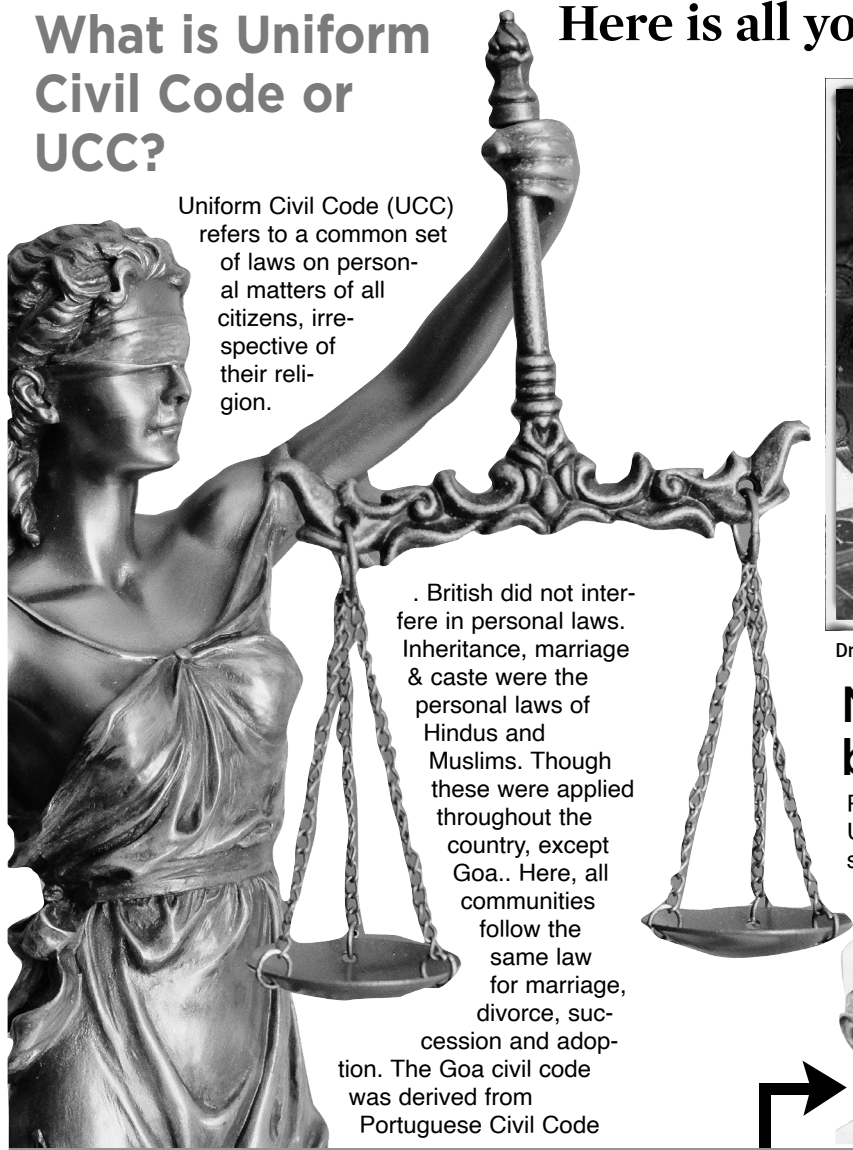


# DOES INDIA NEED UCC?

## What is Uniform Civil Code or UCC?

Here is all you need to know about Uniform Civil Code



Uniform Civil Code (UCC) refers to a common set of laws on personal matters of all citizens, irrespective of their religion.

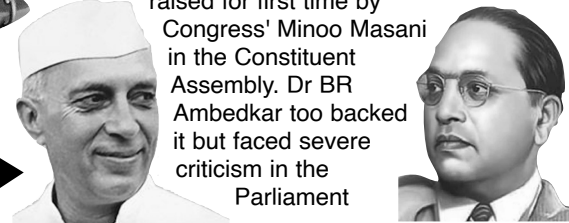
British did not interfere in personal laws. Inheritance, marriage & caste were the personal laws of Hindus and Muslims. Though these were applied throughout the country, except Goa.. Here, all communities follow the same law for marriage, divorce, succession and adoption. The Goa civil code was derived from Portuguese Civil Code



Dr BR Ambedkar chairs a discussion on Hindu Code Bill in New Delhi Source: Ministry of External Affairs

## Nehru & Ambedkar backed UCC

Prime minister Jawaharlal Nehru wanted a Uniform Civil Code for India. Nehru believed state must be governed by legislation, not religion. On 23 November, 1948, UCC was raised for first time by Congress' Minoo Masani in the Constituent Assembly. Dr BR Ambedkar too backed it but faced severe criticism in the Parliament



## MUSLIM PERSONAL LAW (SHARIAT):

- This law deals with marriage, succession, inheritance and charities among Muslims except those in Jammu and Kashmir
- Inheritance comes after death of a person. A childless Muslim widow is entitled to one-fourth of the property of the deceased husband. However, a widow who has children or grandchildren is entitled to one-eighth of the deceased husband's property
- A husband may divorce his wife without reason. A wife can divorce the husband only when the husband has delegated such a right to her

## CHRISTIAN PERSONAL LAW:

- Marriages of Indian Christians are regulated by Indian Christian Marriage Act, 1872. These laws are not applicable in Goa.

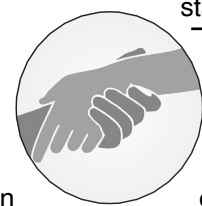


## PARSI MARRIAGE AND DIVORCE ACT (1936):

- Parsi woman who marries outside her religion loses all her rights to Parsi rituals. There is no provision for adoption by Parsis. If a Parsi woman marries outside her religion, her children are not entitled to inherit

## Arguments for UCC

- UCC can eradicate discriminatory practices related to marriage, divorce, inheritance
- It will strengthen idea of a unified Indian identity
- It will remove patriarchal notions of society in all religions
- It would bring India's legal system in line with global standards
- It will simplify complex legal matters governed by different personal laws. It will help in speedy disposal of cases
- UCC would promote gender equality



Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take, for instance, the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way, even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu laws for themselves. It is therefore not merely a question for minorities but it also affects the majority

KM Munshi, former governor of Uttar Pradesh



## Arguments against UCC



- Muslims, Sikhs, Christians and Dalits opposed the UCC and dubbed it a 'Hindi, Hindu, Hindustan' project
- Muslims flagged the potential erosion of religious autonomy and minority rights
- Rashtriya Adivasi Ekta Parishad, a tribal group, said Uniform Civil Code will impact their customs such as polygamy and polyandry
- It violates Article 25, which gives freedom to practise religion
- It violates Article 29, right to have distinct culture. For eg in Nagaland and Mizoram
- It allegedly Hinduises all laws
- Many legal pundits argue that 'One nation, one law', doesn't work for India as different states have different criminal and civil laws. For eg, laws of anticipatory bail



This is when Article 44 was included in Directive Principles of State Policy (DPSP) under Part IV of the Constitution (Article 36-51). These aim at ensuring socio-economic justice. Article 44 states: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." While citizens can be encouraged to follow them, they are not mandatory. Directive Principles are not "enforceable" in a court of law

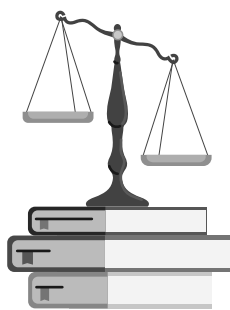
Govt then passed Hindu code bills but faced criticism over rules on monogamy, inheritance to daughters. Thus, a lesser version of this bill was passed by Parliament in 1956, in the form of four separate acts:

- Hindu Marriage Act, 1955:** A marriage is valid when bridegroom is 21 years and bride 18. A marriage can be annulled due to impotency or inability to consummate
- Hindu Succession Act, 1956:** If a widow re-marries, she won't inherit property. In religious conversion, children and descendants can't inherit
- Hindu Adoptions and Maintenance Act, 1956:** Adoptive father or mother cannot cancel adoption and the child cannot renounce the adopted status
- Special Marriage Act, 1954:** It allows marriage of people from different religions or castes. These laws apply to Hindus, Jains, Buddhists and Sikhs. Muslims, Christians and Parsis are excluded

## Landmark cases

### Shah Bano (1985)

Shah Bano, 73, was denied maintenance after her husband of 40 years divorced her using triple talaq. She moved court. SC ruled in her favour under the "maintenance of wives, children and parents" provision of Section 125 of the Criminal Code, which applied to all citizens irrespective of religion. Bano got an alimony of Rs 179.20. SC recommended that UCC be set up. However, fearing poll defeat, Rajiv Gandhi govt passed 'The Muslim Women's (Right to Protection on Divorce) Act' in 1986, which made Sec 125 of the Criminal Code inapplicable to Muslim women, reversing SC verdict



### Sarla Mudgal vs Union of India (1995)

SC ruled that a Hindu husband, upon converting to Islam, cannot enter into a second marriage without dissolving his first. SC held that the Hindu marriage can only be dissolved under the Hindu Marriage Act 1955. It ruled that a 2nd marriage solemnised after converting to Islam would be an offence under Section 494 of IPC. The verdict discussed the issue of bigamy as SC again pressed for UCC



### Triple Talaq case (2017)



Domestic violence survivor Shayara Bano was divorced by her husband through triple talaq. She approached SC in 2016 saying triple talaq violated Right to Equality, Right against Discrimination, and Right to Livelihood. In 2017, SC in 3:2 verdict declared triple talaq unconstitutional, holding that it violates Fundamental Rights. Parliament on 30 July, 2019, passed Muslim Women (Protection of Rights on Marriage) Bill, 2019, and declared triple talaq illegal, and made it a punishable act

RESEARCH: ANUSHREE CHAKRABORTY, AMINA AFAQ, SAPTARSHI CHAKRABORTY, SHRESHTHA DUTTA, AARATI KRISHNA, SUBHALAKSHMI PR; GRAPHICS: KISHORE BABU

## BJP's tryst with UCC

- When Bharatiya Jana Sangh, the pre-Emergency avatar of BJP, was born on 21 October, 1951, nearly 200 delegates adopted resolution on UCC
- BJP's call for UCC turned stronger in 1985 after Shah Bano case
- BJP promised UCC in 1967, 1971, 1991, 1998, 2004 and 2019 LS polls manifestos
- After NDA coalition in 1998, BJP kept away from issues such as UCC
- In 2009, UCC became BJP's major agenda after LK Advani became PM candidate
- After Modi govt won 2019 polls, it introduced the Bill in Parliament for the first time in November
- But it was withdrawn to make certain amendments due to its differences with the RSS
- In 2022, U'khand CM vowed to implement UCC after winning Assembly polls



## Marriage to live-in: U'khand UCC rules for all

Uttarakhand is 1st state post-Independence to impose UCC. It proposes common laws on marriage, divorce, land and inheritance, excluding Schedule Tribes. Here is what the Bill has:

### Rules for marriage made stricter

- Minimum age Men: 21 yrs Women: 18 yrs Violation will lead to 8 months' jail. Polygamy, bigamy are prohibited
- Nikah (Muslim marriage), Saptapadi (Hindu), Anand Karaj (Sikh) and other religious marriages recognised
- Marriages must be registered in 60 days
- Within 15 days, sub-registrar will issue certificate or inform why registration was rejected
- Rs 10K fine for non-registration of marriage
- 3-month jail + Rs 25,000 fine for false information during registration
- Marriages after 26 March, 2010, must be registered in 6 months or face Rs 20,000 fine



### Marriage voidable if:

- Not been consummated owing to impotence
- Woman was pregnant with another man's child
- Husband impregnates another woman
- Either party was coerced into marriage

### Live-in recognised but privacy lost

- Live-in relationship must be registered with govt
- Couples who fail to do so may attract jail terms for 3 months
- Children from live-in relationships to be considered legitimate
- If any partner is under 21, parent nod is must
- Partners may terminate live-in by submitting statements to registrar
- Women deserted in live-in entitled to maintenance, may approach court

### In a first, all get equal inheritance

- Spouse, children, parents have equal property rights
- If no immediate family member, property will be divided among 1st paternal cousins
- Illegitimate and adopted children, kids via surrogacy get equal share
- Bill abolishes system under which 4 generations of Hindus inherit ancestral property
- Wills take precedence over rights of all other inheritors



### Equal divorce rights

- No marriage can be dissolved without court order, outlawing "talaqs" in Islam. 3-year jail for violation of this rule
- Wife can seek divorce if husband has more than 1 wife, and is guilty of rape or unnatural sex
- Marriage can be dissolved for cruelty, adultery, desertion and religious conversion
- Couple can't move court for divorce in less than 1 year of marriage
- Muslim practice of Halala banned. Halala is when a divorced woman remarries
- Both men and women entitled for alimony
- A partner can file for divorce if partner has STDs
- Mother custodian of kids below 5 yrs

### Silent on guardianship, adoption

No new laws on guardianship and adoption. Consequently, under old Bill, father will be child's guardian and mother custodian. Citizens can adopt under Hindu Adoption and Maintenance Act (HAMA), 1956, and Juvenile Justice (JJ) Act, 2015

Assam, Gujarat have proposed to introduce a Bill seeking a Uniform Civil Code (UCC) after Uttarakhand. This may exempt the tribal communities. According to Assam Chief Minister Himanta Biswa Sarma, the Assam model will fight against child marriage and polygamy



Uttarakhand CM Pushkar Singh Dhami PHOTO: PTI