



PERSONALITY TEST PROGRAMME 2019

(Current Affairs Interview Issues)

UNIFORM CIVIL CODE

The call for a **Uniform Civil Code (UCC)** has long featured in the political and legislative debates ever since before the days of formulation of the Constitution. Time and again, the Supreme Court has also been asserting the need for a UCC. Recently, Supreme Court described **Goa (with a common family law)** as a “**shining example**” where “uniform civil code is applicable to all, regardless of religion except while protecting certain limited rights”. **21st Law Commission** also submitted a consultation paper on Reforms in Family Laws in India.

About Uniform Civil Code

- A Uniform Civil Code seeks to provide one law for the entire country, applicable to all religious communities in their personal matters such as marriage, divorce, inheritance, adoption etc.
- A Uniform Civil Code seeks not only to ensure uniformity of laws between communities, but also uniformity of laws within communities ensuring equalities between the rights of men and women.
- In 1941, BN Rau Committee recommended a codified Hindu law, which would give equal rights to women in keeping with the modern trends of society.
- Tracts of the Constituent Assembly debates reveal that there was no consensus in the Constituent Assembly about what a potential uniform civil code would entail.
 - While many thought **uniform civil code would coexist alongside personal law systems**, while others thought that it was to replace personal law.
 - There were yet others who believed that a uniform civil code would **deny freedom of religion**.
 - It was due to this uncertainty about what exceptions were acceptable as ‘freedoms’ and what exceptions would in fact deny this very freedom that led the assembly to contain the provision of uniform civil code in Article 44 of the constitution among Directive Principles of State Policy rather than Fundamental Rights.
- **Article 44 of the Directive Principles of State Policy (Part 4) of the Indian Constitution** lays down that the state shall **endeavour** to secure a **Uniform Civil Code** for the citizens throughout the territory of India.
- The codification of personal laws has historically generated protests. The Hindu Code Bill, one of the foremost pieces of social legislation, had triggered enormous opposition.

History of Uniform Civil Code in Goa

- Portuguese during their rule in Goa and Daman & Diu had separately codified local customs of each of these territories.
- After liberating the territories in 1961 & integrating them into a Union Territory, the Indian government ruled that the Portuguese laws would continue until amended or repealed by a competent authority; among these was the Portuguese civil code, 1867.
- Under this Code practised in Goa,
 - a Muslim man whose marriage is registered in the State cannot practice polygamy,
 - a married couple share property equally,
 - pre-nuptial agreements are the order of the day & assets are divided equally between the man and woman on divorce.

Need of Uniform Civil Code

- **Ensuring equality:** Presently, in India, **different communities** are governed by **different Personal laws** like **Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956 & Hindu Minority & Guardianship Act (1956)**. Similarly, Muslims, Parsis and Christians are governed by their own personal laws.
 - Even **within a religion**, there is **not a single common personal law** governing all its members. E.g. for **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).
 - It can be argued that Personal Law system violates the **principle of equality** of the Constitution.



- Also the Uniform Civil Code will act as a means to achieve clarity, simplicity and intelligibility in personal laws.
- Supreme Court in Indian **Young Lawyers Association v. State of Kerala (2018)** stated that personal/customary law comes under the ambit of Article 13. No body of practices can claim supremacy over the Constitution and its vision of ensuring the sanctity of dignity, liberty and equality.
- **Needed for national integration:** Uniform Civil Code will separate religion from **social relations and personal laws**, ensuring equality and thus harmony in the society.
 - In **Mohd. Ahmed Khan v Shah Bano Begum (1985)**, Supreme Court observed that, “A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies.”
 - It will help in **integration of India**, as a lot of the animosity is caused by preferential treatment by the law of certain religious communities. This could in time **induce custodians of faith** to look inwards and seek to codify and reform age-old personal laws in conformity with **current modernizing and integrative tendencies**.
- **Gender Justice:** UCC will **promote gender justice** by removing the inbuilt discriminatory provisions of personal laws.
 - Under the Hindu law, the Mitakshara branch of law denied to a Hindu daughter a right by birth in the joint family estate and this flowed logically from the fact that her place in the paternal family was only temporary as she was belonged to her husband’s family on marriage.
 - Islamic law prescribes that generally a man’s share of the inheritance is double that of a woman in the same degree of relationship to the deceased.
 - Under Muslim law, the father is the sole guardian of the person and property of his minor child.
- **Freedom of Choice:** A religion neutral personal law would encourage protection of couples in case of inter-caste and inter-religious marriages.
 - Even Acts like the **Special Marriage Act, 1954** permits any citizen to have a civil marriage outside the realm of any specific religious personal law.

Challenges and issues related to UCC

- **Existence of legal pluralism in civil laws:** 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**.
- **Contradictory provisions of the Constitution:** Articles 371 (A) to (I) and the sixth schedule of the constitution of India provides certain protections or rather exceptions to the states of Assam, Nagaland, Mizoram, Andhra Pradesh and Goa with respect to family law.
 - While uniformity in personal laws is envisaged through the Article 44, the inclusion of personal laws in concurrent list indicates protection of diversity in personal laws.
 - While framing a law it has to be borne in mind that cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation

UCC: Supreme Court’s various judgements since 1985:

The Indian Judiciary has been an important instrument for putting an impact on the question of Uniform Civil Code.

- “A common civil code will help the cause of national integration by helping different loyalties to the conflicting ideologies” – (**Shah Bano Case**)
- “When more than 80% of citizens have been placed under the personal law codified, there is no justification, so to keep whatever in the absence, even more, the introduction of the uniform civil code for all citizens on the territory of India” - (**Sarla Mudgal Case**)
- “It is regrettable that Article 44 of the Constitution has not entered into force ... The above provision is based on the premise that there is no necessary link between religion and the law of persons in a civilized society. A common civil code will help the cause of national integration by removing contradictions based on ideologies” – (**John Vallamattom case**)

Secularism and UCC

The principle of UCC essentially involves the question of secularism. There are various interpretations of secularism and it is on the altar of all these interpretations, the UCC is both glorified and criticized. Some factions of our society consider the UCC anti-secular while some regard it as the harbinger of communal harmony and secularism.

- Many experts argue that personal laws are the part and parcel of religion and culture. Any interference with the personal laws would tantamount to interference with the very way of life of those who had been observing such laws from generation to generation.
 - State must not do anything which hinder the religious and cultural ethos of the people.
- While others argue that Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26 of the Constitution of India.
 - Article 44 of the Constitution of India is based on the concept that there is no necessary connection between religion and personal laws in the civilized society.
 - It has also been argued that right to religious freedom did not extend to freeing secular dimensions of religion from the law of the land.

- ✓ Nagaland witnessed a strong protest against provision of reservation of 33% seats for women. The ground for such opposition was that the carving out of reservations for women confirms their status as inferior and in need of special protection
- **Plurality and diversity:** It has been argued that UCC threatens a pluralistic society like India, where people have confidence in their respective religious beliefs or doctrines that have been presented by different religions.
 - In 2018, Law Commission of India opined that the Uniform Civil Code is **“neither necessary nor desirable at this stage”** in the country. The Commission said **secularism cannot be contradictory to plurality**. It only ensures peaceful co-existence of cultural differences.
 - It is this plurality that also makes it difficult to evolve consensus on UCC.
- **Indian Secularism:** The Supreme Court in **T.M.A Pai Foundation v. State of Karnataka** reiterated that the **essence of secularism** in India is **recognition** and **preservation** of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole united India. The idea of UCC might not be in consonance with the spirit of Indian secularism where multiple individual identities co-exist under the umbrella of the national identity.
- **Issue of Drafting the UCC:** One of the biggest obstacles in implementing the UCC, apart from obtaining a consensus, is the **drafting**. There is no **guideline or a vision document**, whether UCC be a blend of all the personal laws or a new and common law adhering to the constitutional mandate.
- **Concerns of Minorities:** There are **impediments** in adoption of the UCC when it comes to addressing Minority concerns, such as **separatism, conservatism and misconceived notions** about personal laws. Most minorities feel a **sense of insecurity, complete loss of identity and marginalization** within Indian society and imposition of a majoritarian outlook on minority religions, if UCC comes into play.

Conclusion

The state's endeavours to secure a Uniform Civil Code are to be found in the miscellany of laws of general application that were sporadically enacted since 1954. Among these are the Acts facilitating civil marriages, banning marital dowries, protecting women from domestic violence, preventing child marriages, ensuring ancestors' maintenance and protection, and facilitating adoption. The process has, of course, been slow-paced particularly because of difficulty of evolving a common consensus. However, there is abundant scope for enacting more such laws that are applicable to all regardless of religion and personal laws.

An **evaluation survey among different communities to suggest reforms within personal laws** on modern, liberal lines and a **broad consensus** must be drawn to facilitate India's religious and legal history.

Uniform Civil Code must be an amalgamation of the elements from the personal laws based on gender equality, non-discrimination of religion, caste and creed. Laws such as Indian Marriage Act, Indian Divorce Act etc. can then be applicable to every citizen of India irrespective of their religion. There is need for **bringing awareness** through **discussion and deliberations** among members of various communities.

Summary

Uniform Civil Code seeks to provide one law for the entire country, applicable to all religious communities in their personal matters such as **marriage, divorce, inheritance, adoption** etc. It aims to ensure uniformity of laws between communities, but also uniformity of laws within communities ensuring equalities between the rights of men and women.

Article 44 of the **Directive Principles of State Policy** (Part 4) of the Indian Constitution lays down that the state shall **endeavour** to secure a **Uniform Civil Code** for the citizens throughout the territory of India.

But, as evident from Constituent Assembly debates, there was no consensus over the structure of UCC to be adopted. It is also seen as a threat to **freedom of religion**, especially among minority communities.

Need for Uniform Civil Code

- It will ensure equality among citizens in civil matters
- It will separate religion from social relations and personal laws, thereby helping the cause of national integration and ensuring harmony in the society
- It would promote gender justice by removing the inbuilt discriminatory provisions of personal laws
- A religion neutral personal law would uphold freedom of choice especially in cases of inter-caste and inter-religious marriages

Challenges and issues related to UCC

- Difficult to contain such a multitude of civil laws into a single, comprehensive UCC
- Difficult to evolve consensus to blend all personal laws into a common law
- Provisions in the Constitution under Article 371 provides for special and differentiated treatment for certain states on the issues like inheritance, succession, marriage and divorce as well as administration of justice, which will be an hindrance to formulation of UCC
- UCC threatens a pluralistic society like India, where people have strong confidence in their respective religious beliefs or doctrines
- UCC might not be in consonance with the spirit of Indian secularism where multiple individual identities co-exist under the umbrella of the national identity
- Minority concerns of a sense of insecurity, complete loss of identity & marginalization within Indian society and imposition of a majoritarian outlook on minority religions, if UCC comes into play.

Conclusion

The state's endeavour to secure a Uniform Civil Code has met with slow progress because of difficulty of evolving a common consensus. There is need for **bringing awareness** through **discussion and deliberations** among members of various communities to reach a common ground. Moreover, there is an abundant scope for enacting more such laws that are applicable to all regardless of religion and personal laws. An evaluation survey must be conducted among different communities to suggest such reforms in the upcoming laws.

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