Cultural Cases: Balancing the Odds

What is the issue?

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- Supreme Court (SC) is currently hearing multiple cases involving culture and traditions, which is polarising the masses.
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- Considering the delicate scenario, judges will have to carefully strike a good balance between “their reformatory zeal” and “social prudence”.
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What are the ongoing cases?

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- Currently, cases involving “Section 377 of the Indian Penal Code (IPC)”, and “Sabarimala case – for women entry” are playing out in the Supreme Court.
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- Hearings in both cases have seen clashes between the invocation of personal rights and the claims of cultural and religious groups.
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- Further, the case to decriminalise adultery will be taken up soon, which is also likely to attract the wrath of the pro-tradition brigade.
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- Notably, the government too has objected to the decriminalisation of adultery on the basis that it would destroy the institution of marriage.
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What are the challenges in dealing with questions involving culture?

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- Settling a case that questions cultural practices is a complex task.
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- This is because these conflicts often represent deep, long-standing and

irreconcilable divisions in society, and concern personal belief systems.
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- **Containment -** Even constitutional documents often consciously refrain from directly addressing them and rather provide a mere guiding light.
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- For example, framers of the Constitution deliberately placed the provision for a “Uniform Civil Code” under the unenforceable “Directive Principles”.
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- This strategy of leaving it to future generations to evolve solutions as an when situations arise is called the “Limited Containment Approach”.
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- Due to this, for the most part, conflicting cultural questions remain submerged and a tense equilibrium between contesting groups prevails.
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- **Litigation -** The equilibrium is shattered when one contesting group finally decides to break the stalemate, and raise the stakes towards a clear resolution.
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- While courts are the most sought after arena for resolving these issues, culture wars are particularly ill-suited for resolution through litigations.
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- Notably, unlike in political or economic disputes, a decisive loss in a matter involving personal belief risks alienated communities.
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- In certain situations, it might even lead to the erosion of faith in the neutrality and impartiality of state institutions.
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What are the possible ways for the court?

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- **Postponement -** Considering the risks involved, some scholars hold that courts should tread with extreme caution while dealing with cultural issues.
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- Further, they vouch that courts should postpone such cases as much as possible and should preferably avoid hearing and deciding on such matters.
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- **Narrow View -** If the court must decide, then it should adopt the narrowest grounds possible, and limit its verdict to mere technical points in law.
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- This would help in avoiding tricky constitutional questions, consciously shun establishing a precedent, and ensure that the simmering dispute is subdued.

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- Importantly, judges should refrain from expressing any opinion on the validity of any personal belief or conviction – thereby reducing the stakes.
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- This approach is a pragmatic one to ease tensions rather than one that envisions establishing a utopian social-cultural order.
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- How would the “narrow view” approach look like in the current cases?
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- **Section 377 -** Government stated that it would not oppose decriminalising same-sex relations between consenting adults, if it is in the private domain.
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- During oral arguments, every time the petitioners pressed for more, the government counsel urged the court to limit itself to mere decriminalisation.
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- **Sabarimala Case -** Here, the validity of a rule which deny women of a certain age groups access to the temple is what is being looked into.
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- The pro-entry groups have pitched upon gender-equity as one of the precepts of right to freedom of religion while arguing their case.
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- But it is open to the courts to merely restrict itself to simply study the scope of the parent law and pronounce on its validity on purely technical grounds.
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- This would help in circumventing the controversial question on whether one is entitled to invoke religion as a ground to deny entry to menstruating women.
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What are the other opinions?

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- Some thinkers decry the “narrow view” approach and alternately call for a “transformative approach” to end long-standing injustices.
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- While the narrow approach advocates a slow change through compromises, the contrary view advocates bang-on reform to rectify traditional misgivings.
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- Notably, strong laws and constitutional safeguards against caste based discrimination is a classical example of the “transformative approach”.
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- Transformative approach sees any retreat by courts in the face of strident

cultural assertions as a betrayal of its constitutional mandate.
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- In this context, “transformative ideologues” argue that mere decriminalisation of 377 won’t suffice and call for institutional safeguards for homosexuality.
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- Similarly, in the Sabarimala case too, their argument is for denouncing gender as a ground for restrictions and discrimination within the religious domain.
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- Therefore, the court is faced with a stark choice between the narrow and the transformative approaches to navigate the uneven waters.
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Quick Facts:
\nUniform Civil Code (UCC):

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- UCC is an envisioned set of codified (drafted) civil laws that is touted to replace the existing religion specific personal laws in India.
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- Notably, personal laws govern aspects like marriage, divorce, adoption, inherited ancestral property, religion etc…
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- UCC has been given in the DPSP (a guide to future governments) of the Indian Constitution and hence is not legally enforceable.
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Source: The Hindu

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