



KAMARAJ IAS ACADEMY
Only IAS Academy by Grandson of "Perunthalsivam Kamarajar"

Uniform Civil Code

Published On: 27-06-2023

Why in News:

Prime Minister Narendra Modi has said the implementation of a Uniform Civil Code (UCC) was imperative for India, citing the impracticality of maintaining a dual legal system that caters to distinct communities. In addition, the 22nd Law Commission released a new notification on June 14, with the aim of gathering perspectives from diverse stakeholders, such as public and religious organisations, regarding the UCC.

A Brief about Uniform Civil Code

A Uniform Civil Code 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.

The framers of the Constitution recognised the need for uniform personal laws, but placed it in the Directive Principles of State Policy.

Article 44 of the Constitution says that “the State shall endeavour to secure for the citizens a uniform civil code 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.

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.

An example of a difference in personal laws in India

The rights of women regarding inheritance differ based on their religion in India. Under the Hindu Succession Act of 1956, (which governs the rights of Hindus, Buddhists, Jains, and Sikhs) Hindu women have equal rights to inherit property from their parents and have the same entitlement as Hindu men.

The rights of married and unmarried daughters are equal, and women are recognised as joint legal heirs for ancestral property partition

Muslim women, governed by the Muslim Personal Law, are entitled to a share of their husband's property, which is either 1/8th or 1/4th, depending on the presence of children. However, daughters' share is half of that of sons.

For Christians, Parsis, and Jews, the Indian Succession Act of 1925 applies. Christian women receive a predetermined share based on the presence of children or other relatives.

Parsi widows receive an equal share as their children, with half of the child's share going to the deceased's parents if they are alive.

Debate in the Constituent Assembly

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

The Constituent Assembly witnessed a lengthy discussion on a common civil code while adopting it as a directive principle.

When the said Article was being discussed on November 23, 1948, several Muslim members suggested adopting a common civil code with a caveat that it would apply to citizens with prior consent. However, BR Ambedkar was strongly opposed to the amendments.

Mohamad Ismail, a member from Madras, proposed a proviso be added to it, stating that “the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law.”

After this, Naziruddin Ahmad from West Bengal said that it’s not just Muslims who will be inconvenienced by the UCC, as each religious community has its own religious beliefs and practices.

Finally, Ambedkar, the then Chairman of the Drafting Committee, pointed out that barring the North-West Frontier Province, Muslims in different parts of India like Bombay and the United Provinces were governed by Hindu law in matters of succession until 1937. However, he assured that the UCC would not be enforced upon the people as Article 44 “merely proposes that the State shall endeavour to secure a civil code”.

Arguments in support of UCC

Ambedkar also underlined the possibility that a future Parliament could make provisions for applying the UCC in a “purely voluntary” manner

Over the following years, various interventions by the legislature, judiciary, and civil society organisations have aimed to amend personal laws or establish a uniform civil code. Notable judgments contributing to this discourse include Mohd. Ahmed Khan v. Shah Bano Begum, Jordan Diengdeh v. S.S. Chopra, and Sarla Mudgal v. Union of India.

In the Shah Bano case, the court observed that Article 44 has remained a “dead letter” and added that a common Civil Code will help the “cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”. It said that the legislative is entrusted with the duty of securing a uniform civil code for the citizens of the country. “A beginning has to be made if the Constitution is to have any meaning.”

In the Sarla Mudgal Case in 1995, Supreme Court requested the prime minister to reexamine Article 44, aiming to establish a UCC throughout India.

However, subsequent orders in the Ahmedabad Women Action Group Case (1997) and the Lily Thomas Case (2000) clarified that the court did not direct the government to enact a UCC in the Sarla Mudgal case.

Arguments against UCC

The 21st Law Commission brought up a consultation paper on “Reform of Family Law” in August 2018 in which it said that UCC was “neither necessary nor desirable at this stage”. It however recommended that existing family laws across religions are modified and codified to tackle discrimination and inequality in personal laws.

The Law Commission, which was headed by former Supreme Court judge BS Chauhan, observed: "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.”

While agreeing that various aspects of prevailing personal laws disprivilege women, the Commission however said that “it is discrimination and not difference which lies at the root of inequality.”

It added that efforts have to be made to reconcile our diversity with universal and indisputable arguments on human rights.

The Way Ahead

The government and society will have to work hard to build trust, but more importantly, make common cause with social reformers rather than religious conservatives.