

## Polity Class 24

11th October, 2023 at 1:00 PM

### UCC (IN CONTINUATION) (01:05 PM)

- At present, India has a different set of laws that govern personal matters that vary from one faith to another.
- Also, personal laws are mentioned as a subject in entry 5 of the concurrent list resulting in variation from one state to another.
- UCC is an idea according to which people practising different faiths would be brought under a common set of personal laws.
- The importance of adopting the UCC can be noted as follows:
- It would help to ensure the effective implementation of laws.
- Certain personal laws are discriminatory against women and lack gender neutrality.
- Adopting a UCC on model lines can help in resolving this issue.
- The principle of equality is a part of the basic structure of the constitution that can be ensured effectively by bringing UCC.
- The secular credential of the Indian Constitution and the state would be strengthened as a result of adopting UCC.
- Challenges:
- It is difficult to create consensus between different communities over the content of UCC.
- It may create fear in the minds of the minorities that their culture may be subsumed by the majority.
- It may run into conflict with several provisions of the constitution including the right to freedom of religion and cultural rights under Articles 29 and 30.
- It may run into conflict with the traditions and customs of various communities and therefore threaten India's cultural diversity.
- It may end up creating conflicts and communal tensions in India and since the personal laws vary from one state to another, ensuring uniformity between them would be a challenging task.
- Conclusion:
- There is no doubt that India needs UCC to ensure the effective implementation of personal laws and to give effect to the provisions of Article 44. The successive governments have found it difficult to evolve consensus on the issues and at the same time, the court has suggested that the government should take all the possible measures to enforce the UCC in India. For example, in the Shah Bano Case, the court held that the provision related to the maintenance under CrPC should be equally applicable to all women irrespective of their religion.

- In conclusion, we can say that such a move to implement the UCC should be only made after evolving a broad consensus in society.
- Such decisions should not be made in a hurry and the government should work along with various social and religious leaders as well as legal experts to evolve a common viewpoint on this matter.

#### **ARTICLE 45:**

- Article 45 was amended by the 86th CAA as per which the original text of this Article was moved to Fundamental Rights under Article 21A.
- At present, it casts a responsibility on the state to promote early childhood care and education till the age of 6 years.
- Some of the steps taken in this direction include a Universal immunisation programme, ICDS etc.
- According to Article 21A, the State shall provide free and compulsory education to children between the ages of 6 to 14 years.
- Several Judgements of the court such as the Mohini Jain case and the Unnikrishnan case have also declared this right as a part of Article 21.
- In pursuance of Article 21A, the Parliament enacted the RTE Act of 2008 which laid down certain requirements to be followed to provide quality education at the primary level in all the schools in India.

#### **ARTICLE 46:**

- It casts a responsibility on the state to promote the interest of weaker sections of the society including SCs and STs.
- The State has given effect to these provisions by making reservations as well as by introducing various measures such as scholarship schemes and programmes for SC/ST students etc.

#### **ARTICLE 47:**

- Some of the initiatives taken to promote health and nutrition include the National Health Mission, PMJAY etc.
- Additionally, the State must try to bring about prohibition on the consumption of intoxicated drinks and drugs. Therefore, several states have introduced a policy of prohibition.
- The NDPS Act, 1985 that prohibits manufacturing, trade, sale and use of narcotics and drugs can be justified under this provision.

#### **ARTICLE 48:(02:10 PM)**

- According to it, the State must try to promote agriculture and animal husbandry on scientific lines. For example setting up of various institutes such as ICAR, NDDB etc. can be justified under this Article.

- Additionally, the state must try and prohibit the slaughter of cows and calves and other milch and draught cattle. As a result, some of the states have passed strict anti-slaughter laws to implement this provision.

#### **ARTICLE 48A:**

- According to it, the State shall endeavour to protect and safeguard India's biodiversity.
- Some of the steps taken in this direction include the enactment of laws such as the Wildlife Protection Act of 1972, the Forest Conservation Act of 1980 etc.
- The state also introduced various schemes to protect endangered wildlife species such as tigers etc.

#### **ARTICLE 49:**

- It imposes a duty on the state to protect monuments of national importance. Some of the measures taken by the State on this front include the enactment of the AMASR Act, the setting up of ASI that has been given the responsibility to conserve and protect these monuments etc.

#### **ARTICLE 50:(02:50 PM)**

- The doctrine of Separation of powers requires that the principal functions of the state must be divided clearly between different organs of the state to safeguard the citizens against the tyranny of the state.
- This concept was propounded by French thinker and scholar Montesquieu in the mid-18th century.
- In his words, when legislative and executive powers are vested in the same person or body, there can be no liberty.
- According to this concept, none of the branches must exercise the powers of the other nor should a person be a member of two organs of the state.
- The USA has adopted the concept of strict separation of powers according to a written constitution where separate articles classify the functions to be performed by the different organs of the state.
- In Britain on the other hand, an uncoded constitution allows for more fluidity in the arrangement of powers.
- Even India has adopted a Parliamentary form of democracy inspired by Britain in which enforcement of strict separation of powers is not a possibility.
- At the same time, certain provisions of the Constitution do provide for the separation of powers like Article 50, 361 etc.
- There are certain provisions in the Constitution that dilute the separation of powers.
- Parliamentary form of government
- Ordinance-making powers of the Governor and the President.

- Setting up of tribunals by the executive to decide disputes of a specific nature.
- Acts of Judicial activism by the Courts.
- In order to compensate for the dilution of separation of power, the constitution of India has adopted a system of checks and balances.
- A law made by the legislature cannot come into force unless approved by the President who heads the executive.
- An ordinance made by the executive requires the approval of the Parliament to continue beyond a certain period of time.
- The powers of the Judicial review according to which the courts may scrutinize the actions of the legislature and the executive.
- The powers of the Parliament to remove the judges of the SC and HC through a resolution of the Parliament.
- Powers of the Parliament to pass a Censure motion including a No-confidence motion against the government.

#### ARTICLE 51:(03:34 PM)

- It casts a responsibility on the Indian State to promote the resolution of conflicts through a dialogue-based approach, to promote respect for international law and to promote international peace and cooperation.
- Some of the initiatives taken in this regard are as follows:
- Sending Indian security forces as a part of IPKF.
- Fostering respect for international conventions such as ICCPR, Beijing rules etc.
- India has tried to resolve its conflict with the neighbouring countries through mechanisms such as ICJ.

#### CRITICISM OF DPSPs:

- They are not legally enforceable and therefore, according to some people, they are merely hollow promises made by the Constitution.
- Several DPSPs are vague and subjective in nature and therefore open to multiple interpretations.
- Several DPSPs are repetitive in nature.
- Several DPSPs are in conflict with fundamental rights like Article 25 with 44 etc.
- They impose a financial burden on the state which is already starved of resources.
- Some of them are orthodox in nature and run contrary to the liberal spirit of the Indian Constitution.

#### RIGHT TO PROPERTY:

- By the 44th CAA, the Right to Property has been removed as a fundamental right and made a legal right.

- **Article 31A allows the state to acquire the private property of an individual for public use.**

**TOPIC OF THE NEXT CLASS: CONTINUATION OF RIGHT TO PROPERTY AND ELECTION OF THE PRESIDENT.**