

## **1. Uniform Civil Code: The Debate, The Status**

### **Why in News?**

- ▶▶ Last week, while hearing a matter relating to properties of a Goan, the Supreme Court described Goa as a “shining example” with a Uniform Civil Code, observed that the founders of the Constitution had “hoped and expected” a Uniform Civil Code for India but there has been no attempt at framing one.

### **What Is A Uniform Civil Code?**

- ▶▶ A Uniform Civil Code is one that 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. Article 44 of the Constitution lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.

### **Article 44- “state shall endeavour”:**

- ▶▶ Article 44 is one of the directive principles. These, as defined in Article 37, are not justiciable (not enforceable by any court) but the principles laid down therein are fundamental in governance.
- ▶▶ Fundamental rights are enforceable in a court of law. 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.
- ▶▶ Article 43 mentions “state shall endeavour by suitable legislation” while 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.**

### **Fundamental Rights and Directive Principles:**

- ▶▶ The Supreme Court held in **Minerva Mills (1980)**: “Indian Constitution is founded on the bed-rock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles). To give absolute primacy to one over the other is to disturb the harmony of the Constitution”.
- ▶▶ **Article 31C** inserted by the 42nd Amendment in 1976, however, lays down that if a law is made to implement any directive principle, it cannot be challenged on the ground of being violative of the fundamental rights under Articles 14 and 19.

## Does India Have A Uniform Code in Civil Matters?

- ▶▶ **Indian laws do follow a uniform code in most civil matters** – Indian Contract Act, Civil Procedure Code, Sale of Goods Act, Transfer of Property Act, Partnership Act, Evidence Act etc. States, however, have made hundreds of amendments and therefore in certain matters, there is diversity even under these secular civil laws.
- ▶▶ Recently, several states refused to be governed by the uniform Motor Vehicles Act, 2019.
- ▶▶ If the framers of the Constitution had intended to have a Uniform Civil Code, they would have given exclusive jurisdiction to Parliament in respect of personal laws, by including this subject in the Union List. But “personal laws” are mentioned in the Concurrent List.
- ▶▶ Last year, the Law Commission concluded that a Uniform Civil Code is neither feasible nor desirable.

## Differing Personal Laws Within Same Religious Communities:

- ▶▶ All Hindus of the country are not governed by one law, nor are all Muslims or all Christians.
- ▶▶ In Jammu and Kashmir until August 5, 2019, local Hindu law statutes differed from central enactments. The Shariat Act of 1937 was extended to J&K a few years ago but has now been repealed.
- ▶▶ Muslims of Kashmir were thus governed by a customary law, which in many ways was at variance with Muslim Personal Law in the rest of the country and was, in fact, closer to Hindu law.
- ▶▶ Even on registration of marriage among Muslims, laws differ from place to place: J&K (1981 Act), Assam (1935 Act), Odisha (1949 Act), etc.
- ▶▶ **In the Northeast:** there are more than 200 tribes with their own varied customary laws. The Constitution itself protects local customs in Nagaland. Similar protections are enjoyed by Meghalaya and Mizoram. Even reformed Hindu law, in spite of codification, protects customary practices.

## Fundamental Right to Freedom of Religion:

- ▶▶ **Constitutional Provisions for Right to Freedom of Religion:**
  - ❖ **Articles 25 to 28** of the Constitution of India guarantees the right of Freedom of religion.
  - ❖ **Article 25:** mandates that subject to public order, morality and health, all persons enjoy freedom of conscience and have the right to entertain any religious belief and

propagate it. The condition of public order, morality and health has been put to make it clear that **freedom of religion is not absolute**. Use of loudspeakers, cracking on diwali, use of loudspeakers for ajan has come under scrutiny of Supreme Court.

- ❖ **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. An individual’s freedom of religion under Article 25 is subject to “public order, health, morality” and other provisions relating to fundamental rights, but a group’s freedom under Article 26 has not been subjected to other fundamental rights.

### **Debate in Constituent Assembly:**

- ▶▶ In the Constituent Assembly, there was division on the issue of putting Uniform Civil Code in the fundamental rights chapter. The matter was settled by a vote.
- ▶▶ By a 5:4 majority, the fundamental rights sub-committee headed by Sardar Vallabhbhai Patel held that the provision was outside the scope of fundamental rights and therefore the Uniform Civil Code was made less important than freedom of religion.
- ▶▶ **View of Muslim members in the Constituent Assembly:**
  - ❖ Some members sought to immunise Muslim Personal Law from state regulation. Mohammed Ismail, who thrice tried unsuccessfully to get Muslim Personal Law exempted from Article 44, said a secular state should not interfere with the personal law of people.
  - ❖ B Pocker Saheb said he had received representations against a common civil code from various organisations, including Hindu organisations.
  - ❖ Hussain Imam questioned whether there could ever be uniformity of personal laws in a diverse country like India.
- ▶▶ **B R Ambedkar** said “no government can use its provisions in a way that would force the Muslims to revolt”.
- ▶▶ Alladi Krishnaswami, who was in favour of a Uniform Civil Code, conceded that it would be unwise to enact Uniform Civil Code ignoring strong opposition from any community. Gender justice was not mentioned in these debates.
- ▶▶ **Debate On A Common Code For Hindus:**
  - ❖ In June 1948, Rajendra Prasad, President of the Constituent Assembly, warned Jawaharlal Nehru that to introduce “basic changes” in personal law was to impose

“progressive ideas” of a “microscopic minority” on the Hindu community as a whole. Others opposed to reforms in Hindu law included Sardar Patel, Pattabhi Sitaramayya, M A Ayyangar, M M Malaviya and Kailash Nath Katju.

- ❖ When the debate on the Hindu Code Bill took place in December 1949, 23 of 28 speakers opposed it. On September 15, 1951, President Prasad threatened to use his powers of returning the Bill to Parliament or vetoing it. Ambedkar eventually had to resign. Nehru agreed to trifurcation of the Code into separate Acts and diluted several provisions.

### **Law Commission of India's View:**

- ▶▶ In its consultation paper on 'Reform of Family Law', the Law Commission highlighted the importance of recognition of difference that exists in the Indian society and opined that **formulation of a Uniform Civil Code is neither necessary nor desirable at this stage.**

### **Conclusion:**

- ▶▶ While diversity of Indian culture can and should be celebrated, specific groups, or weaker sections of the society must not be dis-privileged in the process. Resolution of this conflict does not mean abolition of difference. Therefore, laws which are discriminatory should be dealt with rather than providing for a uniform civil code which according to the Law Commission of India is neither necessary nor desirable at this stage.
- ▶▶ Most countries are now moving towards recognition of difference, and the mere existence of difference does not imply discrimination, but is indicative of a robust democracy.