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UNIFORM CIVIL CODE

SYLLABUS:

GS 2 > Constitution >> Directive Principles of State Policy

REFERENCE NEWS:

By promising a Uniform Civil Code (UCC) which will keep tribals out of its ambit, Union Home Minister Amit Shah has reiterated the BJP's qualified pitch for the move, which is a part of its core agenda.

UNIFORM CIVIL CODE:

The **Uniform Civil Code (UCC)** in India refers to a proposal to create a single set of personal laws governing marriage, divorce, inheritance, adoption, and succession for all citizens, regardless of religion.

- **Article 44 of the Indian Constitution** explicitly mentions that "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." Although Directive Principles are not enforceable by the courts, they guide the state in framing laws to establish **social and economic equality**.
- **Fundamental Rights (Part III of the Constitution):** While Article 25 guarantees **freedom of religion**, the UCC aims to balance individual rights to religious freedom with the goal of legal equality. The UCC seeks to address personal law discrepancies, particularly those that lead to gender-based discrimination, thereby supporting **Article 14** (Right to Equality) and **Article 15** (Prohibition of Discrimination), reinforcing gender justice and equality before the law.

Indian courts have repeatedly emphasized the need for a UCC in landmark judgments, emphasizing its potential role in ensuring equality and eliminating discrimination:

- **Shah Bano Case (1985):** The Supreme Court ruled in favour of maintenance for Shah Bano, a Muslim woman who had been divorced, under Section 125 of the Criminal Procedure Code. The judgment invoked Article 44, suggesting that a UCC would help eliminate gender discrimination in personal laws, irrespective of religious beliefs, and ensure equal protection for all citizens.
- **Sarla Mudgal Case (1995):** The case dealt with the issue of polygamy and conversion to Islam solely for the purpose of contracting a second marriage. The Supreme Court highlighted the need for a UCC to prevent misuse of religious laws and to ensure legal consistency across religions. It stressed that having a UCC would promote national integrity by removing conflicts arising from personal laws.

- **John Vallamattom v. Union of India (2003):** This case challenged the provisions in Christian personal law that prohibited bequests for religious or charitable purposes. The Supreme Court observed that the absence of a UCC creates unnecessary conflict in personal laws and urged the government to implement a common civil code, citing Article 44.

SIGNIFICANCE OF UCC IN INDIA:

- **Promoting Gender Equality:** A UCC would address gender-based discrimination prevalent in religious personal laws, especially in matters of marriage, divorce, and inheritance.
 - In Muslim personal law, men have greater rights to divorce through *triple talaq* (though it was declared unconstitutional in 2017), while Christian divorce laws initially mandated a longer separation period than for Hindus. The UCC would standardize these laws to provide equal rights across religions.
- **Legal Simplification and Administrative Efficiency:** The current system of multiple personal laws creates legal complexity and administrative inefficiency. A UCC would simplify the legal framework by consolidating various personal laws into a single code applicable to all, making the law clearer and more accessible.
 - Currently, a legal dispute involving marriage or inheritance might need to reference Hindu, Muslim, Christian, or Parsi laws based on the parties' religion. A UCC would reduce the burden on the judiciary and streamline dispute resolution. The Special Marriage Act of 1954 provides a secular option for marriage outside religious personal laws, showing how a common code can simplify processes while respecting individual choice.
- **Supporting National Integration and Unity:** By applying a common set of laws to all citizens, a UCC would promote a sense of unity and equality, irrespective of religious or cultural backgrounds. It emphasizes the idea of one nation, one law.
 - In Goa, which has a Uniform Civil Code (also known as Goa Family Law), all residents are subject to the same laws for marriage, divorce, and succession, fostering a sense of equal treatment and national integration.
- **Protecting Minority Rights while Ensuring Social Justice:** A UCC can protect minority rights by providing them with equal legal standing, without discrimination based on religion. This promotes social justice by ensuring everyone has access to the same legal protections.
- **Preventing Exploitation of Religious Laws for Personal Benefit:** Different personal laws create loopholes that can be exploited to avoid legal obligations, such as converting to another religion to contract a second marriage without adhering to the original personal law.
 - In cases like the Sarla Mudgal case, individuals used religious conversion to legally justify polygamy, which is otherwise prohibited for Hindus. A UCC would close these loopholes by applying the same legal standards to all citizens.
- **Enabling India to Fulfil Constitutional Promises:** The UCC is backed by Article 44 of the Constitution, which directs the state to strive for uniformity in civil laws across

communities. Implementing the UCC would fulfil this constitutional promise, reinforcing the commitment to a secular and equal legal framework.

- Countries like Turkey and Tunisia have implemented civil codes that govern personal laws uniformly across all citizens, highlighting that secular states can adopt a single civil code while respecting religious freedom.
- **Improving India's Human Rights Standing Globally:** Implementing a UCC would strengthen India's commitment to human rights, as it addresses issues like gender-based discrimination and promotes equality under the law. This could enhance India's image in the global arena as a nation committed to social justice and human rights.
 - International organizations, including the United Nations, often encourage nations to adopt non-discriminatory practices. A UCC could help India align its domestic policies with its international human rights obligations.

CHALLENGES OF UCC IMPLEMENTATION IN INDIA:

- **Religious and Cultural Sensitivities:** The UCC is perceived by some religious communities as an infringement on their rights and cultural practices. Many fear that a common code would disregard their unique customs and traditions.
 - In 2016, when the Law Commission of India sought public opinion on the UCC, it received mixed responses, with religious groups like the All India Muslim Personal Law Board expressing opposition, fearing an encroachment on religious freedom.
- **Diverse Family Laws and Community Practices:** India's various communities have distinct customs governing marriage, divorce, inheritance, and adoption, making it challenging to create a single code that accommodates all.
 - Hindu law allows coparcenary rights (joint family property rights), which is unique to Hindu families, whereas Christian law doesn't recognize it. Reconciling these differences under one law is complex and can lead to discontent among communities.
- **Political Opposition and Communal Polarization:** The UCC has become a politically sensitive issue, with various political groups either supporting or opposing it based on ideological beliefs, leading to communal polarization.
 - In 2019, the UCC was raised during election campaigns, with different political parties expressing polarized views. Supporters saw it as a means of achieving social justice, while critics viewed it as a threat to India's pluralism.
- **Legal and Constitutional Complexities:** Implementing a UCC poses legal complexities, as it requires the repeal or modification of various religious personal laws, which have been safeguarded under the Constitution.
 - The Constitution allows religious communities to follow their personal laws under Articles 25-28 (freedom of religion). Modifying these would require constitutional amendments and possibly face judicial scrutiny to ensure that

religious rights are not violated. The Special Marriage Act (1954), which is a secular law allowing interfaith marriages, has limited adoption due to the preference for personal laws. The legal challenge is to ensure that UCC doesn't infringe on religious freedoms guaranteed by the Constitution.

- **Opposition from Minority Communities:** Minority communities, especially Muslims, fear that a UCC may disproportionately impose the majority's customs, leading to a perceived erosion of their cultural identity.
 - The All India Muslim Personal Law Board has consistently opposed the UCC, asserting that any attempt to impose it would violate the cultural and religious rights of Muslims. The Board argues that the right to practice personal law is integral to religious freedom.
- **Challenges of Regional and Ethnic Diversity:** Beyond religious diversity, India's ethnic and regional diversity means that personal laws and customs vary widely across states and communities.
 - In Nagaland and Mizoram, customary laws govern land rights, inheritance, and marriage practices. The Constitution under Article 371 provides special provisions to protect the customary practices of northeastern states.
- **Lack of Consensus on the Scope and Content of UCC:** There is no consensus on what a UCC should entail, as different communities and legal experts have varied opinions on what should be included in the code.
 - ★ The Law Commission of India's 2018 report concluded that a UCC may not be feasible in India's current socio-political climate. Instead, it recommended reforms within existing personal laws to make them more equitable and inclusive, reflecting the challenge of finding common ground.
- **Judicial Balance Between Fundamental Rights and Religious Freedom:** The judiciary must balance the fundamental right to equality (Article 14) with the right to religious freedom (Articles 25-28). This balance is delicate and often leads to differing interpretations on whether UCC is constitutionally mandated.
 - In the Sarla Mudgal case (1995), the Supreme Court supported a UCC to prevent misuse of religious laws. However, the court has also recognized the need to protect religious practices, creating ambiguity on the role of UCC.

WAY FORWARD:

- **Phased Implementation and Incremental Reforms:** Rather than a sudden overhaul, a phased approach can help address specific aspects of personal laws, such as marriage, divorce, and inheritance, by introducing reforms that are common across all communities.
 - Goa's family laws provide an example of a partial UCC that is applied in a region-specific manner, showing that gradual change can be effective without imposing a drastic shift.

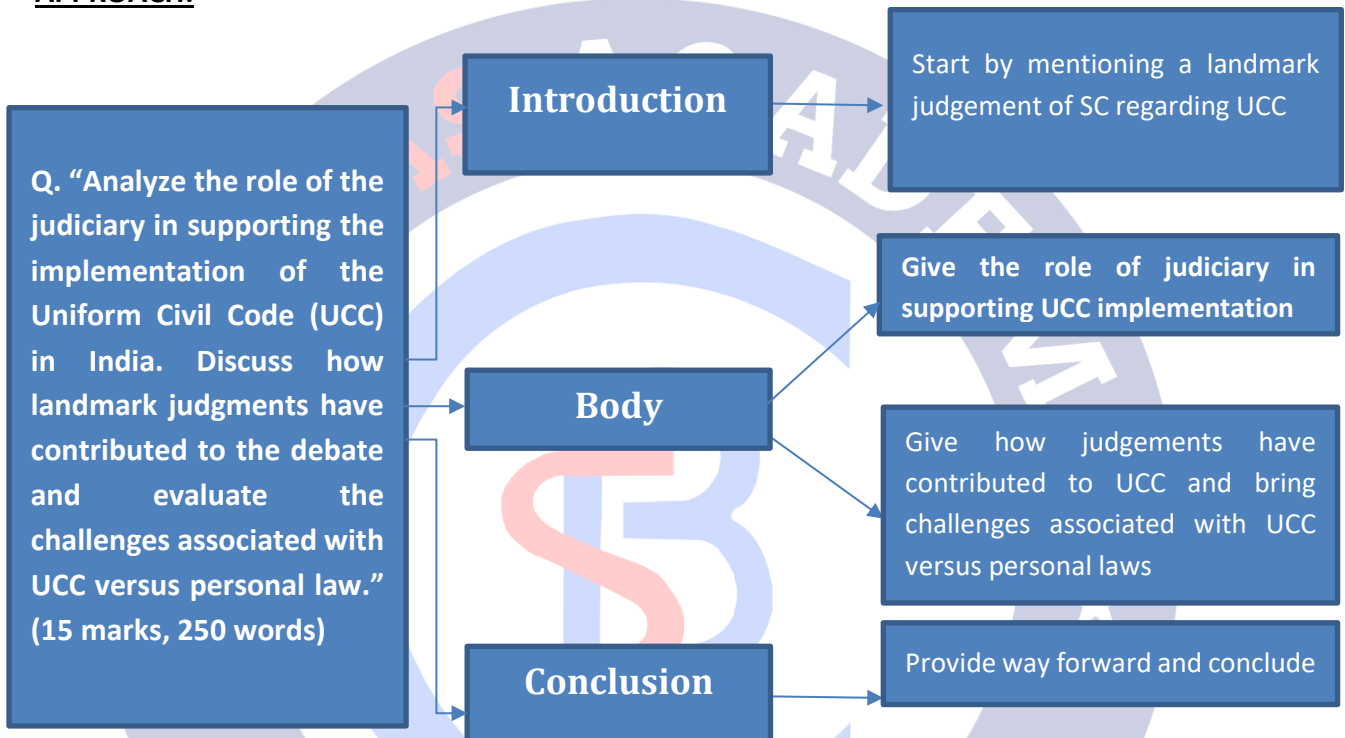
- **Codification and Reform within Personal Laws:** The Law Commission has previously suggested reforms within Muslim, Christian, and Hindu personal laws to address issues like polygamy, divorce rights, and inheritance inequalities. Codifying these changes within communities can lay the groundwork for an eventual UCC.
 - The Hindu Code Bill of the 1950s reformed Hindu personal laws while respecting the Hindu community's cultural practices. Similar reform efforts within other personal laws can prepare communities for a unified code.
- **Broad-Based Dialogue and Consensus Building:** Organize consultations and focus groups across states and religious groups to gather input on what aspects of personal law could be uniformly applied. Such dialogue can address fears of cultural erosion.
 - South Africa's transition to democratic family laws included broad-based consultations, helping to implement a secular family law system without alienating religious communities.
- **Uniformity in Secular Aspects of Law:** Marriage registration, divorce maintenance, and adoption laws could be standardized across religions, while religious rites and customs remain untouched. This ensures the UCC focuses on legal rights without interfering with religious practices.
 - The Special Marriage Act, 1954 allows citizens to marry under a secular law without renouncing their religion, providing a template for how secular aspects can coexist with religious identity.
- **Educational and Awareness Programs on UCC Benefits:** Conduct educational campaigns highlighting the benefits of a UCC in promoting social justice, gender equality, and legal simplicity. This can address misconceptions and help build public support for uniform personal laws.
 - Post-implementation awareness initiatives in countries with secular codes, like Tunisia, helped reduce resistance by showcasing benefits, especially for marginalized communities and women.
- **Model Code as a Voluntary Option:** Create a model UCC that people can voluntarily opt into if they wish, especially in urban and mixed-community settings where people may prefer a secular personal law.
 - In Brazil, a single civil code was gradually accepted over generations as more people voluntarily adopted its secular provisions, which can be a path forward in India.
- **Strengthening Judicial Precedents for Gender Justice:** Encourage courts to interpret personal laws progressively, as seen in the Shah Bano and Shayara Bano (triple talaq) cases. Judicial rulings supporting equal rights across personal laws can pave the way for UCC.
- **Learning from International Models with Diverse Societies:** Study countries with diverse populations that have implemented unified civil codes, focusing on how they balanced secularism with religious and cultural diversity.

- Countries like Turkey and France have implemented secular family laws, while others like South Africa have used a mixed approach. Learning from these models can help India tailor a UCC that respects its unique diversity.

PRACTICE QUESTION:

Q. “Analyze the role of the judiciary in supporting the implementation of the Uniform Civil Code (UCC) in India. Discuss how landmark judgments have contributed to the debate and evaluate the challenges associated with UCC versus personal law.” (15 marks, 250 words)

APPROACH:



Through landmark judgments like Shah Bano case the Supreme Court has repeatedly highlighted the need for a UCC to remove discrimination embedded in personal laws. However, judicial intervention in matters of personal law also faces challenges due to the diverse cultural and religious landscape of India.

ROLE OF JUDICIARY IN SUPPORTING UCC IN INDIA

1. **Reinforcing the Constitutional Directive:** Article 44 of the Indian Constitution encourages the state to strive for a UCC. The judiciary has often referenced this Article to underline the importance of a UCC in promoting equality and addressing inconsistencies in personal laws.
2. **Addressing Gender Inequality:** The judiciary has consistently sought to uphold gender equality in personal law matters, especially in cases involving divorce, maintenance, and inheritance. By advocating for uniformity in these aspects, the judiciary has underscored the UCC as a tool to eliminate gender-based disparities.

- Example: The Shayara Bano case (2017) declared *triple talaq* unconstitutional, emphasizing the need for reforms that protect women's rights within personal laws. The judgment reinforced the notion that certain practices cannot be protected under religious freedom if they violate gender equality.
3. **Balance Article 14 and Article 25 without compromising equality:** The judiciary must balance the fundamental right to religious freedom (Article 25) with the right to equality (Article 14). Judicial interventions in personal laws sometimes face criticism for potentially infringing on religious practices and customs.

CONTRIBUTIONS OF LANDMARK JUDGMENTS TO THE UCC DEBATE

1. **Increased Public Awareness and Debate:** Judicial pronouncements in favor of the UCC have brought the issue into the public domain, fostering discussions about the importance of uniform laws and the need to reform discriminatory personal laws.
2. **Reinforcing Gender Justice and Social Equity:** The judiciary's emphasis on equal rights and social justice has influenced public opinion on the UCC, positioning it as a means to ensure fair treatment for women across communities.
3. **Pressuring the Legislature:** While the judiciary cannot enforce a UCC, its repeated calls for legislative action have put pressure on lawmakers to consider reforms in personal laws that align with the constitutional principles of equality and secularism.
4. **Landmark Judgments Advocating for UCC:**
 1. **Shah Bano Case (1985):** The Supreme Court awarded maintenance to Shah Bano, a Muslim woman divorced by her husband, under Section 125 of the Criminal Procedure Code, which applies to all citizens. In its judgment, the Court invoked Article 44, noting that a UCC could prevent such gender-based discrimination in personal laws and protect the rights of divorced women, irrespective of religion.
 2. **Sarla Mudgal Case (1995):** This case dealt with the misuse of religious conversion to practice polygamy. The Court highlighted the need for a UCC to prevent individuals from using religious laws to evade legal obligations, especially in matters of marriage. It emphasized that a common code would ensure legal uniformity and strengthen national unity.
 3. **John Vallamattom v. Union of India (2003):** The Court struck down a provision in Christian personal law that restricted bequests for charitable purposes, urging the government to adopt a UCC to reduce conflicts and discrimination arising from diverse personal laws.

CHALLENGES ASSOCIATED WITH UCC v. PERSONAL LAWS

Religious Freedom versus Legal Uniformity

- Challenge for UCC: Implementing a UCC is seen by many as a threat to religious freedom, as it would standardize laws across communities, potentially infringing on religious practices protected under Articles 25–28 of the Constitution.

- Challenge for Personal Laws: Practices like polygamy allowed in Muslim personal law are not permitted in Hindu law, resulting in legal disparities that conflict with the principles of equality and secularism in a democratic society.

Gender Equality versus Cultural Sensitivity

- Challenge for UCC: A primary argument for the UCC is to promote gender equality across communities. However, communities argue that uniform laws might disregard cultural norms and values that they believe are essential.
- Challenge for Personal Laws: Muslim personal laws previously allowed *triple talaq*, creating unequal divorce rights for men and women. The Hindu Succession Act, prior to its amendment, gave sons more inheritance rights than daughters, highlighting gender biases within personal laws.

National Integration versus Diversity of Customs

- Challenge for UCC: Proponents argue that a UCC could foster national unity by creating a "one nation, one law" framework. However, critics worry that imposing a UCC could alienate certain communities and erode India's pluralistic ethos, where diversity of practices is valued.
- Challenge for Personal Laws: While personal laws respect cultural diversity, they can lead to legal fragmentation, which may create conflicts between communities and undermine the concept of a unified legal system. This diversity in laws complicates the legal system and often hinders judicial efficiency.

Simplification of Legal Processes versus Regional Autonomy

- Challenge for UCC: A UCC could simplify legal processes by removing the need to apply multiple sets of personal laws. However, this approach may fail to recognize regional and customary practices that are integral to various communities, especially in regions like the Northeast where local customs govern personal laws.
- Challenge for Personal Laws: Personal laws are complex and region-specific, creating legal challenges for the judiciary when resolving disputes involving citizens from different religious backgrounds. This results in inconsistent judgments and makes the legal process longer and more expensive.

Judicial Consistency versus Religious Autonomy

- Challenge for UCC: By standardizing laws, the UCC could bring consistency and predictability in judicial rulings across similar cases. However, the risk is that it could restrict religious communities' autonomy in matters that they regard as personal and sacred, potentially leading to backlash.
- Challenge for Personal Laws: Personal laws often lead to inconsistent judicial decisions, as courts interpret and apply different religious codes in personal matters. This inconsistency complicates the judiciary's ability to deliver fair and equal treatment, with some citizens benefitting more than others depending on the personal law they follow.

Global Human Rights Standards versus Localized Practices

- Challenge for UCC: A UCC aligns India with international human rights standards, addressing gender equality and nondiscrimination. However, communities may see it as imposing foreign values on local traditions, leading to resistance.
- Challenge for Personal Laws: Personal laws that permit gender biases often violate international norms on equality and justice. For example, the UN has advocated for equal rights across gender and religion, but several personal laws fail to meet these standards, affecting India's global human rights image.

The judiciary has played a crucial role in advancing the discussion on the Uniform Civil Code, highlighting its importance for social equality and justice through landmark judgments. However, implementing a UCC remains challenging due to religious sensitivities, the need for legislative action, and the complex balance between rights to equality and religious freedom. A gradual, consultative approach, starting with reforms within personal laws, could pave the way for a UCC that respects India's secular fabric and diverse cultural heritage.

