

Uniform Civil Code must be nationwide, and involve the abolition of all regressive laws.

The reported move to frame a Uniform Civil Code in certain states is the talk of the town. A state-level UCC, however, seems to be prima facie incompatible with Article 44 of the Constitution which proclaims that the “State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”.

The all-India character and extent of the proposed code inherent in this phraseology is too conspicuous to be overlooked. Under the Constitution, family and succession laws are in the concurrent jurisdiction of the Centre and states, but a law to be equally applicable in the entire country can be enacted by Parliament alone. In many cases relating to minorities, the apex court has frowned on continued inaction in this regard, but the addressee of its concern has always been the Centre.

In furtherance of the constitutional goal, Parliament enacted a civil marriage law in 1954, the Special Marriage Act. Not replacing any community-specific law, it was made available to all citizens as a secular alternative. Any man and woman, whether professing the same or different religions, could opt for a civil marriage.

Existing religious marriages could also be voluntarily converted into civil marriages by registration under the Act. Section 21 of the Act laid down that all couples married under its provisions and their descendants will, in regard to their properties, be governed by the religion-neutral chapter on inheritance in the Indian Succession Act of 1925.

The Special Marriage Act and the Indian Succession Act together were, thus, to constitute a UCC of an optional nature for all Indians alike. The law minister of the time, C C Biswas, had called this “first step towards a UCC”.

To regulate religious marriages among the Hindus, Buddhists, Jains and Sikhs, a new law called the Hindu Marriage Act was enacted in 1955. A Hindu Succession Act came in force next year for the properties of those covered by the 1955 Act. Section 29 (4) of the Act clarified that “Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954”. The 1954 Act and the Indian Succession Act as secular laws thus remained available to those governed by Hindu law even after the enactment of the Acts of 1955-56.

The Special Marriage Act and the Indian Succession Act (attached to it) do not apply in the entire country — nor for that matter do the Hindu law Acts of 1955-56. When Goa, Daman and Diu were liberated from Portuguese rule in early 1960s, a Parliamentary law had provided for continued application of the archaic Portuguese Civil Code of 1867 in those territories “until amended or repealed” by a competent authority. That 155-year old foreign law, no more in force even in its parent country, still governs Indian citizens in these parts of India. In Puducherry — liberated even before Goa, Daman and Diu — a sizable section of citizens called Renoncants (Indians whose ancestors had during the French rule abandoned personal law) are still governed by the 218-year old French Civil Code of 1804. Provisions are found in all central family law Acts of India, excluding them from their scope.

Continued application of anachronistic foreign laws to Indian citizens in certain parts of the country stares in the face of the constitutional goal of a UCC. Supposing that such a code can be enacted at the state-level, a beginning should be made by repealing and replacing them with the central marriage and succession laws in force everywhere else in the country. Taking this rational step should pose no problem as Goa is under the rule of the party in power at the Centre and Daman, Diu and Puducherry (as Union Territories) are also within its jurisdiction. Enforcing central family laws in these places will be all the more logical in view of the fact that in 2019, the government did extend them to Jammu, Kashmir and Ladakh, to replace their local variants — though unlike the Portuguese and French laws, they were neither of foreign origin nor antiquated.

Furthermore, the Special Marriage Act is patently discriminatory in certain matters. Its list of prohibited degrees in marriage (relatives one cannot marry) is a copy of that under the Hindu Marriage Act but, unlike that Act, it does not recognise the rule prohibiting marriages within the limits of sapinda relationship (covering distant cousins). So, a Hindu can freely marry a second cousin under the Act, though his religion prohibits it, but a Muslim cannot marry under it a first cousin which his religion allows and is a common practice in the community. To make things worse, under the Hindu Marriage Act, the rule of prohibited degrees can be relaxed on the basis of custom but not under the Special Marriage Act.

During the Emergency days, the Special Marriage Act was amended to provide that if both parties marrying under it were Hindu their properties would be governed — not by the Indian Succession Act as originally provided — but by the Hindu Succession Act. This retrograde step has never been questioned by any court. On the contrary, the objection raised to it in the Maneka Gandhi case (1985) was met by a Delhi High Court judge with spirited defence.

There is nothing wrong in placing the whole nation under a single law of family rights and succession. This must be done in compliance with the constitutional guarantees for equality before the law and equal protection of laws. The provision of the Special Marriage Act relating to prohibited degrees in marriage should be suitably amended, and its 1976 amendment restricting the applicability of the Indian Succession Act must be set aside. The Act, so amended, should be extended to every part of the country. The day this is done, the constitutional promise of a “uniform civil code for the citizens throughout the territory of India” will stand duly fulfilled.

IN THE NEWS

Uniform Civil Code Law

What is?

- If we understand the Uniform Civil Code law in simple words, then it would mean that a common law for every citizen living in India.
- Then why should that person be of any religion or caste. Under the Uniform Civil Code Act, the same law will apply to all religions in marriage, divorce and division of property.
- Under Article 44 of the Constitution, the state should endeavor to secure for its citizens a Uniform Civil Code (UCC) throughout India. However, no action has been taken in this regard till date.

What is Article 44?

- Article 35 was included in the draft constitution as Article 44 of the adopted constitution and it was expected that when the nation was unified, a Uniform Civil Code would come into existence.
- Article 44 directs the state to make a 'uniform civil code' for all religions at an appropriate time.
- Overall, the purpose of Article 44 is to eliminate the problem of discrimination against weaker sections and to increase coordination between different cultural groups throughout the country.

Why was it needed?

- Different laws of different religions put a burden on the judiciary. With the implementation of Uniform Civil Code, this problem will be overcome and the cases pending in the courts for years will be decided soon.
- Marriage, divorce, adoption and property division will have the same law for all, irrespective of religion. At present, people of every religion deal with these matters under their personal laws.
- The concept of Uniform Civil Code is that it will strengthen national unity through equality in law for all. With the implementation of a uniform law on every Indian in the country, there is a hope of improvement in the politics of the country.

What would be the benefits?

- Simplification of laws: Uniform code will simplify complex laws relating to various issues including marriage, inheritance and succession. As a result, uniform civil laws would apply to all citizens, regardless of religion they profess.
- Gender Justice: If the Uniform Civil Code is implemented, then all existing personal laws will be abolished, which will also deal with the problem of gender discrimination present in those laws.
- Protection to vulnerable sections of the society: The objective of Uniform Civil Code is to provide social security to vulnerable sections including women and religious minorities, while uniformity will also strengthen the nationalist sentiment in the country.

- ➔ Strengthening the principle of secularism: The word 'secular' is embodied in the Preamble of the Indian Constitution and a secular republic should make uniform laws for all citizens instead of differentiated rules on the basis of religious practices.

Opponent's argument

- ➔ Those opposing the Uniform Civil Code say that it is like applying Hindu law to all religions.
- ➔ Article 25 of the Indian Constitution, which protects the freedom to profess and propagate any religion, is against the concept of equality enshrined in Article 14 of the Indian Constitution.
- ➔ There should be no interference in personal law in a secular country. If there is a uniform civil code, then religious freedom should be taken care of.

In which countries is it applicable?

- ➔ There are many countries like America, Ireland, Pakistan, Bangladesh, Malaysia, Turkey, Indonesia, Sudan, Egypt, which have implemented Uniform Civil Code. Some human rights organizations do not agree with the Uniform Civil Code of some of these countries.



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Expected Question (Prelims Exams)

Q. Consider the following statements:-

1. Article 44 is part of the Directive Principles of Policy of the Constitution, in which certain duties have been prescribed for the state (nation).
2. Article 44 directs the state to make a 'uniform civil code' for all religions at an appropriate time.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) 1 and 2 both
- (d) Neither 1 nor 2

Expected Question (Mains Exams)

Q. What is the significance of Special Marriage Act and Uniform Civil Code? Also examine its relevance to a secular country like India and the challenges faced in its implementation. (250 Words)

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Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.