

"Recent observations by the Supreme Court have put the spotlight back on the debate over a Uniform Civil Code. What would such a Code seek to achieve, and what have been the arguments for and against it?"

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 a Uniform Civil Code?

A Uniform Civil Code 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 Uniform Civil Code 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 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 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.

GS World Team...

Uniform Civil Code

What is it?

- Article 44 of the Constitution discusses the Uniform Civil Code. This article related to the Directive Principles of State Policy states that 'the State shall endeavor to obtain a uniform civil code for citizens in all the territories of India'.
- Every citizen of the country, irrespective of their religion or caste, has a common law for them in the Uniform Civil Code.
- In the Uniform Civil Code, the same law applies to all religions in marriage, divorce and property-sharing etc. different rules for all religions are present in the country now.
- At this time people of many religions in the country follow their personal laws in marriage, property and adoption etc.
- The Muslim, Christian and Parsi communities have their own personal laws, while the Hindu civil law includes Hindus, Sikhs, Jains and Buddhists.

Arguments in favor

- The word Secularism was inserted in the Preamble of the Indian Constitution through the 42nd Amendment. This makes it clear that the purpose of the Indian constitution is to end any discrimination on religious grounds with all citizens of India, but due to the non-implementation of the Uniform Civil Code till the present time, a large section of India is still in religious laws and is deprived of its rights.

- There are also maladies like gender inequality among the concepts of rule of law in fundamental rights.
- According to the rule of law, there should be a uniform law for all citizens, but even after so many years of independence, a large section of the population is fighting for their fundamental rights.
- Thus, the non-implementation of the Uniform Civil Code is a violation of the rule of law and the Preamble of the Constitution.
- To violate the political equality of a class in the name of respect for social culture is an injustice to the constitution as well as to culture and society because women and men get equal rights under the fundamental rules of every culture and civilization but in the course of time also inequality is created by misrepresenting these rules.
- The violation of the rights of any section of the society due to religious practices should be stopped as well as should be treated with equality under the concept of equality before the law.
- In the environment of globalization, the role of women has become important in the society, so any lack in their rights and their freedom is detrimental to their personality and society.
- Many times governments avoid modification in these religious issues due to political gains, so governments should also look at such matters from the point of view of individual rights rather than religious issues.
- The decision given by the Supreme Court in the

Shahbano case was overturned by the then Rajiv Gandhi government through a law of Parliament under religious pressure.

- The Supreme Court has made remarkable efforts for equality in society through judicial decisions like equal rights on property and equal rights of temple entry, so the government and the court should make concerted and sincere efforts to implement the Uniform Civil Code.

Argument in opposition

- The issue of the Uniform Civil Code has shifted from a social or personal rights issue to a political issue, so while on the one hand some political parties are making political appeasement through this matter, on the other hand many political parties are going through this issue attempting religious polarization.
- Change in matters of Hinduism or any other religion is not done without majority support of that religion, so it is necessary to attempt mental change at the level of religious groups along with political and judicial processes.

- The speciality of composite culture should also be given priority as a state of unrest can be created due to dissatisfaction of any religion in the society.

What is the need?

- The judiciary is burdened by different laws of different religions. The implementation of the Uniform Civil Code will get rid of this problem and the cases pending in the courts for years will be decided soon.
- Marriage, divorce, adoption and property sharing will have the same law for everyone, irrespective of their religion. Presently, people of all religions settle these matters under their personal laws.
- Unity in law for all will increase unity in the country, and the country where there is unity among the citizens, there is no disharmony, the country will move rapidly on the path of development.
- The implementation of uniform law on every Indian in the country will also affect the politics of the country and political parties will not be able to do vote-bank politics and there will be no polarization of votes.

Expected Questions (Prelims Exams)

1. Recently the Supreme Court asked the government to consider the implementation of Uniform Civil Code. With reference to the Uniform Civil Code, consider the following statements-

1. The Uniform Civil Code is mentioned in Article 46 of the Constitution.
2. Uniform Civil Code is one of the Directive Principles of State Policy.
3. Article 31 (C) provides that any law made to implement any Directive Principles cannot be challenged on the grounds of violation of Articles 14 and 19.

Which of the above statements are correct?

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

Expected Questions (Mains Exams)

Q. "Non-implementation of Uniform Civil Code in India has to do less with constitutional complexity, but more with lack of political will." Examine this statement in the context of a recent Supreme Court comment on the Uniform Civil Code. (250 Words)

Note: Answer of Prelims Expected Question given on 17 Sept. is 1 (d)