

# Plea in Supreme Court Against Uniform Civil Code

April 21, 2021

The Supreme Court, while expressing “great caution”, agreed to examine a plea to frame uniform guidelines on divorce, maintenance and alimony for all religions.

Petitioner wants laws on divorce, maintenance and alimony to be “gender-neutral and religion-neutral”.

**In news:** Supreme Court to study plea for uniform divorce, alimony rules for all

**Placing it in syllabus:** Law & Policy

## **Dimensions**

- Arguments made in the Plea
- What is UCC and its Constitutional Provisions?
- Problems of not having a UCC
- Why is UCC necessary ?
- Precautions while bringing UCC

## **Content:**

### **Arguments made in the Plea:**

- The petitioner argued that divorce, maintenance and alimony laws in certain religions discriminated and marginalised women.
- These anomalies, varying from one religion to another, were violative of the right to equality (Article 14 of the Constitution) and right against discrimination (Article 15) on the basis of religion and gender and right to dignity.
- The petition wants the laws on divorce, maintenance and alimony to be “gender-neutral and religion-neutral”.
- The Articles in question contemplated violations by the

State against the fundamental rights of citizens.

- On the other hand, these “discriminatory” personal law practices were imposed by citizens of a particular faith against the women of their own community.
- “Articles 14 and 15, etc, operate as an injunction against the State.

### **Origin of Uniform Civil Code**

- The origin of the UCC dates back to colonial India when the British government submitted its report in 1835 stressing the need for uniformity in the codification of Indian law relating to crimes, evidence, and contracts, specifically recommending that personal laws of Hindus and Muslims be kept outside such codification.
- Increase in legislation dealing with personal issues in the far end of the British rule forced the government to form the B N Rau Committee to codify Hindu law in 1941.
- The task of the Hindu Law Committee was to examine the question of the necessity of common Hindu laws. The committee, in accordance with scriptures, recommended a codified Hindu law, which would give equal rights to women.
- The 1937 Act was reviewed and the committee recommended a civil code of marriage and succession for Hindus.

### **Difference between civil laws and criminal laws**

- The criminal laws in India are uniform and applicable equally on all, no matter what their religious beliefs are.
- However the civil laws are not uniform and are influenced by faith.
- Swayed by religious texts, the personal laws which come into effect in civil cases have always been implemented according to constitutional norms.

### **What are personal laws?**

- Laws that apply to a certain group of people based on their religion, caste, faith, and belief made after due consideration of customs and religious texts. The personal laws of Hindus and Muslims find their source and authority in their religious ancient texts.
- In Hinduism, personal laws are applicable to legal issues related to inheritance, succession, marriage, adoption, co-parenting, obligations of sons to pay their father's debts, the partition of family property, maintenance, guardianship, and charitable donations.
- In Islam, personal laws apply to matters relating to inheritance, wills, succession, legacies, marriage, wakfs, dowry, guardianship, divorce, gifts, and pre-emption taking roots from Quran.

## **What is UCC and its Constitutional Provisions?**

- A uniform civil code refers to a single law, applicable to all citizens of India in their personal matters such as marriage, divorce, custody, adoption and inheritance.
- It is intended to replace the system of fragmented personal laws, which currently govern interpersonal relationships and related matters within different religious communities.
- A Uniform Civil Code means 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.
- It is based on the premise that there is no connection between religion and law in modern civilization.
- The term, 'Uniform Civil Code' is explicitly mentioned in Part 4- Directive Principles of State Policy, **Article 44** of the Indian Constitution.
- Article 44 says, "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."
- However, Article 37 of the Constitution itself makes it

clear the DPSP “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 and secularism are:**

- Article 15- No discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on the grounds of public order, health and morality.
- Article 25 (2)-provides for regulating secular activities associated with religious practices, social welfare and reform.
- Article 26- Right to establish and administer religious institutions.
- Article 27- Prohibits the state from levying a tax, proceeds of which are used for the benefit of a particular religion.
- Article 28- deals with the issue of religious instruction in educational institutions.

### **Problems of not having a UCC:**

#### ***Gender Discrimination:***

- Personal laws, because they derive from tradition and custom, also tend to give undue advantage to men. As the Law Commission observes in its 2018 consultation paper, “Various aspects of prevailing personal laws disprivilege women.”
- This becomes evident in examples such as Muslim men

being allowed to marry multiple wives, but women being forbidden from having multiple husbands.

- Men (fathers) are also treated as 'natural guardians' and are given preference under the Hindu Minority and Guardianship Act.

### ***Inequality:***

- Personal laws of different religions are widely divergent and there is no consistency in how issues like marriage, succession and adoption are treated for people belonging to different communities, which clashes with Article 14 of the Constitution, which guarantees equality before the law.

## **Why is UCC necessary?**

### ***National Integration:***

- 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.

### ***Reducing Vote Bank Politics:***

- A UCC will also help in reducing vote bank politics that most political parties indulge in during every election.

### ***Correcting Loopholes in Personal Laws:***

- 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.

### ***Equal Rights to Women:***

- Religious personal laws are 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.

### ***Upholding the real value of 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 regardless of any religion.

### ***Coherent Legal System:***

- The codification and unification of the variegated personal laws will produce a more coherent legal system.
- This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.

### ***Building a modern progressive nation:***

- It is a sign that the nation has moved away from caste and religious politics. While our economic growth has been significant, our social growth has lagged behind.
- A UCC will help society move forward and take India towards its goal of becoming a truly developed nation.

### ***Goa Civil Code:***

- Goa is the only Indian state to have a UCC 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.

### ***Important 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 have to be compulsorily registered. For divorce, there are several provisions.
- Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.
- During the course of a 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 half of the property and in case of death, the ownership of the property is halved for the surviving member.
- The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

### ***Drawbacks:***

- However, the code has certain drawbacks and is not strictly a uniform code.
- For example, 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 polygamy

### **Precautions while bringing UCC:**

While making a Uniform Civil Code for India, the following issues must be resolved:

### ***Practical difficulties due to diversity in India:***

- It is practically tough to come up with a common and uniform set of rules for personal issues like marriage due to tremendous cultural diversity India across the religions, sects, castes, states etc.

### ***Perception of UCC as encroachment on religious freedom:***

- Many communities, particularly minority communities perceive Uniform Civil Code as an encroachment on their rights to religious freedom.
- They fear that a common code will neglect their traditions and impose rules which will be mainly dictated and influenced by the majority religious communities.

### ***Dispel notions of suppression of minorities and homogenisation of culture:***

- Even though it reinforces equality before law, the idea of a UCC clashes with the right to freedom of religion (Article 25 of the Constitution).
- Separate personal laws are one of the ways in which people have exercised their right to practise their own religion, which has been particularly important for minorities.
- The UCC could become a tool to erode this right, suppress minorities and homogenise culture.

### ***Building Consensus:***

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

**Mould your thought:** What is Universal Civil Code? Is it



feasible to implement such a code in India? Give reasons for your answer.

***Approach to the answer:***

- Introduction
- Define and discuss UCC and its constitutional provisions
- Discuss the need for such a code
- Discuss the problems of not having UCC
- Discuss the precautions to be taken
- Conclusion