

Is there such a thing as a "good" UCC?

The Uniform Civil Code is one of the primary election promises of the BJP in 2024, and seems almost inevitable if it comes back to power with a decisive majority. When Uttarakhand passed its own Uniform Civil Code in February 2024, it was a clear signal of intent. The upcoming elections therefore raise a pressing question: What does an 'ideal' UCC—one that upholds India's constitutional framework—look like? What does the Uttarakhand UCC tell us about the pitfalls/challenges that lie ahead?

The historical roots of the UCC

Dr BR Ambedkar supported the Uniform Civil Code (UCC) during the drafting of the Constitution to ensure gender equality and eliminate discrimination based on personal laws. Women members of the Constituent Assembly—Dakshayani Velayudhan, Rajkumari Amrit Kaur, Sucheta Kripalani, and Hansa Mehta—also advocated for the UCC for similar reasons.

So what is a UCC, and what does the government mean by it? The debate over the code is rooted in [Article 44](#) of our Constitution, which states: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." As a Directive Principle of State Policy, Article 44 was included as a means to achieving equality—especially gender equality—within our personal laws.

At present, our legal system has laws dealing with marriage, divorce, child custody, maintenance, adoption and inheritance—all of which are governed by religious personal laws. These matters are dependent

on the religion one is born into and the law under which one gets married.

(Editor's note: These personal laws are rooted in colonial jurisprudence. The ostensible aim of the colonial courts was to 'codify' existing customs of each community. In effect, however, the British created new laws that were a mix of English civil law and the judges' interpretation of religious customs (explained in [greater length here](#)). On Independence, the framers of the Constitution chose to retain these laws after a lengthy, heated debate (explained [at length here](#).)

Hindu personal law is codified in statutes such as the Hindu Marriage Act 1955, the Hindu Minority and Guardianship Act 1956, and the Hindu Succession Act 1956. The law for marriage and divorce for Christians and Parsis is Indian Christian Marriage Act 1972, the Indian Divorce Act 1869, and the Parsi Marriage and Divorce Act 1936, respectively.

For Muslims, the provisions for marriage and property inheritance are still covered under Muslim law, which has not been codified (i.e. passed as an act of parliament or state legislature) except for The Muslim Women (Protection of Rights on Divorce) Act 1986.

Besides these, people of any faith can choose to get married under the Special Marriage Act 1954 (SMA). The SMA allows interfaith and inter-caste marriages to be registered, which existing personal laws did not permit. Some scholars have argued that the Special Marriage Act was actually intended as a [first step](#) towards a UCC, because it offers positive freedom from religious personal laws to couples.

Under the Constitution, a Uniform Civil Code is intended to be a common civil code to govern all persons on matters relating to marriage, divorce, child custody, maintenance and inheritance, irrespective of religion.

But what would an ideal UCC look like?

If equality of personal laws and equal protection under the law is the aspiration, then a Uniform Civil Code must pass the test of "non-discrimination" and "equal treatment", as required under Articles 14 and 15 (1) of our Constitution. This raises several important questions about what an ideal UCC would look like:

Mandatory or voluntary? The first point of concern is whether the proposed UCC would be mandatory or voluntary. When the Constitution was drafted, this question was left open to the Parliament for the future. Dr Ambedkar suggested including a provision that would make the code applicable only to those who volunteer to be bound by it—at least at the initial stage. However, if that's the case, then we already have the Special Marriage Act 1954—which is a non-denominational law and is voluntary. Despite the presence and availability of the Special Marriage Act, most citizens do not choose it. Hence, most marriages still fall under the ambit of their respective religious personal laws.

When the question of a UCC was raised in the 1990s, a Working Group on Women's Rights proposed an alternative strategy of '[reverse optionality](#)'—where all persons would be governed by a UCC—but have the option of choosing their personal laws. So, instead of the

present system where couples have to 'opt in' to choose the Special Marriage Act, they would have to 'opt out' of the UCC instead.

Recently, in 2021, the Allahabad High Court in 'Mayra Alias Vaishnvi Vilas Shirshikar And Another v State of UP' also reaffirmed the need for a UCC and held that it cannot be made "purely voluntary".

Reform of all personal laws: Next, it is often (and wrongly) assumed that only minority religions are in need of legal reform to ensure gender equality. However, this is true for all personal laws.

While polygamy in Muslim law is often raised as an issue for legal reform, little attention is paid to the provision of restitution of conjugal rights under the Hindu Marriage Act. It allows legal action to be taken against a husband or wife "guilty of living away from their spouse without good reason", requiring the married couple to live together again. Despite being removed from English family law—where it originated from—this provision continues to be aggressively used by husbands to prevent women from leaving abusive marriages in India. (Another major challenge is the Hindu Undivided Family (HUF), which governs succession—and is addressed in the discussion of the Uttarakhand debate below.)

Besides, for substantive gender equality in family laws, we also need a UCC that would cover the fundamental right of all persons to marry outside of caste, faith and communities and to prevent crimes in the name of honour when persons do marry without social sanction or without family approval.

What about LGBTQI rights? A third and important issue is that such a civil code should cover marriage, adoption and other matters for

LGBTQI persons as well. In 2023, the Supreme Court [held](#) that framing a new law to legally recognise LGBTQI unions is the task of the legislature ([explained here](#)). This can be done either by making all marriage and family related laws gender-neutral, or by creating a separate Special Marriage Act-like statute in gender-neutral terms. Any proposal of a national UCC ought to include coverage of same sex marriage, preceded by marriage rights for the LGBTQI community.

Uniform Civil Code in Uttarakhand: Lessons learned

So far, the UCC debate has lacked clarity due to the absence of a concrete model to assess its provisions and potential impact. The introduction of the [Uniform Civil Code of Uttarakhand, 2024](#) by the state government finally offers us a starting point.

The UCC in Uttarakhand consists primarily of provisions covered by personal laws, including marriage and divorce, property succession. It also contains an unprecedented section that covers live-in relationships. Neither women's rights nor minority rights find solace in this UCC. Instead, it adopts colonial Hindu law provisions that restrict women's autonomy within marriage and the family. This is a mandatory legislation, with no opt-out clause.

Remix of Hindu laws: The Uttarakhand UCC is primarily a compilation of existing Hindu personal laws from the Hindu Marriage Act, 1955, with some sections that draw from the Indian Succession Act, 1925, and the Hindu Succession Act, 1956.

Provisions on inheritance and succession of property take up an elaborate 120 pages of the 170-odd page Uttarakhand UCC,

universalising a problematic mish-mash of the Hindu Succession Act and the Indian Succession Act. This includes the Hindu Succession Act's classification of heirs, and disqualification from inheritance for widows/widowers who remarry or those convicted of serious crimes.

Most critically, the law fails to address the status of a Hindu Undivided Family (HUF), which is treated as a legal entity of lineal descendants jointly owning property, managed by a Karta (leader). This offers distinct tax advantages not available to members of other religions. (**Editor's note:** this is a primary reason why many Hindu leaders [oppose](#) repealing personal laws.) The status of the HUF remains uncertain because the provisions on repeal merely state that all laws which are inconsistent with the Uttarakhand Code shall not apply.

As for Muslims, the laws on succession and inheritance are not codified and remain governed by Islamic law. The Uttarakhand UCC now introduces a new set of rules for succession—moving away from the [fixed shares](#) prescribed by the religion.

In other sections, the 2024 Code reiterates all the provisions on wills and estates under the Indian Succession Act. It retains outdated references to persons who have the legal capacity to make wills—including references to persons not being of unsound mind. All of which has been deemed discriminatory by the Mental Healthcare Act 2017.

An 'unequal' civil code: The UCC also retains all the provisions on restitution of conjugal rights from the Hindu Marriage Act that are used against women. These also take away women's agency and autonomy to walk out of the marriage and not live with their partner.

These provisions have now been imposed on couples of every faith. The code reproduces provisions from the Hindu Marriage Act on the custody of children, but remains silent on discriminatory Hindu guardianship laws that favour fathers as natural guardians over mothers.

The Code is also restrictive in mandating the registration of divorces, making divorce even more onerous for women. The section on maintenance says the traditional 'mahr' (given by a Muslim groom to his future wife) will be given in addition to the alimony claimed by the spouse upon divorce. This is confusing because courts have [interpreted](#) mahr under Muslim law as maintenance given upon dissolution of marriage.

The code allows marriages to be performed according to different religious traditions, including the Hindu *Saptapadi*, Muslim *Nikah* or Christian ceremony of "the Holy Union". But it is unclear as to whether couples wedded according to these religious rites will then be ruled by personal laws, or still be governed by the Uttarakhand Code. Also: no existing law defines any such thing as the "Holy Union" – the Indian Christian Marriage Act 1872 only says that marriages should be registered and solemnised by the church.

Alarming new territory: The Uttarakhand Code has an entire section on live-in relationships that is dangerous. It mandatorily requires all persons (of the opposite sex) who are living together to compulsory register their live-in relationships with the registrar. The Special Marriage Act 1954 [requires couples](#) to post public notices in order to qualify for a marriage licence. This UCC makes a similar requirement mandatory for registering live-in relationships. Under the Uttarakhand Code, the registrar would have the power to make inquiries, refuse

the registration of live-in relationships, and have the power to inform the police and parents of the parties applying for registration.

In conclusion: A uniformly unequal code

Article 44 does indeed position the Uniform Civil Code as a Directive Principle—making clear that this should be the goal of the Indian State. But it is important to remember that Articles 14 and 15 (1) safeguard women's rights to equality, and Articles 25, 26 and 29 protect the right to religious freedom. These are not 'principles' but fundamental rights accorded to all citizens of India. Thus, any UCC that is introduced must protect these rights.

For the constitutional rights of women from all faiths to be a reality, a UCC needs to contain at its core the recognition of the rights of equality and autonomy in matters relating to family, marriage, divorce, custody and succession. The 2024 Uttarakhand Code, albeit "uniform", scarcely resembles the UCC envisaged by the Constitution. It instead cherry-picks from existing personal law provisions—especially Hindu personal law—to take away rather than protect constitutional rights.