



Just (Uniform) Civil Code

This editorial is based on [Strike a fine balance, have a just civil code](#) which was published in *The Hindu* on 24/06/2023. It talks about uniform civil code (UCC) and challenges in the implementation of UCC.

For Prelims: [Fundamental Rights](#), [Law Commission](#), [Directive Principles of State Policy](#), [Uniform Civil Code](#)

For Mains: Challenges in Implementation of Uniform Civil Code.

The Law Commission of India has asked for views and proposals from the public regarding the UCC. The **UCC has been a highly debated and politically charged issue** in India. The [Law Commission's](#) previous stance on the UCC was that **it was neither necessary nor desirable**. UCC is a **proposal to replace the personal laws** of various religious communities with a common set of laws for all citizens.

What is Uniform Civil Code?

▪ About:

- The Uniform Civil Code is **mentioned in Article 44 of the Indian Constitution**, which is part of the [Directive Principles of State Policy](#).
- These principles are **not legally enforceable but are meant to guide the state** in making policies.
 - It has been supported by some as a way **to promote national integration and gender justice**, but **opposed by others as a threat to religious freedom and diversity**.
- The **only state in India that has a UCC is Goa**, which retained its common family law **known as the Goa Civil Code** after it was liberated from Portuguese rule in 1961.
- The **rest of India follows different personal laws** based on their religious or community identity.

▪ Personal Laws in India:

- Currently, **not only Muslims but also Hindus, Jains, Buddhists, Sikhs, Parsis, and Jews** are governed by **their own personal laws**.
 - Personal laws are determined based on religious identity.
- The reformed Hindu Personal Law still incorporates certain traditional practices.
- Differences arise when Hindus and Muslims marry under the Special Marriage Act, where Hindus continue to be governed by Hindu Personal Law, but Muslims are not.

What are the Challenges in Implementing UCC?

▪ Diverse Personal Laws and Customary Practices:

- India is a country of diverse religions, cultures and traditions.
 - Each community has its own set of personal laws and customs that govern their civil matters.
 - These laws and practices vary widely across regions, sects and groups.
- To find a common ground and uniformity among such diversity is very difficult and complex.
- Moreover, many **personal laws are not codified or documented**, but are based on **oral or written sources** that are **often ambiguous or contradictory**.
- **Resistance from Religious and Minority Groups:**
 - Many religious and **minority group's view UCC as an infringement on their religious freedom** and cultural autonomy.
 - They fear that **UCC would impose a majoritarian or homogenous law** that would disregard their identity and diversity.
 - They also argue that **UCC would violate their constitutional rights under Article 25**, which guarantees the freedom of conscience and free profession, practice and propagation of religion.
- **Lack of Political Will and Consensus:**
 - There is a lack of political will and consensus among the government, the legislature, the judiciary and the civil society to initiate and implement UCC.
 - There are also apprehensions that **UCC could provoke communal tensions and conflicts** in the society.
- **Practical Difficulties and Complexities:**
 - UCC would require a **massive exercise of drafting, codifying, harmonising and rationalising** the various personal laws and practices in India.
 - It would **require a wide consultation and participation of various stakeholders**, including religious leaders, legal experts, women's organisations, etc.
 - It would also require a **robust mechanism of enforcement and awareness to ensure compliance** and acceptance of UCC by the people.

'DIRECTIVE PRINCIPLES CALL FOR UCC'

- SC favours UCC throughout India as envisaged under Article 44 of the Directive Principles in the Constitution
- Cites example of Goa, says the state has a UCC for all irrespective of their religion and no provision for triple talaq
- Says Muslim men whose marriages are registered in Goa cannot practise polygamy
- Says no attempt made to frame a UCC despite SC appeals in Shah Bano and Sarla Mudgal cases
- Hindu laws codified in 1956

“ It is interesting to note that whereas the founders of the Constitution in Article 44 in Part IV dealing with Directive Principles of state policy had hoped and expected that the state shall endeavour to secure for the citizens a uniform civil code throughout the territories of India, till date no action has been taken in this regard

—SUPREME COURT BENCH

What are the Benefits of UCC?

- **National Integration and Secularism:**
 - UCC would promote national integration and secularism **by creating a common identity and sense of belonging among all** citizens.
 - It would also **reduce the communal and sectarian conflicts that arise due to different personal laws**.
 - It would **uphold the constitutional values of equality, fraternity and dignity** for all.
- **Gender Justice and Equality:**
 - UCC would ensure gender justice and equality **by removing the discrimination and oppression faced by women** under various personal laws.
 - It would **grant equal rights and status to women in matters of marriage, divorce, inheritance, adoption, maintenance**, etc.

- It would also **empower women to challenge the patriarchal and regressive practices** that violate their **fundamental rights**.
- **Simplification and Rationalisation of the Legal System:**
 - UCC would simplify and rationalise the legal system **by removing the complexities and contradictions** of multiple personal laws.
 - It would **harmonise the civil and criminal laws by removing the anomalies and loopholes** that arise due to different personal laws.
 - It would **make the law more accessible and understandable** for the common people.
- **Modernisation and Reform of Outdated and Regressive Practices:**
 - UCC would modernise and reform the **outdated and regressive practices that are prevalent** in some personal laws.
 - It would **eliminate the practices that are against the human rights** and values enshrined in the Constitution of India, **such as triple talaq, polygamy, child marriage, etc.**
 - It would also **accommodate the changing social realities and aspirations** of the people.

What are the Important Cases Related to UCC?

- **Shah Bano Begum v. Mohammad Ahmed Khan (1985):**
 - The Supreme Court upheld the right of a Muslim woman to claim maintenance from her husband under Section 125 of the Criminal Procedure Code, even after the expiry of the Iddat period.
 - It also **observed that a UCC would help in removing contradictions** based on ideologies.
- **Sarla Mudgal v. Union of India (1995):**
 - The Supreme Court held that a Hindu husband cannot convert to Islam and marry another woman without dissolving his first marriage.
 - It also stated that a UCC would prevent such fraudulent conversions and bigamous marriages.
- **Shayara Bano v. Union of India (2017):**
 - The Supreme Court declared the practice of triple talaq as unconstitutional and violative of the dignity and equality of Muslim women.
 - It also recommended that the **Parliament should enact a law to regulate Muslim marriages and divorces.**

What Should be the Way Forward?

- **Unity and Uniformity:**
 - The recommended **UCC should reflect India's multiculturalism and preserve its diversity.**
 - **Unity is more important than uniformity.**
 - The Indian Constitution **allows for both integrationist and restricted multicultural approaches** to accommodate cultural differences.
- **Discussion and Deliberations with Stakeholders:**
 - Also, involving a broad range of stakeholders, including religious leaders, legal experts, and community representatives, in the process of developing and implementing the UCC.
 - This could help to ensure that the UCC takes into account the diverse perspectives and needs of different groups, and that it is seen as fair and legitimate by all citizens.
- **Striking a Balance:**
 - The Law Commission **should aim to eliminate** only those practices **that do not meet** the constitutional standards.
 - **Cultural practices** must **align with substantive equality and gender justice goals.**
 - The Commission should avoid contributing to reactive culturalism among different communities.
 - The **Muslim clergy should lead the reform process** of Muslim Personal Law by identifying discriminatory and oppressive issues and considering progressive views.
- **Constitutional Perspective:**

- The Indian Constitution upholds the right to cultural autonomy and aims for cultural accommodation.
- **Article 29(1) protects the distinctive culture** of all citizens.
- Muslims **need to question whether practices like polygamy and arbitrary unilateral divorce** align with their cultural values.
- The **focus should be on achieving a just code** that promotes equality and justice.

Drishti Mains Question:

Analyse the constitutional, legal and socio-cultural implications of implementing a uniform civil code (UCC) in India. How can the challenges and opportunities of UCC be addressed in a democratic and secular manner?

UPSC Civil Services Examination Previous Year's Question (PYQs)

Prelims:

Q1. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India: (2012)

1. Securing for citizens of India a uniform civil code
2. Organising village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Ans: (b)

Q2. A legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India?

- (a) Article 14
- (b) Article 28
- (c) Article 32
- (d) Article 44

Ans: (a)

Mains

Q. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (2015)