



## Uniform Civil Code

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### Why in the news

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Recently, the Supreme Court in a case concerning the question of whether succession and inheritance of a Goan domicile is governed by the Portuguese Civil Code, 1867 or the Indian Succession Act of 1925, held that:

- The Constitution in **Article 44** requires the State to strive to secure for its citizens a Uniform Civil Code(UCC) throughout India, but till date, no action has been taken in this regard.
- The **Hindu personal laws** were codified in the year 1956. However, there has been no attempt to frame a Uniform Civil Code applicable to all citizens of the country.
- Despite exhortations of this Court in the case of **Shah Bano in 1985**, the government has done nothing to bring the Uniform Civil Code.
- The Supreme Court hailed the State of Goa as a “shining example” where “uniform civil code” is applicable to all, regardless of religion except while protecting certain limited rights.

Goa has a common civil code called Portuguese civil code 1867, whereby:

- 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 and assets are divided equally between the man and woman on divorce.

### Uniform Civil Code

**Uniform Civil Code** seeks to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen.

### Status of Personal Law in India

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- Personal law subjects like marriage, divorce, inheritance come under Concurrent list.

- Hindu personal laws have been by and large **secularized and modernized** by statutory enactments.
  - The Hindu personal laws (that apply also to the Sikhs, Jains and Buddhists) have been codified by the Parliament in 1956
  - This Code Bill has been split into four parts:
    - The Hindu Marriage Act, 1955
    - The Hindu Succession Act, 1956
    - The Hindu Minority and Guardianship Act, 1956
    - The Hindu Adoption and Maintenance Act, 1956
- On the other hand, Muslim personal laws are still primarily unmodified and traditional in their content and approach.
  - The Shariat law of 1937 governs the personal matters of all Indian Muslims in India.
  - It clearly states that in matters of personal disputes, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith.
- Apart from it, Christians and Jews are also governed by different personal laws.

## Need for a Uniform Civil Code

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- Different personal laws **promote communalism** and it leads to discrimination at two levels:
  - First, between people of different religions.
  - Second, between the two sexes.
    - Uniform Civil Code will provide **women with the right to equality and justice in courts of law**- irrespective of their religion in matters pertaining to marriage, divorce, maintenance, custody of children, inheritance rights, adoption, etc.
- The Supreme Court for the first time directed the Parliament to frame a UCC in the year 1985 in the case of Mohammad Ahmed Khan v. Shah Bano Begum , popularly known as the **Shah Bano case**.
  - In this case, Shah Bano claimed for maintenance from her husband under **Section 125 of the Code of Criminal Procedure** after she was given triple talaq by him.
  - However, government overturned the Shah Bano case decision by way of **Muslim Women (Right to Protection on Divorce) Act, 1986** which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of criminal Procedure.
- The Supreme Court in **Shayara Bano** case (2017) had declared the practise of Triple Talaq (talaq-e-bidat) as unconstitutional.

# Challenges associated with UCC

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## Constitutional challenges

- **Freedom of religion gets into conflict with the right to equality.**
  - 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.
  - These rights gets into conflict with the equality before law enshrined under article 14 and 15.
- Moreover, an individual's freedom of religion under Article 25 is subject to "**public order, health, morality**".
- In 2018, a report by the Law Commission of India stated that the Uniform Civil Code is "**neither necessary nor desirable at this stage**" in the country. The Commission said secularism cannot contradict the plurality prevalent in the country.

## Social-political challenges

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- In the name of uniformity, the minorities fears that the culture of the majority is being imposed over them.
- Given vast cultural diversity in India, bringing uniformity among all such people will be a huge challenge.
- Patriarchal mindset of Indian society poses a big challenge in implementation of UCC. This can be reflected by the fact that, the Hindu code bill has been already in place from mid-1950s, yet the quantum of land actually inherited by Hindu women is only a fraction of the land they are entitled.

## Merits of Uniform Civil Code

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- **National Integration**

A unified code is imperative, both for the protection of the vulnerable sections in Indian society(women and religious minorities) and for the promotion of national unity and solidarity.
- **Simplification of laws**
  - There exists so many personal laws like Hindu code bill, Shariat law, etc.
  - Presence of so many laws creates confusion, complexity and inconsistencies in the adjudication of personal matters, at times leading to delayed justice or no justice.
  - UCC will eliminate this overlapping of laws.
- **Simplification of Indian legal system:**

UCC will lead to reduction in litigation emanating from multiple personal laws.

- **Establishing a secular society:**
  - UCC will de-link law from religion which is a very desirable objective to achieve in a secular and socialist pattern of society.
  - Moreover, it fulfill constitutional mandates under Article 44 of Directive Principles of State Policy.
- **Gender justice:**
  - The rights of women are usually limited under the patriarchal discourse through religious laws.
  - UCC will liberate women from patriarchal domination and provide them with right to equality and liberty.
- In the long term, UCC would lead to the defeat of the communal and the divisionist forces.

## Way Forward

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- The social transformation from diverse civil code to uniformity shall be gradual and cannot happen in a day. Therefore, the government must adopt a **“Piecemeal” approach.**
  - Government could bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages.
- Government must emulate Goan practice of a common civil code, which has been the law since 1867, when the state was under the Portuguese colonial rule.
- Moreover, when constitution espouses the cause of Uniform civil code in its Article 44, it shouldn't be misconstrued to be a “common law”.
  - The word uniform here means that all communities must be governed by uniform principles of gender justice and human justice.
  - It will mean modernization and humanization of each personal law.
  - It would mean, not a common law, but different personal laws based on principles of equality, liberty and justice.
- Government has to take steps towards increasing the awareness among the public, especially minorities, about the importance of having a UCC.

The UCC must carve a balance between the protection of fundamental rights and religious dogmas of individuals. It should be a code, which is just and proper according to a man of ordinary prudence, without any bias with regards to religious and political considerations.