



Uniform Civil Code

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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 fulfill 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.