

Uniform Civil Code (UCC)

What is the issue?

- While hearing a matter relating to properties of a Goan recently, the Supreme Court described Goa as a “shining example” with a Uniform Civil Code (UCC).
- It also observed that the founders of the Constitution had hoped and expected a UCC for India but there has been no attempt at framing one.

What is a Uniform Civil Code?

- A Uniform Civil Code (UCC) 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**, a directive principle of the Constitution says that the state shall endeavour to secure a UCC for the citizens throughout the territory of India.
- The directive principle 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 in Article 44, this phrase is absent.
- 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 in **Minerva Mills (1980)** said that the Indian Constitution is found on the bed-rock of the balance between the fundamental rights and directive principles.
- It also added that to give absolute primacy to one over the other is to disturb the harmony of the Constitution.
- However, **Article 31C** 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, Transfer of Property Act, Partnership 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 UCC, they would have given exclusive jurisdiction to Parliament, by adding “personal laws” in the Union List. But it’s in the Concurrent List.
- In 2018, 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.
- **British Portuguese and the French legal traditions** 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 governed by a customary law, which was way closer to Hindu law than to the Muslim Personal Law in the rest of the country.
- In the Northeast, there are more than 200 tribes with their own varied customary laws. The Constitution itself protects local customs in Nagaland, Meghalaya and Mizoram.
- Even reformed Hindu law protects customary practices.

How does the idea of a UCC 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 UCC in the fundamental rights chapter.
- The matter was settled by a vote. The fundamental rights sub-committee held that the provision was outside the scope of fundamental rights.
- Therefore, the UCC was made less important than freedom of religion.

What was the Muslim members' view in the Constituent Assembly?

- Some sought to immunise Muslim Personal Law from state regulation.
- **Mohammed Ismail** 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 ones.
- **B R Ambedkar** said that no government can use its provisions in a way that would force the Muslims to revolt.
- **Alladi Krishnaswami**, who was in favour of a UCC, conceded that it would be unwise to enact UCC ignoring strong opposition from any community. But, 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.

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