



India's Uniform Civil Code Conundrum

This editorial is based on “[Call for a new ‘secular’ civil code](#)” which was published in Hindustan Times on 07/05/2024. The article brings into picture the necessity of a Uniform Civil Code (UCC) to eliminate religious-based discrimination and promote equality, as emphasized by the Indian Prime Minister in his Independence Day speech.

For Prelims: [Uniform Civil Code](#), [Directive Principle of State Policy](#), [Fundamental Rights](#), [1985 - Shah Bano Case](#), [2017 - Shayara Bano Case](#), [Article 14 of the Indian Constitution](#), [LGBTQ+ rights in marriage](#), [Global Gender Gap index](#), [UCC in Uttarakhand](#).

For Mains: Constitutional History and Key Judicial Pronouncements Related to Uniform Civil Code in India, Arguments in Favour and Against Uniform Civil Code

The [Uniform Civil Code \(UCC\)](#) has been a longstanding and complex issue in India's legal and social landscape. The UCC aims to **replace the current system** where different religious communities follow their own personal laws in matters such as **marriage, divorce, inheritance, and adoption**. Proponents argue that a UCC would promote national integration, gender justice, and equality before the law, while critics express concerns about preserving religious and cultural diversity.

The concept of a UCC has been part of India's constitutional framework since independence, included as a [Directive Principle of State Policy](#). However, its implementation has been a subject of debate and controversy for decades. The discussion around UCC touches on sensitive issues of **religious freedom, minority rights, and the balance between uniform civil law and India's diverse cultural traditions**.

What is Uniform Civil Code?

- The **Uniform Civil Code** refers to a single set of laws governing personal matters such as **marriage, divorce, adoption, inheritance, and succession** for all citizens of India.
- The concept of UCC is mentioned in **Article 44 of the Indian Constitution** as a **Directive Principle of State Policy**, which states that the state shall endeavor to secure a uniform civil code for citizens throughout the territory of India.
 - However, it's important to note that this is not a legally enforceable right but a guiding principle for the state.

What is the Constitutional History and Key Judicial Pronouncements Related to Uniform Civil Code in India?

- **The Initial Debates:**
 - **Sub-Committee on [Fundamental Rights](#):** Tasked with drafting fundamental rights for the Constitution. **Ambedkar, Munshi, and Minoo Masani** included UCC in their drafts.
 - **Division of Rights:** The Sub-Committee split fundamental rights into justiciable and non-justiciable categories. UCC was placed in the **non-justiciable section**.
 - **M.R. Masani, Hansa Mehta, and Amrit Kaur** opposed this, arguing that personal laws based on religion hindered national unity.
 - They advocated for UCC as a justiciable right.
- **Constituent Assembly Debates:**
 - **Draft Article 35:** Introduced by Ambedkar, which later became **Article 44, placed UCC in the Directive Principles**, making it non-mandatory.
 - Muslim leaders like **Ismail Sahab and Pocker Sahib Bahadur** argued that UCC violated religious freedom and would cause disharmony.
 - **Defense of UCC:**
 - **K.M. Munshi:** Advocated UCC for national unity and secularism, noting even Hindu communities' concerns.
 - **Alladi Krishnaswami Aiyar:** Argued UCC would promote harmony and questioned why there was no protest against the existing common criminal code.
 - **Ambedkar:** Emphasized UCC's optional nature and its inclusion in the Directive Principles as a compromise.
- **Key Judicial Pronouncements on UCC**
 - **[1985 - Shah Bano Case](#):** The Court upheld a Muslim woman's right to maintenance, linking UCC to national integration.
 - **1985 - Jordan Diengdeh Case:** Highlighted inconsistencies in divorce laws and called for UCC for legal uniformity.
 - **1995 - Sarla Mudgal Case:** Strongly favored UCC, especially for the majority Hindu population, questioning the delay in its implementation.
 - **1996 - Pannalal Bansilal Pitti Case:** Acknowledged India's pluralism and argued for gradual implementation of UCC.
 - **2000 - Lily Thomas Case:** The Supreme Court emphasized the significance of UCC in terms of succession.
 - **2003 - John Vallamattom Case:** Struck down discriminatory provisions in Christian personal law, reiterating the need for UCC.
 - **2014 - Shabnam Hashmi Case:** Linked the **Juvenile Justice Act to UCC**, emphasizing the need for secular laws.
 - **[2017 - Shayara Bano Case](#):** Addressed **triple talaq**, reigniting the UCC debate but **separating it from the issue of human rights**.

What are the Arguments in Favour of Uniform Civil Code?

- **Equality Under the Law-Breaking Down Religious Barriers:** A UCC would ensure equal rights and treatment for all citizens, **regardless of their religious background**.
 - This aligns with **[Article 14 of the Indian Constitution](#)**, which guarantees equality before the law.
 - A UCC would standardize marriage laws, promoting gender equality and religious neutrality.
 - The recent implementation of UCC in Uttarakhand, which bans polygamy and standardizes the marriage age at 21 for all, serves as a model for potential national implementation.
- **Empowering Women-Challenging Patriarchal Norms** Many personal laws have been criticized for being discriminatory towards women.
 - A UCC could address issues like **triple talaq, unequal inheritance rights, and child marriage**.
 - **NEHS-5** estimates show that **23.3% of women in the 20-24 age** bracket were married before they were 18, highlighting the need for uniform marriage laws.
 - A UCC could potentially **reduce this figure**.
- **Simplifying the Legal System- Streamlining Personal Laws:** India's current system of multiple personal laws based on religion creates a complex legal landscape.
 - A UCC would simplify this system, making it **easier for courts to administer justice and**

for citizens to understand their rights.

- Personal law disputes account for a significant portion of civil cases, contributing to **judicial backlog**. A unified code could potentially reduce this burden and streamline legal processes.
- **National Integration-Fostering a Unified Indian Identity:** Proponents argue that a UCC would promote national integration by emphasizing citizenship over religious identity in civil matters.
 - This aligns with the **idea of "constitutional patriotism" advocated by scholars like Jürgen Habermas**.
 - The successful implementation of a **common criminal code ([Indian Penal Code](#)) across all communities** serves as a precedent for how a unified law can function in a diverse society like India.
- **Modernization and Social Reform:** A UCC could be an opportunity to reform outdated practices across all communities and align personal laws with contemporary social values.
 - For instance, the legalization of **same-sex relationships by the Supreme Court in 2018** highlights the need for modernized personal laws.
 - A UCC could potentially address issues like **LGBTQ+ rights in marriage, adoption, and inheritance**, which are currently not uniformly recognized under various personal laws.
- **International Alignment-Keeping Pace with Global Trends:** Many countries with diverse populations have successfully implemented unified civil codes.
 - Turkey's adoption of a **secular civil code in 1926** serves as an example.
 - Adopting a UCC could **align India with international human rights standards**, potentially improving its standing on global indices like the **[Global Gender Gap index](#)**, which is currently **129th out of the 146 countries**.

What are the Arguments Against the Uniform Civil Code?

- **Cultural Preservation- Safeguarding India's Diverse Heritage:** India's pluralistic society is characterized by a rich **blend of cultural and religious practices**, many of which are protected under personal laws.
 - Critics argue that a **UCC could erode this diversity**, leading to cultural homogenization.
 - For instance, the **unique matrilineal inheritance system of the Khasi tribe in Meghalaya**, could be at risk.
- **Religious Freedom-Balancing Secularism and Faith:** Opponents of UCC argue that it could infringe on the **right to religious freedom guaranteed by [Article 25 of the Constitution](#)**.
 - They contend that personal laws are an integral part of religious practice for many communities.
 - A 2021 Pew Research Center survey found that **84% of Indians consider religion very important in their lives**, underscoring the potential resistance to changes in religiously-influenced personal laws.
- **Minority Rights-Protecting Vulnerable Communities:** There are concerns that a UCC could **disproportionately affect minority communities**, potentially leading to a sense of marginalization.
 - Critics point to the **recent [implementation of UCC in Uttarakhand](#)**, which faced opposition from minority groups who felt their customs were not adequately considered.
 - India's minority population, comprising about **19.3% of the total population (2011 Census)**, fears that a UCC might be influenced more by majority practices, potentially diluting their cultural identity.
- **Practical Implementation- Overcoming Logistical Hurdles:** Critics argue that creating a UCC that satisfies all communities in a diverse country like India is practically impossible.
 - The **Law Commission's 2018 report concluded that a UCC is "neither necessary nor desirable at this stage,"** citing the country's diversity.
 - The challenge is evident in the fact that even within Hindu law, which was codified in the 1950s, **there are still regional variations**.
 - For instance, the **Hindu Succession (Kerala Amendment) Act, 2015**, provides for different inheritance rules in Kerala.
- **Federalism Concerns-State vs. Centre Authority:** The implementation of a nationwide UCC could potentially **infringe upon the federal structure of India**.
 - **Personal laws fall under the Concurrent List of the Constitution**, allowing both state and central governments to legislate on them.

- Critics argue that a centrally imposed UCC could **undermine state autonomy**. The recent UCC implementation in **Uttarakhand**, while a state initiative, has raised questions about how a national UCC would interact with state-specific laws and customs.
- **Economic Impact-Hidden Costs of Legal Overhaul:** The implementation of a UCC would require a massive overhaul of the legal system, potentially incurring significant costs.
 - This includes **retraining legal professionals, updating legal databases**, and potentially increasing the **court burden during the transition period**.
 - With India's judiciary already facing a backlog of over **47 million cases**, critics argue that the resources required for UCC implementation could be better used in addressing existing judicial inefficiencies.

What Should be the Way Forward?

- **Inclusive Dialogue- Building Consensus Through Consultation:** The way forward for **UCC must involve extensive, nationwide consultations** with diverse stakeholders.
 - This should include **religious leaders, legal experts, civil society organizations, and representatives** from various communities.
 - The process should be **transparent, with clear communication of proposed changes and their implications**.
 - Public debates and discussions should be encouraged to build awareness and gather diverse perspectives.
 - This inclusive approach could help address concerns and build a broader consensus, potentially reducing resistance to implementation.
- **Phased Implementation-A Gradual Approach to Change:** Rather than an abrupt overhaul, a **phased implementation of UCC could be more feasible** and less disruptive.
 - This could start with **areas of broad agreement**, such as **standardizing the legal age of marriage, equal rights to female or inheritance rights**.
 - Subsequent phases could address more contentious issues. This gradual approach allows for **adjustments based on feedback and real-world outcomes**. It also provides time for communities to adapt and for the legal system to prepare for changes.
- **Constitutional Safeguards- Protecting Minority Rights:** Any UCC implementation should include **robust constitutional safeguards to protect minority rights and cultural practices**.
 - This could involve creating a **body to oversee UCC implementation and address grievances**.
 - Clear mechanisms should be established for communities to seek exemptions for specific practices that **do not conflict with fundamental rights**.
 - This approach can help balance the goals of uniformity and cultural preservation, addressing a key concern of UCC critics.
 - A **just civil code** is more important than the uniform civil code.
- **Evidence-Based Reform-Learning from State-Level Initiatives:** The way forward should involve careful study of existing state-level initiatives related to personal law reforms.
 - For instance, the **outcomes of Goa's civil code (in place since Portuguese rule)** and **Uttarakhand's recent UCC implementation** should be analyzed.
 - This evidence-based approach can inform the design of a national UCC, highlighting successful strategies and potential pitfalls.
 - It can also provide concrete data to support or modify arguments for and against UCC.

Drishti Mains Question:

Discuss the significance of implementing a Uniform Civil Code (UCC) in India and the challenges associated with its adoption

Prelims:

Q1. Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India: (2012)

1. Securing for citizens of India a uniform civil code
2. Organising village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
- (b) 2 and 3 only
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Ans: (b)

Q2. A legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India?

- (a) Article 14
- (b) Article 28
- (c) Article 32
- (d) Article 44

Ans: (a)

Mains

Q. 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. **(2015)**

