



KAMARAJ IAS ACADEMY
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Law Commission seeks views on Uniform Civil Code

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Why in News:

Recently, the 22nd Law Commission of India recently sought the views of religious organisations and the public on the issue of a Uniform Civil Code (UCC). A notice issued by the Commission said those interested and willing may present their views within 30 days.

About Uniform Civil Code

A UCC would provide for one law for the entire country, applicable to all religious communities, in their personal matters such as marriage, divorce, inheritance, adoption etc.

Currently, Indian personal law is fairly complex, with each religion adhering to its own specific laws. Separate laws govern Hindus including Sikhs, Jains and Buddhist, Muslims, Christians, and followers of other religions.

Constitutional Provision

Article 44 of the Constitution lays down that the state shall endeavour to secure a UCC for citizens throughout the territory of India.

Article 44 is among the Directive Principles of State Policy. Directive Principles are not enforceable by court, but are supposed to inform and guide governance.

However, in some senses, Article 44 is unique in this manner. While Article 44 uses the words "state shall endeavour", other Articles in the 'Directive Principles' chapter use words such as "in particular strive"; "shall in particular direct its policy"; "shall be obligation of the state" etc.

Furthermore, the phrase "by suitable legislation" is absent in Article 44. All this implies that the duty of the state is greater in other directive principles than in Article 44

Constituent Assembly view on the UCC

Article 44 contained in part IV of the Constitution says that the state "shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

While there is no draft or model document yet for the UCC, the framers of the Constitution envisioned that it would be a uniform set of laws that would replace the distinct personal laws of each religion with regard to matters like marriage, divorce, adoption, and inheritance.

Part IV of the Constitution outlines the Directive Principles of State Policy, which, while not enforceable or justiciable in a court of law, are fundamental to the country's governance.

The clause on UCC generated substantial debate in the Constituent Assembly about whether it should be included as a fundamental right or a directive principle.

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The matter had to be settled by vote; with a majority of 5:4, wherein the sub-committee on fundamental rights headed by Sardar Vallabhbhai Patel decided that securing a UCC was not within the scope of fundamental rights.

Members of the Assembly took starkly contrasting stances on the UCC. Some also felt that India was too diverse a country for the UCC. Member Naziruddin Ahmad from Bengal argued that certain civil laws in all communities were “inseparably connected with religious beliefs and practices”.

He felt the UCC would come in the way of Article 19 of the draft Constitution (now Article 25) which guarantees the right to freedom of religion subject to public order, morality, and health.

While he was not against the idea of a uniform civil law, he argued that the time for that had not yet come, adding that the process had to be gradual and not without the consent of the concerned communities.

Member K.M. Munshi however, rejected the notion that a UCC would be against the freedom of religion as the Constitution allowed the government to make laws covering secular activities related to religious practices if they were intended for social reform. He advocated for the UCC, stating benefits such as promoting the unity of the nation and equality for women. He said that if personal laws of inheritance, succession and so on were seen as a part of religion, then many discriminatory practices of the Hindu personal law against women could not be eliminated.

Dr. B.R. Ambedkar had more of an ambivalent stance toward the UCC. He felt that while desirable, the UCC should remain “purely voluntary” in the initial stages. He stated that the Article “merely” proposed that the state shall endeavour to secure a UCC, which means it would not impose it on all citizens. The amendments to protect personal laws from the UCC were eventually rejected.

Supreme Court view about the UCC

The Supreme Court in various judgements has called for the implementation of the UCC. In its Mohd. Ahmed Khan vs Shah Bano Begum judgement of 1985, where a divorced Muslim woman demanded maintenance from her former husband, the apex court while deciding whether to give prevalence to the CrPc or the Muslim personal law, called for the implementation of the UCC.

The Court also called on the government to implement the UCC in the 1995 Sarla Mudgal judgement as well as in the Paulo Coutinho vs Maria Luiza Valentina Pereira case (2019).

21st Law Commission view on UCC

Underlining that the Uniform Civil Code is “neither necessary nor desirable at this stage”, the 21st Law Commission of India, in 2018, argued for reform of family laws of every religion through amendments and codification of certain aspects so as to make them gender-just.

In its ‘Consultation Paper on Family Law Reforms’, the Law Commission took a stand in favour of “equality ‘within communities’ between men and women” (personal law reform), “rather than ‘equality between’ communities” (UCC).

“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,” the paper said, emphasising that celebration of the diversity of Indian culture must not disprivilege specific groups.

It further noted that “women must be guaranteed their freedom of faith without any compromise on their right to equality” as it would be unfair to make women choose between one or the other.

The current Law Commission’s directive on the issue, while not making any recommendations, again raises the matter.