Kerala Resolution on Uniform Civil Code

Why in news?

Recently, Kerala passed a resolution against Centre's move to implement Uniform Civil Code.

What is Uniform Civil Code?

> *It is defined in Article 44 as part of the Directive Principles of State Policy, in Part IV of the Constitution. It is often called as "One Law for One Nation"*

- **Article 44 -** It states that 'the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India'.
- Though DPSP is fundamental to the country's governance, it is *not enforceable or justiciable* in a court of law.
- **Aim-** To enforce a uniform legal framework to all citizens, irrespective of their religion.
- To safeguard the fundamental rights of all citizens and reduce social inequalities and gender discrimination.

> *In Shah Bano Begum Judgement of 1985, where a divorced Muslim woman demanded maintenance from her former husband, the apex court called for the implementation of the UCC.*

What is Kerala's resolution on UCC about?

- **Affects secularism-** The Uniform Civil Code affects the secular fabric of the country.
- **Imposition of Manusmriti-** It is an ancient Hindu code that endorsed the oppressive caste system and was deeply prejudicial to women.
- **Non-enforceable**- The Uniform Civil Code is placed under Directive Principles of State Policy, which is not mandatory to implement.
- **Power of court-** The Court may order to enforce Fundamental rights. But, Article 44 of the Constitution cannot be enforced even by the courts.
- **Against federalism-** Centre could make a unilateral move on the contentious issue without consulting states, which is the basic structure of the Constitution.
- **Constitution-** It is essential to understand how much thought the founders of the Constitution put into their decision.
- **Negates tribal rights-** It would render the statutory autonomous councils for tribal development in North Eastern States redundant.

- **Violates article 25-** It seeks to erase the fundamental right of citizens to practice, profess and propagate the religion of their choice.

What is the power of centre with respect to Uniform Civil Code?

- **Personal laws-** It is found in *Concurrent List (List III)* of the Seventh Schedule to the Constitution.
- **Article 162-** The constitution gives State governments the power to legislate on subjects where a central law does not occupy the field.
- **Limitations-** The executive power of the State is limited by the executive power conferred by the Constitution or by any law made by Parliament.
- If there is a central law, it automatically gains precedence over the state law on the subject.
- **Entry 5 of the Concurrent list-** Marriage, divorce, Adoption of infants and minors, wills, intestacy and succession, joint family and partition.
- State laws will not have precedence over the central laws for the issues mentioned in Entry 5 of the concurrent list.
- **Legislations-** Hindu Marriage Act, 1955 and Shariat Act of 1937, are central legislations on Hindu and Muslim personal laws.
- When the Hindu personal laws were codified in 1955, it replaced several provincial legislations that existed on the issue.
- **Judiciary stand-** Supreme Court refused to hear petitions challenging the move by certain states to set up committees to explore the feasibility of implementing a uniform civil code in their respective administrative jurisdictions.
- As per article 162, the executive power of a State extends to matters with respect to which the Legislature of the State has power to make laws hence the constitution of a Committee cannot be challenged.

To know more about Uniform Civil Code click here

States stand on Uniform Civil Code

States in favour of UCC

• **Goa-** It is the only state in India that has a uniform civil code regardless of religion, gender and caste.
• It inherited the Portuguese Civil Code, 1867 even after it joined the Indian Union in 1961.
• **Uttarakhand-** Ranjana Desai committee was set up to prepare draft for the implementation of UCC.
• **Gujarat-** It announced to constitute a committee for the implementation of UCC in the state.
• **Madhya Pradesh-** It announced that it will form a committee to implement UCC in the state.
• **Assam-** It is in favour of UCC and also plans to ban polygamy by legislation.
• **Uttar Pradesh -** It decided to implement the UCC in the state.

States against UCC

• **Mizoram-** It unanimously passed resolution against Article 44, as it could clash with the customs and social practices of Mizos in the state.
• **Nagaland-** The Nagaland Tribal Council has written to the Law Commission that the UCC will dilute the provisions of *Article 371A* of the Constitution (Special provisions for the state).
• **Tamilnadu-** It wrote to 22nd Law commission that the UCC could violate individual's religious freedom.
• **Kerala-** It passed resolution against the UCC as it would affect secularism and federalism in the country.

What lies ahead?

- **Reiterate Ambedkar's position -** If implemented, UCC should also "make a provision that the Code shall apply only to those who make a declaration that they are prepared to be bound by it".
- **Law commission report**- 21st Law Commission report recommended that the UCC is "neither necessary nor desirable at this stage."

References

1. Indian Express- Kerala adopts resolution against UCC
2. The Hindu- Kerala seeks to scrap plan for UCC

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