

## **2. Mizoram Assembly adopts resolution opposing any move to implement UCC**

**Prelims Syllabus:** Rights Issues

**Mains Syllabus:** GS-II Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections.



### **Why in News?**

- The Mizoram Assembly has recently unanimously adopted an official resolution opposing any move to implement the Uniform Civil Code (UCC) in the country.

### **Background:**

- The promulgation of the UCC emerges as a positive obligation and not duty of the State under Article 44 of the Constitution in the Directive Principles of State Policy (DPSP).
- Goa's Portuguese Civil Code of 1867 is an example of a common family law prevalent in a State.
- This to govern matters of divorce, adoption, inheritance, guardianship, succession of all citizens equally regardless of their religion, gender and sexual orientation.
- Several other petitions are also pending before the top court seeking uniform ground and procedures of divorce, adoption and guardianship for all communities across the country.
- The Centre has maintained the issue of UCC falls within the domain of legislature.

### 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, one of the directive principles of the Constitution lays down that the state shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.
- These, as defined in Article 37, are not justiciable (not enforceable by any court) but the principles laid down therein are fundamental in governance.

### What did the SC say?

- The constitution of such committees by the states cannot be challenged for being ultra vires to the Constitution of India, as Article 162 empowers the State to constitute such committees.
- Article 162 of the Constitution states that the executive power of a state shall extend to the matters with respect to which the legislature of the State has power to make laws.
- Also, Entry 5 (Concurrent List) of the 7th schedule of the Constitution gives such power to the states to form a committee.
- It deals with marriage and divorce; infants and minors; adoption; etc.

### Role of State in this regard:

- Fundamental rights are enforceable in a court of law.
- While Article 44 uses the words “the 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 the 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.

### What are more important — fundamental rights or directive principles?

- There is no doubt that fundamental rights are more important.
- **The Supreme Court held in Minerva Mills (1980):** Indian Constitution is founded on the bedrock 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 FRs under Articles 14 and 19.

### **Does India not already 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.

### **What about personal laws?**

- 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.

### **Is there one common personal law for any religious community governing all its members?**

- All Hindus of the country are not governed by one law, nor are all Muslims or all Christians. Not only British legal traditions, even those of the Portuguese and the French remain operative in some parts.
- 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.

### **Various customary laws**

- Muslims of Kashmir were 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 the registration of marriage among Muslims, laws differ from place to place. It was compulsory in J&K (1981 Act), and is optional in Bengal, Bihar (both under 1876 Act), Assam (1935 Act) and Odisha (1949 Act).

- 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.

### **How does the idea of a Uniform Civil Code relate to the fundamental right to religion?**

- Article 25 lays down an individual's fundamental right to religion;
- 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 FRs, but a group's freedom under Article 26 has not been subjected to other fundamental rights.
- In the Constituent Assembly, there was division on the issue of putting UCC 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 Patel held that the provision was outside the scope of FRs and therefore the UCC was made less important than freedom of religion.

### **Minority opinion in the Constituent Assembly**

- Some members sought to immunize 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 UCC, conceded that it would be unwise to enact UCC ignoring strong opposition from any community.
- Gender justice was never discussed in these debates.

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**How did the debate on a common code for Hindus play out?**

- In June 1948, Rajendra Prasad, President of the Constituent Assembly, warned 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.

