The Supreme Court’s recent judgement in the Jose Paulo Coutinho v. Maria Luiza Valentina Pereira case has revived the need for a Uniform Civil Code (UCC) in India.

Constitutional provisions:

- Indian Constitution has a provision for the Uniform Civil Code (UCC) in Article 44 as a Directive Principle of State Policy, which says “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

What is the Uniform Civil Code?

- The Uniform Civil Code (UCC) in India replaces the personal laws based on the scriptures and customs of each major religious community in the country with a common set of laws governing every citizen.

Historical Background:

- Indian Constitution provides certain strong safeguards in Part III, for the protection of individual rights irrespective of their differences with respect to caste, creed, religion, race, sex and place of birth.
- It is universally accepted principle that one has to give prime importance to one’s religion, tradition, culture and customs as it comes under personal realm.
- The provision enshrined under Articles 25-28 of our Constitution provides religious freedom to all religions. It paved the way to frame personal laws as suiting to one’s religion and culture.
- Traditionally, under the basic feature of Secularism, every religion is left free with a discretion to frame their own personal laws and keeping them away from judicial clutch.
- In a few instances it was found that under the guise of this religious freedoms, personal laws came in frequent conflict with other fundamental rights guaranteed under Articles 14-15 (right to equality) and Article 21 (right to life). These articles in our constitution act as a watchdog
- Almost all personal laws clearly manifest certain gender-discriminatory provisions and have been challenged in the courts with the courts recurrently stressing on the need for a UCC.

Judgements:
Ahmed Khan v. Shah Bano Begum, 1985 case:
- In this case, the woman claimed maintenance from her husband under Sec.125 CrPC after she was given triple talaq. The Supreme Court clearly ruled in the woman's favour.
- The Supreme Court provided that the Muslim women are entitled to maintenance from their husband under Section 125 CrPC, when her economic position is weak and the husband's financial position is good enough to provide, even if it goes against the basic personal laws.
- The Supreme Court then directed Parliament to frame UCC. In this case the court held that Article 44(3) has remained as dead letter in the constitution.

Sarla Mudgal Vs Union of India, 1995 case:
- In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam can solemnise second marriage.
- The Supreme Court held that adopting Islam for a second marriage is an abuse of personal laws.
- The court held the view that Hindu marriage can be dissolved only under the Hindu Marriage Act, 1955. It meant that merely by converting into Islam and marrying again does not dissolve the marriage under Hindu Marriage Law and thus any such act will be an offence under Section 494[5] of the Indian Penal Code. It would also be a violation of the female's basic fundamental right guaranteed under Article 21 of our constitution.
- The Supreme Court again called for implementation of UCC and it also detailed how personal laws of different religions are in conflict with each other.

Jose Paulo Coutinho v. Maria Luiza Valentina Pereira case, 2019:
- The case dealt with whether succession to the property of a Goan situated outside Goa in India will be governed by the Portuguese Civil Code, 1867 as applicable in the State of Goa or by Indian Succession Act or by personal laws, as applicable in the rest of the country e.g. Hindu Succession Act, 1956, Muslim Personal Law (Shariat) Application Act, 1937, etc.
- The court held that Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights.
- The Supreme Court has lamented at the failure of successive governments to frame a UCC.

Shayara Bano and others v. Union of India and others case, 2017:
- The 5 Judge Bench of the Supreme Court pronounced its decision in the
Triple Talaq Case, declaring that the practice was unconstitutional.

- The judgement upheld the primacy of Human rights like equality and dignity over the personal laws.
- Though this case does not exclusively deal with UCC, the need for a uniform UCC become obvious.

- **On passing the verdict on Juvenile Justice (Care and Protection of Children) Act** the SC paved the way for an adoption of a child by persons from Muslim Community even though not allowed under their personal laws. The Supreme Court of India again asked the Union Government to form a UCC to remove gender inequality and abolish the retrograde practices followed under the framework of personal laws.
- The need of UCC is related to inconsistencies in Tax laws as well. The Hindu Undivided Families are exempted from taxes whereas Muslims are exempted from paying stamps duty on gift deeds. This brings in unnecessary differences which are generally exploited to avoid taxes. Such cases have been challenged in the courts as well.

**Why Uniform Civil Code?**

- UCC will help in providing equal status to all citizens irrespective of their religion, class, caste, gender, etc. as it is envisaged in a secular democratic republic.
- It is commonly observed that personal laws of almost all religions are discriminatory towards women. There is a need to reform our social system, which is full of inequities, discriminations and other things which conflict with our Fundamental Rights. UCC will help promote gender equality. UCC will bring both men and women at par.
- India is a young country with more than half of India’s population, being under 25 years. They are set to change the fortunes of not just India but the world too. An attempt of shedding their identities based on religion has to be given a serious consideration so as to utilize their full potential towards nation-building. They should be guided by the principles of equality, humanity, and modernity as is envisaged by the UCC.
- With the implementation of the Uniform Civil Code, all citizens will share the same set of personal laws. With this all Indian citizens will be equal before the court of law in case of both criminal laws and civil laws including personal laws. So, UCC will promote national integration.
- There have been demands for reforming the personal laws since independence. But, politicization of issues of discrimination, concessions, special privileges enjoyed by a particular community on the basis of their particular religious personal laws have either eliminated the chances of
positive reforms or have drastically slowed down the process. Implementation of UCC provides an opportunity to address the challenge of reform of existing personal laws individually.

Issues:

- Given the tremendous cultural diversity in India across the religions, sects, castes, states, etc., it would be challenging to come up with a common and uniform set of rules acceptable to all.
- The internal differences within the communities is a major factor.
- Eg: not all Hindus in the country are governed by one law. Marriages amongst close relatives are prohibited by the Hindu Marriage Act of 1955, but is considered auspicious in Southern India. The Hindu Code Bill recognises customs of different Hindu communities. Similarly, there is no uniform applicability of personal laws among Muslims and Christians. The Constitution itself protects the local customs of Nagaland, Meghalaya and Mizoram from outside influence.
- There is an alternative view which states that India is a unique example of unity in diversity. Uniformity should not be mistaken for unity and any attempt to ensure uniformity via the implementation of UCC might endanger diversity which has been a defining nature of our shared culture.
- Several communities, mainly minority communities perceive the Uniform Civil Code as an encroachment on their rights to religious freedom.
- The Constitution via Article 25 provides for the right to freedom of religion of one’s choice. Under the basic feature of Secularism, the state extends its respect to all religions equally. With the implementation of UCC the scope of the freedom of religion might be reduced.
- UCC can be counterproductive leaving minorities more insecure and vulnerable to get attracted towards fundamentalist and extremist ideologies.
- Attempts for implementation of UCC might endanger the secular fabric of India which has been largely successful in ensuring unity and progress in India.
- Since personal laws are in the Concurrent List, they may differ from State to State. The framers of the Constitution did not intend total uniformity or one law for the whole country. The states have brought in many amendments to cater to the local needs and culture this proves the futility of one nation, one law.

Way forward:

- The importance of UCC was emphasized by our forefathers on, keeping in mind the advantages it can offer to India. However, the resistance to UCC
must also be considered.

- One territory one law will draw more benefits rather than one territory with multiple laws having conflicting provisions in the same area.
- UCC must be brought about by borrowing freely from different personal laws, making gradual changes in each, acknowledging the benefits that one community secures from the others.
- The government should be sensitive and unbiased at each step while dealing with the majority and minority communities.
- UCC can only emerge through an evolutionary process, which preserves India’s rich legal heritage, of which all the personal laws are equal constituents. The codification and implementation of UCC must necessarily usher in the expected equality among genders and religions.