

Constituent Assembly Debate on Uniform Civil Code

Constituent Assembly debates are very important sources of material for the UPSC exam. In this article, we bring you the highlights of the Constituent Assembly debates on the topic of untouchability for the [IAS exam](#) polity, governance, and social issues segments.

CA Debate on Uniform Civil Code

Soon after independence, the question of the position of personal laws got embroiled into the muddy waters of national politics. On the floor of the [Constituent Assembly](#), for about two years, the issue suffered convulsions owing to the utterances of progressive legislators, dissenting voices of the so-called conservative legislators, apprehensions stated by the spokesmen of the minority communities, and brickbats thrown from outside by law-men as well as laymen.

- The [Constituent Assembly Debates](#) in the constitution-making process revealed that the constitution makers debated the concept, relevance and utility of the Uniform Civil Code.
- The Muslim members of the Constituent Assembly opposed the move with all possible intensity at their command.
- In this background, the arguments for and a quest for the objective evaluation of the [Uniform Civil Code](#), will not be out of place in India which is known for its religious, cultural and lingual diversities.

The Constituent Assembly had its first meeting in December 1946.

- The framers of the Constitution envisioned establishing a Sovereign Democratic Republic - ideas based on the ideas of justice, liberty, equality and fraternity.
- Later on, in 1976, the words 'secularism' and 'socialism' were added to the Preamble.
- Fundamental rights, especially regarding the [right to freedom of religion](#), were designed in our Constitution before its commencement in 1950.
- Since then, in the Constituent Assembly as well as on every platform, a great deal of discussion on personal laws has taken place repeatedly.
- Even prior to the commencement of the Constitution much was debated in the Constituent Assembly for and against the personal laws.

The Constituent Assembly debated the Uniform Civil Code under Article 35.

- **Mohammad Ismail** from Madras moved the following proviso for addition to Article 33 which provided that 'any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law'.
 - He advocated that the right to adhere to one's own personal laws was one of the fundamental rights.
 - He asserted that personal laws were a part of the way of life of the people.
 - In his evaluation, personal laws were the part and parcel of religion and culture.
 - Any interference with the personal laws, in his view, would tantamount to interference with the very way of life of those who had been observing such laws from generation to generation.
 - He elucidated that India was emerging as a secular state and it must not do anything which hinders the religious and cultural ethos of the people.
 - To strengthen his argument, he cited precedents of Yugoslavia, the Kingdom of Serbs, Croats and Slovenes which were obliged under treaty obligations to guarantee to Muslims being in minority in the matter of family laws and personal status.

- To enrich his arguments, he named similar protective clauses of other European constitutions which dealt with minorities.
- However, he pointed out that such clauses were narrow in scope as they dealt with any group, section or community of people and were not confined to minorities only.

Mahboob Ali Beg emphasized that the civil code spoken of in Article 35 did not include family law and inheritance but since some people have doubts about it, it should be made clear by a proviso to assure that the civil code would cover the transfer of property, contract, etc., but not matters regulated by personal laws.

M.A. Ayyangar, a member of the Constituent Assembly, intervened and remarked on it as a matter of contract.

- Ayyangar tried to put his argument forcefully and asserted that the matrimonial contract was enjoined by the Holy Quran and the Traditions of the Prophet.
- He stated that the Indian concept of secularism tolerated the existence of all religions with equal honour and dignity.
- He emphasised that in a secular state like India, different communities must have the freedom to practice their own religion and culture, and they should be allowed to observe their own personal law.

Moreover, organisations - both of Hindus and Muslims, questioned the competence of the Constituent Assembly to interfere with religious laws. Article 35 was thus, antagonistic to religious freedom.

Many members of the Hindu community expressed their opinions contrary to the views of Muslim members.

K.M. Munshi expressed his views stating that even in the absence of Article 35 it would be lawful for Parliament to enact a uniform civil code, since the article guaranteeing religious freedom gave to the state power to regulate secular activities associated with religion.

- In some Muslim countries, for example, Turkey and Egypt, personal laws of religious minorities were not protected.
- Moreover certain communities amongst Muslims, for example, Khojas and Memons did not want to follow the Shariat, but they were made to do so under the Shariat Act, 1937.
- European countries had uniform laws applied even to minorities. Religion should be divorced from personal law.
- The Hindu Code Bill did not conform in its provisions to the precepts of Manu and Yajnavalkya.
- In essence, personal laws discriminated between person and person on the basis of sex which was not permitted by the Constitution.

A.K. Iyer, a member of the Constituent Assembly, supported K.M. Munshi and urged the Assembly to pass the article dealing with the Uniform Civil Code.

Dr. B.R. Ambedkar, although, did not accept the amendments and defended the right of the state to interfere in the personal laws of different communities.

- He defended the laws of different communities. He defended the arguments of Hindu members of the Constituent Assembly.
- But at the same time, he also gave some assurances to the Muslim members and he explained that the proposal was creating only a 'power' not an 'obligation'.
- Besides, Dr. Ambedkar persuaded the Muslim members '*not to read too much into Article 44*'.
- He affirmed that even if the Uniform Civil Code was implemented, it would be applicable to those who would consent to be governed by it.

Conclusion

There is no doubt that the Constitution of India empowers the Parliament to enact a Uniform Civil Code. After the enactment of the Hindu Code, the demand for reforms in Muslim Personal Laws and the Uniform Civil Code gained momentum. Constitutionally all laws including personal laws can be changed or amended. In reality, personal laws are placed within the purview of Parliament and legislature. So far as the question of recognition of personal laws is concerned, the Constitution does acknowledge the existence and continuation of such laws under Entry 5 List III of Seventh Schedule, together with Article 372.