

## Why in news?

1. Time and again numerous cases and public interest Litigations have been filed in the Honorable supreme Court and various High courts regarding the need for a uniform civil code in India .
2. The Honorable Supreme Court in various cases questioned the government about its mandate on framing the Uniform Civil Code to regulate all religions by the same yardstick.
3. Widely debated topic across print and social media.

## What is uniform civil code?

By uniform civil code, it is meant that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly.

They cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession of property. It is based on the premise that there is necessarily no connection between religion and personal law in a civilized society.

Therefore, Uniform civil code is a proposal to replace the [personal laws](#) based on the scriptures and customs of each major [religious community in India](#) with a common set of governing laws for every citizen.

**Historical perspective** - The debate for a uniform civil code dates back to the [colonial period in India](#).

### **Pre-Independence(colonial era)**

1. **The Lex Loci Report of October 1840-** It stressed the importance and necessity of uniformity in codification of Indian law, relating to crimes, evidences and contract. But, it also recommended that personal laws of Hindus and Muslims should be kept outside such codification.
2. **Queen's 1859 Proclamation-** It promised absolute non-interference in religious matters.

**So while criminal laws were codified and became common for the whole country, personal laws continue to be governed by separate codes for different communities.**

### **Post-Colonial era (1947-1985)**

During drafting of the constitution prominent leaders like Nehru, Ambedkar pushed for a uniform civil code. However they ended up proposing the uniform civil code into the directive principles of the state policy (article 44) mainly due to opposition from Muslim fundamentalists, lack of awareness among the masses and the time for its imposition then, was not proper.

*'I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field.'*-  
**Dr. B R Ambedkar, Constituent Assembly Debates**

### **Some of the reforms of this period were-**

**Hindu code bill** -The bill was drafted by Dr.B R Ambedkar to reform Hindu laws, which legalized divorce, opposed polygamy, gave inheritance rights to daughters. Amidst intense opposition of the code, a diluted version was passed via four different legislations.

1. The Hindu Marriage Act,
2. Succession Act,
3. Minority and Guardianship Act
4. Adoptions and Maintenance Act.

After passing of the Hindu Code bill, the personal laws in India had two major areas of application: the common Indian citizens and the [Muslim community](#), whose laws were kept away from any reforms and most debated aspect were provisions of triple talaq and polygamy in Muslims.

**Special marriage act** was enacted in 1956 which provided for civil marriages outside of any religious personal law.

### **Post 1985-**

The debate for a uniform civil code, with its diverse implications and concerning [secularism in the country](#), is one of the most controversial issues in twenty-first century Indian politics. The honorable supreme court in its various judgements have pressed for framing the Uniform Civil Code to regulate all religions by the same yardstick.

### **Judicial interventions-**

1. **Shah Bano case (1985)**

### **Facts-**

1. Under Muslim personal law, maintenance was to be paid only till period of iddat. (three lunar months-roughly 90 days ).
2. Section 125 of Crpc (criminal procedure code) that applied to all citizens, provided for maintenance of wife.

A 73 year old woman called Shah Bano was divorced by her husband by triple talaq (saying "I divorce thee" three times) and was denied maintenance. She approached the courts and the District Court and high court ruled in her favour that led to her lawyer husband moving to the supreme court saying that he had fulfilled all his obligations under Islamic law.

The Supreme court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the [All India Criminal Code](#), which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

### **Impact-**

After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure, passed The Muslim Women's (Right to protection on divorce ) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

### **2. Daniel Latifi case**

Muslim Womens Act (MWA) was challenged on the grounds that it violated right to equality under article 14& 15 as well as right to life under article 21.

Supreme court while holding the law as constitutional, harmonised it with section 125of Crpc and held that amount received during iddat period should be sufficient to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to provision for maintenance for a lifetime or until she is remarried.

### **3. Sarla Mudgal case**

In this case,the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise second marriage.

The court held that the Hindu marriage solemnized under the hindu law can only be dissolved on any of the grounds specified under the Hindu marriage act 1955.conversion to Islam and marrying again, would not by itself dissolve the hindu marriage under the act and thus , a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian penal code.

**Justice Kuldip Singh, while delivering the landmark judgment remarked “When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, any more, the introduction of ‘uniform civil code’ for all citizens in the territory of India”.**

#### **4. John Vallamattom case**

In this case, a priest from Kerala, John Vallamattom challenged the Constitutional validity of Section 118 of the Indian Succession Act, which is applicable for non-Hindus on India. Mr. John Vallamattom, contended that Section 118 of the said act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purposes by will. The bench struck down the section as unconstitutional.

### **What Does Our Constitution Say About Uniform Civil Code?**

**K.M. Munshi said in the Constituent Assembly, specifically quoting the examples of Egypt and Turkey, “Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code”.**

**Part IV, Article 44 of the constitution- "The State shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India".**

However, [Article 37](#) of the [Constitution](#) itself makes clear, that the directive principles “shall not be enforceable by any court”. Nevertheless, they are “fundamental in the governance of the country”. This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

#### **Other constitutional provisions relating to religious freedom, secularism are-**

- **Art 15- No discrimination on grounds of religion, race, caste, sex, place of birth only.**
- **Art 25- Freedom of conscience and free profession, practice and propagation of religion subject to reasonable restrictions on the grounds of public order, health and mortality.**
- **Art 25 (2)-provides for regulating secular activities associated with religious practices and social welfare and reform.**
- **Art 26- Right to establish and administer religious institutions.**
- **Art 27- Prohibit state from levying tax proceeds of which are used for the benefit of a particular religion.**

- Art 28- deals with issue of religious instruction in educational institutions.

**42nd Constitutional Amendment Act inserted the word 'secularism' in preamble. In S.R.Bommai vs Union of India case, supreme court held secularism as a basic feature of the constitution.**



# Uniform CIVIL CODE

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## THEY COVER AREAS LIKE



Marriage



Divorce



Maintenance



Inheritance



Adoption



Succession of property

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## CONSTITUTIONAL PROVISION

### Part IV, Article 44 of the constitution

The State shall endeavor to secure the citizen a Uniform Civil Code throughout the territory of India

## Arguments in favor of UCC-

- **It Will Integrate India-**India is a country with many religions, customs and practices. A uniform civil code will help in integrating India more than it has ever been since independence. It will help in bringing every Indian, despite his caste, religion or tribe, under one national civil code of conduct.
- **Will Help in Reducing Vote Bank Politics-** A uniform civil code will also help in reducing vote bank politics that most political parties indulge in during every election.
- **Personal Laws Are a Loop Hole-** By allowing personal laws we have constituted an alternate judicial system that still operates on thousands of years old values. A uniform civil code would change that.
- **Sign of modern progressive nation-** It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been the significant in the world our social growth has lagged behind. A uniform civil code will help the society move forward and take India towards its goal of becoming a developed nation.
- **It will Give More Rights to the Women-** Our society is patriarchal and misogynistic in nature and by allowing old religious rules to continue to govern the family life we are condemning all Indian women to subjugation and mistreatment. A uniform civil code will also help in improving the condition of women in India.
- **All Indians Should be Treated Same-** All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians. Uniform civil code is the only way to ensure that all Indians are treated same.
- **It Promotes Real Secularism-** A uniform civil code doesn't mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same and all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs.
- **Change has been law of nature-**A minority of people should not be allowed to pick and choose the laws they want to be administered under and these personal laws were formulated in specific spatio-temporal context and should not stand still in a changed time and context.
- Many provisions of personal laws are violations of human rights.
- Article 25 and 26 guarantee freedom of religion and UCC is not opposed to secularism.
- The codification and unification of the variegated personal laws will produce a more coherent system of laws. This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.

## Challenges-

- The task of actually devising a set of rules that will govern all communities is a very formidable and tedious one considering the vast range of interests and sentiments to be accounted for.
- Misinformation about UCC - Content of UCC has not been spelt out leading minorities to believe that it is way of imposing majority views on them.
- Lack of political will due to the complexity and sensitivity of the issue.
- Change in laws in favour of women like Hindu inheritance Act has neither brought about any change in the percentage of property held by women nor in their status.

- Different religious communities have different personal laws which lead to politicization.

Opponents of UCC argue that personal laws are driven by and derived from religious beliefs. it may be prudent not to disturb them by enacting a common code, as this runs the risk of engendering a great deal of animosity and tension between various religious communities .Also India being a secular country guarantees its minorities the right to follow their own religion, culture and customs under Article 29 and 30. But implementing a Uniform Code will hamper India's secularism.

Due to these, UCC has become next to impossible.

### THE GOAN MODEL

Goa is the the only Indian state to have a uniform civil code in the form of common family law.

The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation.

#### **Features-**

- The Uniform civil code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).
- Every birth, marriage and death has to be compulsorily registered. For divorce there are severe provisions.
- Muslims that have their marriages registered in Goa cannot practice polygamy or divorce by pronouncing "talak" thrice.
- During the course of marriage all the property and wealth owned or acquired by each spouse is commonly held by the couple.
- Each spouse in case of divorce is entitled to a half share of the property and in case of death the ownership over half of the property is retained by the other.
- The parents cannot [disinherit](#) their children entirely. At least half of their property has to be passed on to the children compulsorily. This inherited property must be shared equally among the children.

However the code has certain drawbacks and is not strictly a [uniform civil code](#). For example: The [Hindu](#) men have the right to [bigamy](#) under specific circumstances mentioned in Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30). For other communities, the law prohibits bigamy.



## SUGGESTIONS

**In order to promote the spirit of uniformity of laws and accomplish the objectives enshrined in Art.44 of the Constitution, the following suggestions need immediate consideration.**

- A progressive and broadminded outlook is needed among the people to understand the spirit of such code. For this, education, awareness and sensitisation programmes must be taken up.
- The Uniform Civil Code should act in the best interest of all the religions.
- A committee of eminent jurists should be considered to maintain uniformity and care must be taken not to hurt the sentiments of any particular community.
- The matter being sensitive in nature, its always better if the initiative comes from the religious groups concerned.

## CHALLENGES

The task of actually devising a set of rules that will govern all communities is a very formidable and tedious one considering the vast range of interests and sentiments to be accounted for.

**Misinformation about UCC -**  
Content of UCC has not been spelt out leading minorities to believe that it is a way of Hinduise them.

Some sections in Minorities claim it is a way of imposing majority views on them.

Lack of political will due to the complexity and sensitivity of the issue.

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## Way forward- gradual change

India is a unique blend and merger of codified personal laws of Hindus, Muslims, Christians, Parsis. There exists no uniform family related law in a single statutory book for all Indians which is acceptable to all religious communities who co-exist in India. However majority of them believe that UCC is definitely desirable and would go a long way in strengthening and consolidating the Indian nationhood but differ on its timing and the manner in which it should be realized.

Instead of using it as an emotive issue to gain political advantage, political and intellectual leaders should try to evolve an consensus on the issue. The question is not of minority protection, or even of national unity, it is simply one of treating each human person with the dignity that he deserves; something which personal laws have so far failed to do.

**"The need for common civil code though it is debated at different levels still it remains a mirage for want of agreement among different groups. There are many areas in which religious laws can be reconciled with secular law without there being a conflict of each other. It is possible to have a common code at least for the marriage law in India."- Kochi high court**

## **Approach for the Civil Services Examination**

### In prelims

- Polity-religion, secularism, personnel laws etc

### General Studies Paper II

- Indian polity

### Practice Questions

#### Prelims-

Which of the following statement is /are correct

- a) Part IV of the constitution deals with uniform civil code
- b) Uniform civil code has been recommended to ensure national integration.
- c) Goa is the only state in India to have some form of uniform civil code

d) Part IV of the constitution is justiciable in nature

**Essay** -The Need for a Uniform Civil Code in a Secular India.

**General Studies paper II-**

a) 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.

b) There is no necessary connection between religion and personnel laws on the one hand and civil laws and personnel laws are different on the other. In this context discuss the need for a uniform civil code and the different challenges associated with this.