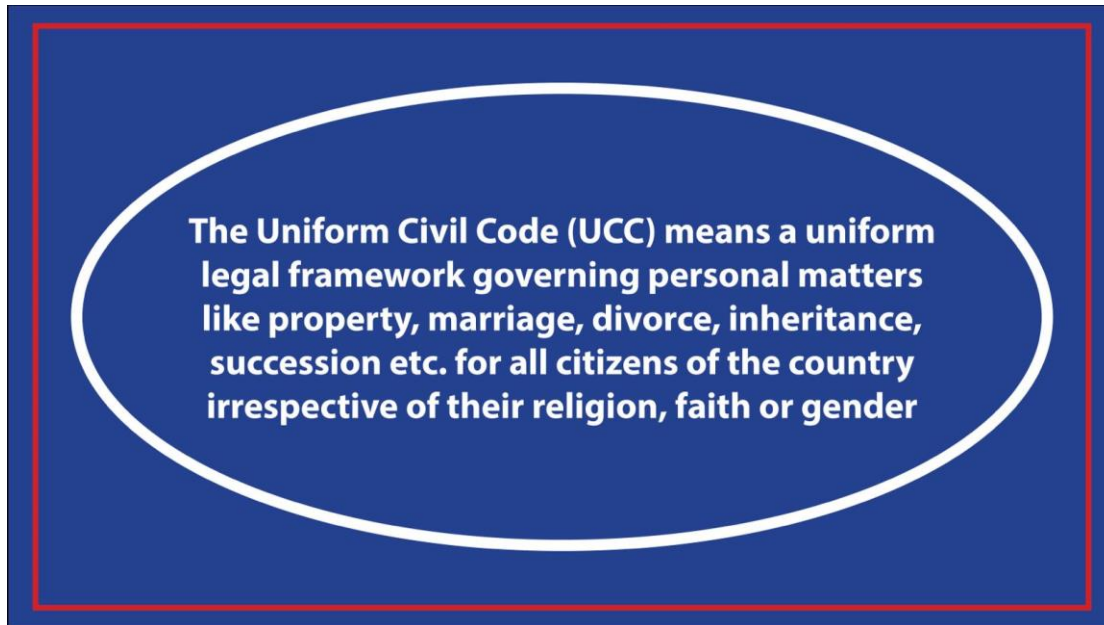
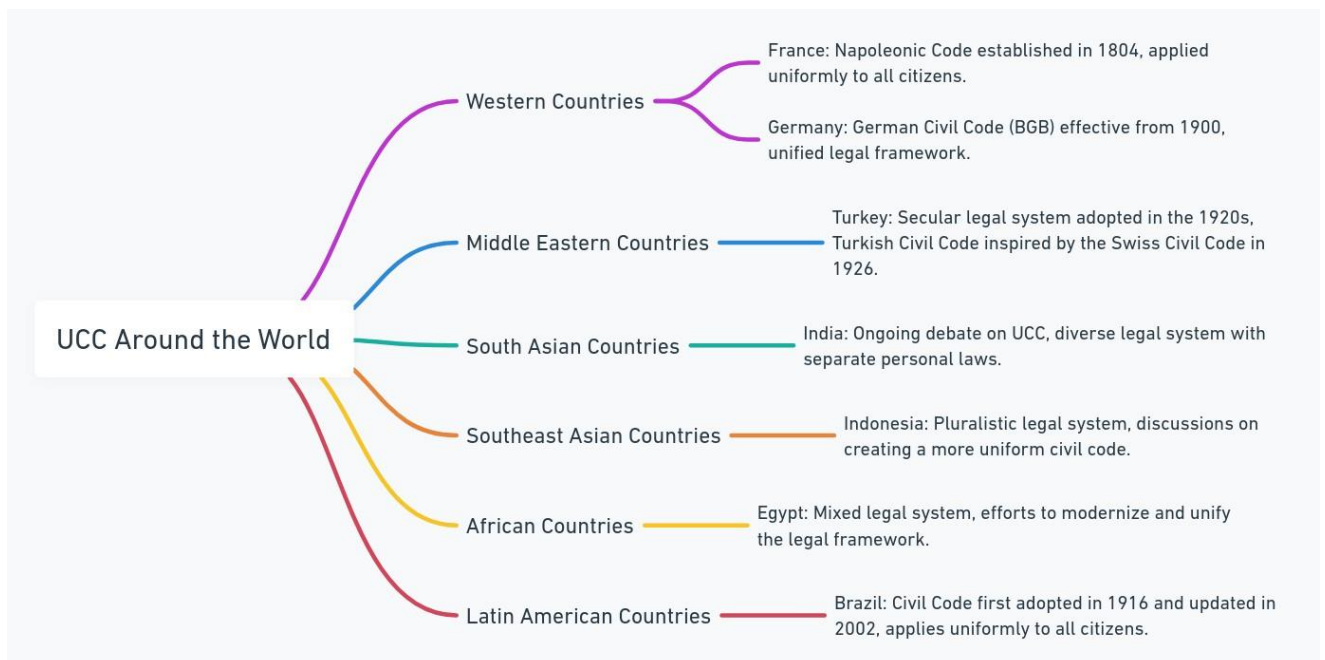


## What is the Uniform Civil Code?



The Uniform Civil Code (UCC) is a proposal in India to formulate and implement personal laws of citizens which apply to all citizens equally regardless of their religion.

## Where around the world it has been adopted?



No country has fully implemented a Uniform Civil Code that covers all personal matters for its citizens. However, some countries like France, Germany, and Turkey have aspects of uniformity in their civil codes that apply to all citizens, regardless of their religion or beliefs.

However in some countries there have been efforts like:-

### **Western Countries**

- **France:** France has a long history of a uniform civil code, famously known as the Napoleonic Code, established under Napoleon Bonaparte in 1804. It was one of the first examples of a comprehensive legal code that applied uniformly to all citizens, regardless of class or religion, covering issues like property, civil rights, family law, and contracts.
- **Germany:** The German Civil Code (Bürgerliches Gesetzbuch, BGB) came into effect in 1900, providing a unified legal framework for all citizens in the German Empire. It covered a wide range of personal and civil matters, emphasizing the principle of equality before the law.

### **Middle Eastern Countries**

- **Turkey:** Under Mustafa Kemal Atatürk, Turkey underwent significant reforms in the 1920s and 1930s, including the adoption of a secular legal system. The Turkish Civil Code, inspired by the Swiss Civil Code, was adopted in 1926, replacing Islamic law in matters of family and personal status, and applying uniformly to all citizens.

### **Status of UCC in gulf countries: -**

The Gulf countries, comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE), have legal systems that are significantly influenced by Islamic law (Sharia). Here's an overview of the situation in the Gulf countries regarding personal law:

#### **Bahrain**

Bahrain's legal system incorporates both civil law and Islamic law. Family law for Sunni Muslims follows the Maliki school of Islamic jurisprudence, whereas Shia Muslims are governed by the Jafari school. Despite these religious-based laws, Bahrain has made efforts to modernize its legal framework, including the establishment of family courts.

#### **Kuwait**

Kuwait's legal system is a mix of civil law, Islamic law, and customary law. Personal status law and family matters, such as marriage, divorce, and inheritance, are governed by Islamic principles. Kuwait has separate sections within its court system to deal with Sunni and Shia family law cases.

#### **Oman**

In Oman, Islamic law is the basis for legislation, particularly in personal and family law matters. The legal system is deeply rooted in the Ibadi school of Islam, which influences laws regarding marriage, divorce, inheritance, and child custody.

#### **Qatar**

Qatar's legal framework is heavily based on Islamic law for personal status matters, affecting marriage, divorce, inheritance, and custody among Muslims. The country has specific family law courts that deal with these issues according to Islamic legal principles.

### **Saudi Arabia**

Saudi Arabia has a legal system that strictly follows Wahhabi Islam, with no codified personal law; instead, judges rely directly on the Quran and Hadith for guidance in legal matters. This means that all personal status law is governed exclusively by Sharia without a uniform civil code in the secular sense. Recent reforms, particularly regarding women's rights, have been introduced, but the legal framework remains firmly rooted in Islamic law.

### **United Arab Emirates (UAE)**

The UAE's legal system is a hybrid of civil law and Islamic law. While it has a federal legal framework, personal status matters such as marriage, divorce, and inheritance are governed by Sharia. However, the UAE has introduced significant legal reforms, including allowing non-Muslims to opt for civil marriage and providing for more progressive family law provisions for its expatriate population. In 2020, the UAE announced reforms to some of its Islamic personal laws, aiming to improve personal freedoms and attract foreign residents.

## **Evolution of UCC in India: -**

### **Ancient Period**

- Vedas and Smritis: Initially, the legal system was based on religious texts. Hindus followed rights and rules provided in the Vedas and Smritis.

### **Medieval Period**

- Mughal Rule: With the arrival of the Mughals, Shariat law, a divine law, became prevalent. Emperor Aurangzeb compiled various laws followed by the Muslim community into a uniform set of laws named 'Fatwa Alamgiri'.

### **British Colonial Period**

- Company Rule to Crown Rule: Initially, criminal matters were governed by Hindu personal law or Shariat laws. However, post-1781, English laws started governing criminal matters due to the perceived rigidity and harshness of Muslim law.
- Reforms by Lord William Bentinck (1828-1829): Introduced laws against 'Sati Pratha' and 'Female Infanticide' marking the first intervention in Hindu civil matters.
- Uniform Criminal Code Proposal (1833): Lord Macaulay proposed a uniform criminal code, leading to the enactment of the Indian Penal Code, Code of Criminal Procedure, and other statutes by the 19th century.

### **Unification of Civil Matters**

- Special Marriage Act (1873): Introduced by Sir Henry Maine, it allowed inter-caste and inter-religion marriages, aiming for a unified civil law framework.

- **Progressive Legislation:** Various acts such as the Age of Consent Act (1891), Child Marriage Restraint Act (1929), Hindu Inheritance (Removal of Disabilities) Act (1928), and others aimed at unifying civil matters and enhancing rights, especially for women.

## Debates over UCC in the constituent assembly of India:-

The debate over the Uniform Civil Code (UCC) in India, particularly during the Constituent Assembly discussions, revealed deep divisions and a range of opinions among the key figures involved in drafting the Constitution. These debates can be summarized into three main positions: those for the UCC, those against it, and those advocating for a middle ground.

### For UCC

Proponents of the UCC, such as B.R. Ambedkar, K.M. Munshi, and Minoo Masani, argued for its adoption on several grounds:

- **National Unity and Secularism:** They believed a UCC was essential for promoting national unity and secularism, transcending religious and community divides.
- **Gender Justice:** Advocates highlighted the potential for the UCC to reform and improve women's rights, particularly within Hindu law.
- **Modern Legal Framework:** They saw the UCC as a step towards creating a modern legal framework that treated all citizens equally, regardless of religion.

### Against UCC

Opposition to the UCC came from various quarters, including members like Ismail Sahab, Nazzirudin Ahmad, and Pocker Sahib Bahadur, who raised concerns on several fronts:

- **Religious Freedom:** Opponents argued that the UCC infringed upon the constitutional guarantee of religious freedom, fearing it would override personal laws.
- **Community Autonomy:** There was a strong sentiment that communities should have the autonomy to follow their personal laws, which were integral to their identity and religious practice.
- **Risk of Disharmony:** Critics warned that imposing a UCC could lead to social disharmony and exacerbate communal tensions, given India's diverse religious landscape.

### Adoption of Middle Ground

A middle path was also evident in the discussions, aimed at reconciling the opposing views:

- **Directive Principles of State Policy:** The decision to place the UCC within the non-justiciable section of the Directive Principles was a compromise, recognizing the importance of a UCC while acknowledging the complexities involved in its implementation.
- **Future Flexibility:** Figures like Alladi Krishnaswamy and Dr. B.R. Ambedkar suggested that while the UCC was desirable, its implementation should be optional, allowing future legislatures to act with the consent of communities, thus leaving room for gradual acceptance and adaptation.

## **Conclusion and Adoption**

- Vote on Draft Article 35: The Constituent Assembly adopted the article, later renumbered as Article 44 of the Indian Constitution, as a compromise and deferred decision to future legislatures.

## **Key Supreme Court Cases around UCC**

### **Shah Bano Case (1985)**

- Case Summary: The Supreme Court ruled that Section 125 of the Code of Criminal Procedure, 1973, which provides for maintenance support to wives, children, and parents, applies to everyone regardless of religion, caste, or community.
- Implications: The court's decision emphasized the need for a UCC to eliminate legal disparities and foster national unity. This case became a focal point in discussions about the intersection of personal laws and the rights guaranteed by the constitution.

### **Sarla Mudgal Case vs. the Union of India (1995)**

- Case Summary: The Supreme Court addressed the issue of religious conversion for the sake of remarriage without dissolving the first marriage. It held that a Hindu marriage can only be dissolved under the Hindu Marriage Act, 1955, and converting to Islam for the sake of bigamy constitutes a criminal offense under section 494 of the Indian Penal Code.
- Implications: This judgment underscored the misuse of personal laws for evading legal obligations and reiterated the necessity for a UCC to prevent such misuse and ensure legal uniformity.

### **John Vallamattom Case vs. Union of India (2003)**

- Case Summary: The Supreme Court declared Section 118 of the Indian Succession Act, 1925, unconstitutional. The section discriminated against Christians in matters of wills and legacies.
- Implications: The ruling highlighted the discrepancies in personal laws and the adverse impact on national integration. It called attention to the unfulfilled directive of Article 44 of the Constitution, advocating for a UCC to harmonize these contradictions.

### **Juvenile Justice (Care and Protection of Children) Act**

- Legislation Summary: This Act, allowing for adoption across communities, marked a departure from personal laws that restricted adoption rights, particularly within the Muslim community.
- Implications: The implementation of this Act is seen as a progressive step towards a UCC, as it offers a uniform legal provision for adoption, transcending personal law restrictions and promoting the welfare of children across all communities.

## **21st Law Commission's Stance on UCC**

- Date of Consultation Paper: Issued on August 31, 2018, by the 21st Law Commission, chaired by former Supreme Court judge Balbir Singh Chauhan.
- Key Findings: The commission argued that formulating a UCC is neither necessary nor desirable at the current stage, emphasizing the importance of recognizing diversity within a robust democracy.
- Recommendations: It advocated for the reform of family laws across all religions to make them gender-just, focusing on uniformity of rights rather than uniform laws. It also addressed economic rights for women, criticized the Hindu coparcenary system, suggested the codification of Muslim law of inheritance, and recommended the division of matrimonial property upon divorce.
- Observations on Muslim Polygamy: Noted that while polygamy is permitted within Islam, it's rarely practiced among Indian Muslims but is misused by individuals from other religions converting to Islam for remarriage.

## **22<sup>nd</sup> Law Commission's Stance on UCC**

22nd Law Commission's decision to revisit the debate on the UCC, despite the previous commission's reservations, underscores the evolving nature of this discussion. By soliciting input from a broad cross-section of society and engaging in direct dialogue with communities across the country, the commission aims to ensure that any deliberation on the UCC is informed by a comprehensive understanding of the diverse perspectives and concerns that characterize India's socio-cultural landscape.

## **Uniform Civil Code in Goa**

Goa is the only state in India that has uniform civil code regardless of religion, gender, caste. Goa has a common family law. Thus Goa is the only Indian state that has a uniform civil code. In Goa Hindu, Muslim, Christians all are bound with the same law related to marriage, divorce, succession. When the Goa became the part of union territory in 1961 by the virtue of the Goa Daman and Diu administration act 1962 the parliament authorized the Portuguese civil code of 1867 to Goa and shall be amended and repealed by the competent legislature.

In Goa marriages is a contract between two people of different sex with the purpose of living together and constitute the legitimate family which is register before the office of civil registrar. And the particular rules and regulation has to be followed by the parties after that they can live together and start their life but there are certain restrictions according to which these categories of person are prohibited to perform marriage for example: any spouse convicted of committing or abetting the murder of other spouse shall not marry

## **Key Features of the Uttarakhand UCC Bill**

1. **Applicability:**

- The Code applies to residents of Uttarakhand, specifically recognizing only binary genders (male and female) in heterosexual relationships, thereby excluding most LGBT individuals.
  - It does not apply to members of the Scheduled Tribes (STs), respecting constitutional protections for customary practices in family law prevalent in certain regions.
2. **Incorporation of Secular Laws:**
- Borrows significantly from secular laws such as The Special Marriage Act, 1954, and The Indian Succession Act, 1925.
  - Repeals all family laws — secular, personal, and customary — to the extent they conflict with the new Code.
3. **Live-in Relationships:**
- Defines live-in relationships as akin to marriage, requiring compulsory registration through a "statement of live-in relationship".
  - Allows termination of such relationships by either party via a "statement of termination".
  - Criminalizes the failure to register a live-in relationship within a month, with penalties including jail or fines.
4. **Children Born Out of Wedlock:**
- Abolishes the concept of "illegitimate children", treating children born in void and voidable marriages, as well as those from live-in relationships, as legitimate.
  - However, does not address discrimination faced by mothers under current guardianship laws.
5. **Coparcenary Property:**
- Abolishes the Hindu coparcenary system, adopting a uniform scheme of intestate succession for all residents, thereby treating all property as individual property.

### **Limitations and Omissions**

- **Exclusion of LGBT Persons:** Misses the opportunity to extend marriage equality following the Supreme Court's directives, excluding most LGBT persons from its provisions.
- **Matrimonial Remedies:** Retains restitution of conjugal rights as a remedy, omitting irretrievable breakdown of marriage as a divorce ground, despite its recognition in Supreme Court judgments.
- **Matrimonial Estate Division:** Leaves the division to court discretion, acknowledging pre-nuptial agreements but not providing a structured approach to property division.

### **Criminalized Actions**

- **Non-registration of Live-in Relationships:** Criminalizes the lack of formal registration of live-in relationships.

- **Child Marriage and Prohibited Relationships:** Criminalizes marrying within prohibited degrees and child marriage.
- **Non-judicial Dissolution of Marriage:** Penalizes dissolution of marriage through non-judicial means.
- **Compulsion in Remarriage Conditions:** Sets penalties for compelling, abetting, or inducing conditions for remarriage.

## Advantages of UCC Implementation

### 1. Equality and Social Justice

- **Uniform Legal Framework:** Ensures equal treatment under the law for all citizens, irrespective of religion.
- **Elimination of Discriminatory Practices:** Aims to abolish practices like triple talaq and unequal inheritance rights, which are seen as discriminatory.

### 2. Secularism and National Integration

- **Promotion of Secular Values:** Aligns with the Indian Constitution's principles of secularism by treating all citizens equally.
- **Fostering Unity:** Bridges religious divides, promoting a sense of shared identity and national integration.

### 3. Legal Certainty and Simplification

- **Simplifies Legal System:** Establishes a uniform set of laws, reducing confusion and enhancing legal certainty.
- **Enhanced Access to Justice:** Makes the legal process more accessible, particularly benefiting marginalized communities.

### 4. Women's Empowerment

- **Gender Equality:** Addresses biases in personal laws against women, ensuring equal rights in marriage, divorce, and inheritance.
- **Empowerment:** Empowers women by providing them with equal protections and rights as citizens.

## Disadvantages of UCC Implementation

### 1. Threat to Minority Rights

- **Risk to Religious Freedom:** May be perceived as imposing a uniform legal framework on diverse religious communities, potentially undermining minority rights.
- **Erosion of Diversity:** Concerns that a UCC could dilute India's cultural and religious diversity, which is integral to its identity.

### 2. Cultural Sensitivity and Identity



- **Impact on Cultural Practices:** The uniformity required by a UCC might conflict with deeply held cultural and religious practices, affecting individual and community identities.
- **Loss of Customary Laws:** Customary laws that are intertwined with cultural and religious practices might be overridden by a uniform code.

### 3. Implementation Challenges

- **Resistance and Lack of Consensus:** Opposition from various religious and political groups could hinder reaching a consensus on the UCC's content and implementation.
- **Logistical Hurdles:** The diverse and vast population of India presents significant challenges in implementing a uniform set of laws.

### 4. Potential for Social Unrest

- **Perceived Encroachment on Religious Freedom:** Moves towards a UCC could be seen as infringing upon religious freedom, risking polarization and communal tensions.
- **Triggering Social Conflicts:** The sensitive nature of religious and cultural identities in India means that attempts to implement a UCC could lead to social unrest.

This structured analysis highlights the nuanced debate surrounding the UCC's implementation in India, capturing the balance between the pursuit of legal uniformity and the preservation of the nation's rich cultural and religious mosaic.

## Suggestions Found in Law Commission Reports and Government Documents:

### 1. Public Consultation

- The Law Commission might recommend extensive public consultations to gather diverse viewpoints from all stakeholders, including legal experts, religious organizations, and civil society groups, to ensure that the UCC reflects a broad consensus.

### 2. Incremental Approach

- Reports often suggest adopting an incremental approach to implementing the UCC, addressing less controversial areas of personal law first to facilitate gradual acceptance and minimize resistance.

### 3. Codification and Harmonization

- The Commission might propose the codification of existing personal laws where possible and their harmonization with the proposed UCC framework to ensure consistency and fairness across different religious laws.

### 4. Gender Equality and Protection of Rights

- Emphasizing the need for the UCC to uphold gender equality and protect the rights of women and children, ensuring that any new code does not perpetuate existing inequalities or discriminations.

### 5. Respecting Diversity

- Suggestions may include mechanisms for respecting and protecting India's cultural and religious diversity within the UCC, ensuring that the code is sensitive to the traditions and practices of all communities.

#### 6. Education and Awareness Campaigns

- Highlighting the importance of education and awareness campaigns to inform the public about the benefits of a UCC and address misconceptions and fears related to its implementation.

#### 7. Legal Reforms and Amendments

- Recommending necessary legal reforms and amendments to existing laws to pave the way for the introduction of a UCC, ensuring that such changes are constitutionally sound and legally viable.

### Prelims Previous Year Questions: -

Q: Consider the following provisions under the Directive Principles of State Policy as enshrined in the Constitution of India :[CSE 2012]

1. Securing for citizens of India a uniform civil code
2. Organizing village Panchayats
3. Promoting cottage industries in rural areas
4. Securing for all the workers reasonable leisure and cultural opportunities

Which of the above are the Gandhian Principles that are reflected in the Directive Principles of State Policy?

- (a) 1, 2 and 4 only
- (b) 2 and 3 only**
- (c) 1, 3 and 4 only
- (d) 1, 2, 3 and 4

Q: Which one of the following statements regarding Uniform Civil Code as provided under Article 44 of Constitution of India is not correct? (CDS 2 2017)

- A. It is a fundamental right of every Indian citizen**
- B. The state shall endeavour to secure it for the citizens throughout the territory of India
- C. It is not enforceable by any Court
- D. It is not enforceable by a Court yet the Constitution requires that as a principal it should be fundamental in the Governance of our country

Q: Which one of the following is not a part of the Directive Principles of State Policy? [CAPF 2018]

- (a) Uniform Civil Code for all citizens

- (b) Separation of Judiciary from Executive
- (c) Duty of the State to raise the level of nutrition and standard of living
- (d) Promotion of scientific temper, humanity and the spirit of inquiry and reform**

Q: Which of the following is NOT provided for under the Directive Principles of State Policy? [CAPF 2019]

- (a) Right to work, to education and to public assistance in certain cases
- (b) Uniform Civil Code for the citizens
- (c) Separation of Judiciary from executive
- (d) Participation of workers in the management of local-self government**

### **Mains Previous Year Questions: -**

Q. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (200 words, 12.5 marks) (2015)

### **Interview Questions (From Transcripts): -**

**Board - Smitha Nagraj Ma'am.**

Q: Do you think Common Civil Code should be brought before UCC?

**Board - Lt. Gen. Raj Shukla sir**

Q: Can parliament pass UCC without states permission?

**Board - Preeti Sudan Ma'am**

Q- 1. What is your stand on UCC?

Q- 2. There has been religious harmony since ages in India, why then do we need to bring in UCC?

Q- 3. Would it not dissolve the diversity of India? What is the use of UCC then?

**Board- RN Chaubey Sir**

Q- 1. What is Uniform Civil Code? What is your opinion about it?

Q- 2. Should we implement it or not?

Q- 3. There is a Special Marriage Act since so many years. Still it is not being used. So how will the society become ready for the reform/change to come from within, like you suggest?

Q- 4. Suppose marriage and inheritance laws are separated from each other and legislations are enacted under UCC for the same. What do you think about that?

Q- 5. Why not have a Common Civil Code when a Common Civil code can solve the problems?

Q- 6. Three provisions you want to include in UCC?

**Fun Fact:-**

In the Shah Bano Case, the Supreme Court decided that section 125 of the Code of Criminal Procedure 1973 is applicable to all irrespective of religion, caste or community. The court directed that Shah Bano must be provided with living expenses. The then **Chief Justice Y.V. Chandrachud** said that Uniform Civil Code would end the dissimilarities in the Indian law which would help in establishing national unity. Hence, the Supreme Court had observed that the Parliament may make law related to the Uniform Civil Code.

Today his son **Justice DY Chandrachud** is the Chief justice of India.