

# Daily Answer Writing

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## Structure

- Analyse the arguments for and against the Uniform civil code.
- Discuss why it is back in news and what should be the next step in this direction.
- Conclusion

## Context

- Define UCC
- Discuss the constitutional provisions related to it.
- Discuss the challenges in implementing it.

## Introduction

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.

## Greater role for State

- 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.

## 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 bed-rock of the balance between Parts III (Fundamental Rights) and IV (Directive Principles).

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- 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.

## 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.

## 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.

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- 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.

## 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.

### Conclusion:

An ideal state UCC would be an ideal safeguard of citizen’s rights. Its adoption will be a progressive legislation. With changing times, the need has arisen for having a Common Civil Code for all citizens, irrespective of religion, ensuring that their fundamental and Constitutional rights are protected. Even Secularism and National Integrity can also be strengthened by introducing UCC.

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