, who thrice tried unsuccessfully to get Muslim Personal Law exempted from Article 44, said a secular state should not interfere with the personal law of people.
- B Pocker Saheb said he had received representations against a common civil code from various organisations, including Hindu organisations.
- Hussain Imam questioned whether there could ever be uniformity of personal laws in a diverse country like India.
- B R Ambedkar said "no government can use its provisions in a way that would force the Muslims to revolt".
- Alladi Krishnaswami, who was in favour of a Uniform Civil Code, conceded that it would be unwise to enact Uniform Civil Code ignoring strong opposition from any community.
- Gender justice was not mentioned in these debates.

How did the debate on a common code for Hindus play out?

- In June 1948, Rajendra Prasad, President of the Constituent Assembly, warned Jawaharlal Nehru that to introduce "basic changes" in personal law was to impose "progressive ideas" of a "microscopic minority" on the Hindu community as a whole.
- Others opposed to reforms in Hindu law included Sardar Patel, Pattabhi Sitaramayya, M A Ayyangar, M M Malaviya and Kailash Nath Katju.
- When the debate on the Hindu Code Bill took place in December 1949, 23 of 28 speakers opposed it.
- On September 15, 1951, President Prasad threatened to use his powers of returning the Bill to Parliament or vetoing it.
- Ambedkar eventually had to resign. Nehru agreed to trifurcation of the Code into separate Acts and diluted several provisions.