

UNIFORM CIVIL CODE

UNIFORM CIVIL CODE - CHALLENGES, SUGGESTIONS & DEBATE ON UCC

Uniform Civil Code resonates with one country one rule, to be applied to all religious communities. The term, ‘Uniform Civil Code’ is explicitly mentioned in Part 4, Article 44 of the Indian Constitution. **Article 44** says, “**The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.**”

Context: Uniform Civil Code in India is a widely debated topic lately since the first petition was filed in 2019 to seek for framing of a UCC to promote national integration and gender justice, equality, and dignity of women.

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Uniform Civil Code – UCC

A Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly.

They cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession of the property. It is based on the premise that there is no connection between religion and law in modern civilization.

What is Article 44?

Article 44 corresponds with Directive Principles of State Policy stating that State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India.

Uniform Civil Code Debate

Historical perspective – The debate for a uniform civil code dates back to the colonial period in India.

- **Pre-Independence (colonial era)**

- The Lex Loci Report of October 1840- It stressed the importance and necessity of uniformity in the codification of Indian law, relating to crimes, evidence and

contract. But, it also recommended that personal laws of Hindus and Muslims should be kept outside such codification.

- The Queen's 1859 Proclamation- It promised absolute non-interference in religious matters.

So while criminal laws were codified and became common for the whole country, personal laws continue to be governed by separate codes for different communities.

- **Post-Colonial era (1947-1985)**

- During the drafting of the constitution, prominent leaders like Jawaharlal Nehru and Dr B.R Ambedkar pushed for a uniform civil code. However, they included the UCC in the Directive Principles of State Policy (DPSP, Article 44) mainly due to opposition from religious fundamentalists and a lack of awareness among the masses during the time.

Some of the reforms of this period were:-

The Hindu code bill -The bill was drafted by Dr.B R Ambedkar to reform Hindu laws, which legalized divorce, opposed polygamy, gave rights of inheritance to daughters. Amidst intense opposition of the code, a diluted version was passed via four different laws.

Succession Act-The Hindu Succession Act, 1956, originally did not give daughters inheritance rights in ancestral property. They could only ask for a right to sustenance from a joint Hindu family. But this disparity was removed by an amendment to the Act on September 9, 2005

The Hindu Marriage Act

Minority and Guardianship Act

Adoptions and Maintenance Act

Special Marriage Act:

- It was enacted in 1954 which provided for civil marriages outside of any religious personal law.
- Judicial interventions:

Shah Bano case (1985):-

A 73-year-old woman called Shah Bano was divorced by her husband using triple talaq (saying "I divorce thee" three times) and was denied maintenance. She approached the courts and the District Court and the High Court ruled in her favour. This led to her husband appealing to the Supreme Court saying that he had fulfilled all his obligations under Islamic law.

The Supreme Court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

Facts about the case:

- Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).
- Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife.

Impact – After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection

on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

Daniel Latifi Case:-

Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional, harmonised it with section 125 of CrPC and held that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

Sarla Mudgal Case:-

In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code (IPC).

John Vallamattom Case:-

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus in India. Mr Vallamattom contended that Section 118 of the act was discriminatory against Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional.

The Constitution of India on the Uniform Civil Code

Part IV, Article 44 of the Constitution states that "The State shall endeavour to secure the citizen a Uniform Civil Code throughout the territory of India".

However, Article 37 of the Constitution itself makes it clear the DPSP "shall not be enforceable by any court". Nevertheless, they are "fundamental in the governance of the country". This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

Other constitutional provisions relating to religious freedom and secularism are:

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and mortality.
- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.
- Article 26- Right to establish and administer religious institutions.
- Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.
- Article 28- deals with the issue of religious instruction in educational institutions.

The 42nd Constitutional Amendment Act inserted the word ‘secularism’ in the preamble. In the S.R.Bommai vs Union of India case, the Supreme Court held secularism as a basic feature of the constitution.

Goa Civil Code

Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn’t replaced after its liberation.

Features-

- The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).
- Every birth, marriage and death have to be compulsorily registered. For divorce, there are several provisions.
- Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.
- During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple.
- Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

However, the code has certain drawbacks and is not strictly a uniform code. For example, Hindu men have the right to bigamy under specific circumstances mentioned in Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30). For other communities, the law prohibits polygamy.

Uniform Civil Code and Arguments For & Against

Arguments in favour of the Uniform Civil Code:

- It will Integrate India- India is a country with many religions, customs and practices. A uniform civil code will help in integrating India more than it has ever been since independence. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct.
- Will Help in Reducing Vote Bank Politics- A UCC will also help in reducing vote bank politics that most political parties indulge in during every election.
- Personal Laws Are a Loophole- By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that.
- Sign of a modern progressive nation- It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been significant, our social growth has lagged behind. A UCC will help society move forward and take India towards its goal of becoming a truly developed nation.
- It will Give More Rights to Women- Religious personal laws are misogynistic in nature and by allowing old religious rules to continue to govern the family life we are

condemning all Indian women to subjugation and mistreatment. A uniform civil code will also help in improving the condition of women in India.

- All Indians Should be Treated the Same- All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians. UCC is the only way to ensure that all Indians are treated the same.
- It Promotes Real Secularism- A uniform civil code doesn't mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same and all citizens of India have to follow the same laws regardless of any religion.
- Change has been the law of nature-A minority of people should not be allowed to pick and choose the laws they want to be administered under. These personal laws were formulated in a specific spatiotemporal context and should not stand still in a changed time and context.
- Many provisions of specific personal laws are in violation of human rights.
- Article 25 and Article 26 guarantee the freedom of religion and UCC is not opposed to secularism.
- The codification and unification of the variegated personal laws will produce a more coherent legal system. This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.

Uniform Civil Code – Challenges in its Implementation

The task of actually devising a set of rules that will govern all communities is a very formidable and tedious one considering the vast range of interests and sentiments to be accounted for.

- **Misinformation about UCC** – Content of UCC has not been spelt out leading minorities to believe that it is a way of imposing majority views on them.
- **Lack of political will** due to the complexity and sensitivity of the issue.
- **Different religious communities** have different personal laws which lead to the politicization of the UCC debate.

Opponents of UCC argue that personal laws are derived from religious beliefs. They maintain that it is prudent not to disturb them, as this runs the risk of engendering a great deal of animosity and tension between various religious communities. Also, India being a secular country guarantees its minorities the right to follow their own religion, culture and customs under Article 29 and 30. They argue that implementing UCC will contravene these articles.

CHALLENGES

The task of actually devising a set of rules that will govern all communities is a very formidable and tedious one considering the vast range of interests and sentiments to be accounted for.

Misinformation about UCC -
Content of UCC has not been spelt out leading minorities to believe that it is a way of Hinduise them.

Some sections in Minorities claim it is a way of imposing majority views on them.

Lack of political will due to the complexity and sensitivity of the issue.

Change in laws in favour of women like Hindu inheritance Act has neither brought about any change in the percentage of property held by women nor in their status.

Different religious communities have different personal laws which lead to politicization.

SUGGESTIONS

In order to promote the spirit of uniformity of laws and accomplish the objectives enshrined in Art.44 of the Constitution, the following suggestions need immediate consideration.

A progressive and broadminded outlook is needed among the people to understand the spirit of such code. For this, education, awareness and sensitisation programmes must be taken up.

The Uniform Civil Code should act in the best interest of all the religions.

A committee of eminent jurists should be considered to maintain uniformity and care must be taken not to hurt the sentiments of any particular community.

The matter being sensitive in nature, its always better if the initiative comes from the religious groups concerned.

**DEVISHANKAR
FACULTY FOR
CIVIL
SERVICES-UPSC**

Suggestions for Implementing a Uniform Civil Code:

To realize the goals of the DPSP and to maintain the uniformity of laws, the following suggestions need immediate consideration:

- A progressive and broadminded outlook should be encouraged among the people to understand the spirit of the UCC. For this, education, awareness and sensitisation programmes must be taken up.
- The Uniform Civil Code should be drafted keeping in mind the best interest of all the religions.
- A committee of eminent jurists should be constituted to maintain uniformity and care must be taken not to hurt the sentiments of any particular community.
- The matter being sensitive in nature, it is always better if the initiative comes from the religious groups concerned.

The Way Forward for UCC: Gradual Change

India has a unique blend of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family-related law in a single statute book for all Indians which is acceptable to all religious communities who co-exist in India. However, a majority of them believe that UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood. The differences of opinion are on its timing and the manner in which it should be realized.

Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve a consensus. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with dignity, something which personal laws have so far failed to do.