



UNIFORM CIVIL CODE TOWARDS GENDER EQUALITY FOR PROPERTY RIGHTS
IN INDIA: A CRITICAL STUDY

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ABSTRACT

Women's ownership and management of property, have an impact on their social and economic security. Since the dawn of time, all property laws, have been made expressly for the benefit of man. But with the advent of succession laws in India,¹ the distribution of property under family law was deeply shaped with the help of historical traditions, statutory laws and personal laws in this regard.² Due to the extensive colonial presence, many aspects of English succession law were introduced in our country; yet, as time went on, these rules continued to change and diverged from English law. From India's pre-independence era, women have been exposed to discrimination in various areas, including marriage, inheritance and succession. The greatest option to replace personal laws, is the Uniform Civil Code, to ensure gender equality which is enshrined under Article- 14 of the Indian Constitution but the Constitutional's preamble and Article- 44, are the guiding principle for protecting the equality of women in property rights. The present research paper strives for the developments brought about by contemporary ideas of equality and structural inequalities that support women's property rights and the Uniform Civil Code in India. The impact of current statutory provisions, their judicial interpretations and desired improvements that could be made with the help of the Uniform Civil Code for the betterment of the economic and social circumstances of women are also examined in the present study.

Keywords: *Inheritance and Succession Rights, Women, Uniform Civil Code, Gender Equality, Article 44, Constitution.*

INTRODUCTION

Property rights, particularly are related to land, are crucial for women's economic and social growth³. Women's ownership and administration of real estate have an impact on their social and economic security. Since the dawn of time, only men have benefited from the creation of all property laws, and women have been regarded as dependents on and subordinate to men⁴. Property laws' social ramifications should not be understood as a one-way transfer of ideals; rather, what the laws meant for women was strongly dependent on the pre-existing social and economic ties in the society upon which they were imposed. Socially acceptable standards of behavior, intra-household distribution, and decision-making procedures all impact women's rights to inheritance, ownership, and control. Rights of Women were strengthened by the CEDAW⁵ promise to grant equivalent access to land and other property, but progress on women's property rights has been modest.

Although historical legacies significantly impact gender neutrality in family law, they don't completely determine the outcome. As seen the growth of succession laws in India, is influenced by a complex network of statutory laws, personal laws, social norms, and customs. Many English succession law theories are now part of Indian law as a result of the long colonial history in India. Before India's independence in 1925, the British constructed a legislative succession system based on common law. The Indian Succession Act, 1925 (ISA, 1925) and Canadian succession rules have evolved and varied from English law in several respects, including the recognition of legal rights for same-sex spouses and the primogeniture principle. Despite significant differences in the statutory share set aside for the widow or widower in England, Canada, and India, both have upheld the English law-established intestate succession rule, which preferred the "horizontal" flow of property to a spouse over the "vertical" flow to a descendant's descendants. Here researcher investigates changes in succession laws in India, with an emphasis on how property transfers have affected women's rights. It investigates the application of personal law in our nations and demonstrates the changes brought about by current conceptions of equality and positive discrimination that favor women's property rights. It also investigates the repercussions of current legislative provisions, their judicial interpretations, and desirable modifications that could be made to our succession laws about enhancing women's social and financial circumstances⁶.

INHERITANCE AND SUCCESSION LAWS IN INDIA

Indian society hasn't given up on old ideas, and ownership of material things is still done the same way it has been done for centuries. India's move away from farming has been slow, uneven, and very different for men and women. In India, women have less power than men because they don't have property rights. Lack of financial independence makes

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³ Bina Agarwal, "Gender and legal rights in Agriculture land in India",30(12)Economic and Political Weekly,A39-A56 (1995)

⁴ Law Commission of India, 174th Reports

⁵ United Nations Convention on the, "Elimination of All Forms of Discrimination Against Women's".

⁶ *Journal of the Indian Law Institute* , October - December 2016, Vol. 58, No. 4 (October - December 2016), pp. 481-508



people of all castes and religions weak and submissive⁷. On the other hand, personal laws are often based on outdated and patriarchal ideas and threaten another important constitutional right: the right to be treated equally before the law, which is especially important for women.

Deep cultural bias keeps women from claiming their right to inherit, and women are afraid that asking for their share would cause trouble in the family. A study showed that the majority of men and local officials opposed a daughter inheriting family property. This shows that the fear is well-founded. Even though there have been some gradual interpretations and new legal maxims, Indian women's property rights have not moved in a straight line toward justice. The link between both religious control and unfair laws has more to do with the religion's organizational structures and sexism than with its doctrines or traditions. The patriarchal way of thinking lets Indian women have different rights when there is no will. In 2000, the Law Commission of India⁸ came out and said that there is discrimination against women in laws about how property is passed down in a joint Hindu family. This is a clear sign that the Indian government is tied to patriarchal ideas by not giving Hindu women equal inheritance rights. This is true for all women, no matter what religion they follow. Legal pluralism is used in India, which means that different religious groups can use their laws for marriage, divorce, child support, adoption, guardianship, and even inheritance. In ways that are unique to each religion, personal laws often give men the right to be in charge of women⁹. While India was still a British colony, there was a lot of confusion about how personal law affected people who weren't Hindus or Muslims. This was so bad that the second Law Commission said that because personal law in India is religious¹⁰, it shouldn't be changed by an outside agency. Even though colonial officials didn't involve native people in making laws right away, they were careful about transferring the legal system and rules because they respected the Hindu and Muslim codes of conduct that was already in place.

HINDU'S LAWS FOR INHERITANCE

Inheritance is a common way for women to gain property ownership. Ownership of any form of asset is a more certain way of gaining recognition and admiration in the household and society. The "Hindu Women's Rights to Property Act, of 1937" has been hailed for its unique nature; nevertheless, some renowned that the trouble of lady property rights is only being dealt with partially. This "Hindu Women Rights to Property Act," which has a grandiose title, only addresses widows and spouses of deceased sons and other halves of deceased sons' pre-deceased wives. When the regulation was being reviewed by using the Select Committee, all of these factors were dropped, no doubt due to the fact Dr. Deshmukh had covered them in his unique proposal. It wasn't till the Hindu Succession Act, 1956 that Hindus have been capable to set up a comprehensive succession system and resolve long-standing inequities in the household between guys and women. The preamble to the Acts entirely referred to intestate succession¹¹. The consignment significantly altered inheritance regulation barring abolishing joint households or joint household property. But this policy does not follow Mitakshara Coparcenary members.

Section- 6 of the Act acknowledges the entitlement of certain privileged dependents to a property hobby upon the loss of life of a coparcener. Each coparcener is believed to be established to their share upon partition. While a lady cannot are searching for division, if one arises, she is accredited to get an equal quantity for her son and experience it one by one from her husband. According to Section 6 of the Act, the pastime is devolved on a survivor's basis. If he or she has a girl or male family member in Class I who claims through a woman relative, his or her pastime will ignore through 'intestate or testamentary succession' as a substitute for survivor's rights. The thought of notional partitioning was introduced here. As a result, the Hindu Succession Act furnished a Hindu woman relative several rights, along with the chance to accede to the property interest. This is one of the most critical provisions of the Act because Section 14 promises the female Hindu full possession of any property purchased earlier than or after the Act's implementation. This clause utilized any immovable or movable property received thru inheritance, partition, through a lady as an alternative of a gift, maintenance, or her income, or in any other way. This initiative tried to understand the rights of Hindu women.

According to the judgment delivered by way of the Supreme Court of India, in the case of *V. Tulasamma v. Sesha Reddy*¹², there is no distinction between widows who inherit from their deceased spouses and those who inherit from their male offspring or coparceners. If the estate is in the possession of a 3rd person celebration and is conscious of her rights, she has the proper right to demand the property for her support.

Based on Law Commission recommendations, India's Parliament exceeded the (Amendment Act, 2005) to the "Hindu Succession Act," granting females identical coparcenary rights as boys underneath the Hindu School of Mitakshara coparcenary system. This updated law modifies the preceding HSA of 1956 in two crucial respects pointing

⁷ Leila Seth, "On Balancing: An Autobiography, Penguins Book India, New Delhi", 2003.

⁸ Supra note 4.

⁹ Cathrine A. Mackinnon, "Sex Equality Under the Constitution of India: Problems, Prospects, and Personal Laws" 4(2), International Jurnol of Constitutional Law (Apr. 2006).

¹⁰ Law Commission Appointed in England under, The Charter Act, 1853

¹¹ The Preamble of HAS, 1956 "An Act to amend and codify the law relating to intestate succession among Hindus."

¹² AIR 1977 SC, 1944.



out that; Section 6 of the original Act must be modified to dispose of gender discrimination. The authentic Act's Section 23, which prohibits lady spouses and children from asking for a division of a joint-family residence, is meant to be repealed. This would allow lady heirs to be seeking division of a joint-family residence earlier than the male heirs determined how to divide their respective halves. Section 6 of "the Hindu Succession Act, 1956" - Allocation of pursuits in coparcenary property - has been renamed for ease. As a result, after the implementation of this Act, if a male Hindu dies in such conditions, his stake in a coparcenary estate below Mitakshara School will switch to the surviving individuals of the coparcenary by survivorship as an alternative by way of the Act. If the deceased left him a woman relative referred to in Schedule Class I or a male heirs inside this class who claims by way of the deceased's girl relative, this property will switch to the survivor's woman or male blood relatives, relying on the circumstances. Acts such as the "Hindu Succession Amendment Act, 2005" are full-size landmarks in India's legal history. After 50 years, positive gender disparities had been addressed, like inequalities in Mitakshara joint household property, parental residential houses, agricultural land, and some widows' property.

INHERITANCE LAWS FOR MUSLIM WOMEN

Muslims in India are also dominated by their regulation and the majority of Muslims in India adhere to the Hanafi School of thought. Both the daughter and son are regarded as coparceners or criminal heirs of the useless father below Mohammedan Law from the inception of these non-public laws among Muslims. However, Mohammedan Law creates a disparity in the distribution of shares during the inheritance of ancestral property. According to Muslim personal law, a woman inheritor may also only receive 1/2 of the share of a male heir, and if there is no male issue, a female can inherit half of the property. As a result, Muslim girls would possibly obtain the closing section of the ancestral property as a present from male household members. The role of a girl in Muslim non-public regulation is discriminatory, as she might also inherit simply one-eighth of her useless husband's property if they have children, and if there is no difficulty from their marriage, she can receive one-quarter of her deceased husband's property. Recently, public activity litigation used to be launched before the Hon'ble Supreme Court of India against such discrimination in connection to Muslim women's property rights below Muslim private laws, which is currently watching for the Hon'ble Court's ruling

CONSTITUTIONAL PROVISIONS FOR UNIFORM CIVIL CODE

The Indian Constitution says that men and women should have the same rights. Art. 44 provides provision of UCC for all Nationals and says, "The State shall try to ensure that all citizens have the same civil code all over India"¹³ But even after 50 years since the Constitution was written, the goal of a single civil code has not been reached. Since women make up about half of the population in India, they have often called for a gender less ness code so that they can be treated equally and fairly regardless of the society they are from. A UCC is needed to make sure those (i) laws are the same between communities and (ii) laws are the same within communities to make sure that males and females have similar rights.

After independence, there have been a few attempts to create a UCC, and the SC has told the government in different cases to follow Art. 44, to reform personal laws, especially minority persons, and get rid of any gender bias in them. But the government hasn't changed these laws much because religion has been a "formidable barrier" to changing personal laws. In 1947, the Constituent Assembly initially discussed the concept of a single civil code. The subcommittee on fundamental rights listed it as one of the state's directive policy concepts, and clause 39 of the drafted DPSP¹⁴ said that the state should work toward creating a unified civil code for its inhabitants. People said that the disparate personal laws founded on religion in various groups prevented India from becoming a nation and demanded that the Indian people be given access to a common civil code within 05 to 10 years. Dr. Ambedkar, who was in charge of writing the Constitution, said, "We have a uniform set of laws in this country that cover almost every aspect of human relationships. The IPC and the CrPC make up our complete and uniform criminal code. This code is used all over the country. Gopala Swamy Ayyangar and others agreed with Ambedkar, but Jawarharlal Nehru stepped in to change the subject. In 1954, Nehru told Parliament, "I do not think that the time is right for myself to try to push it (UCC) through at the moment." Because the UCC was a major political matter, the founders of the Constitution found a good middle ground by making it DPSP in Article 44¹⁵.

JUDICIAL APPROACH REGARDING UNIFORM CIVIL CODE

Even though the Constitution was written more than 50 years ago, Article 44's goal of a single civil code has not been reached. But people kept working in this direction, as shown by different decisions made by the Supreme Court at different periods. Regrettably, Art. 44 remains unimplemented, the SC stated in the Shah Bano case¹⁶. That further demonstrated the less emphasis given to the rights of women even in the irreligious nation of India. Therefore, a religious group's autonomy was valued more highly than the rights of women.

¹³ V.N. Shukla, *The Constitution of India* 308 (2008)

¹⁴ *The Constitution of India*, "Directive Principles of State Policy".

¹⁵ *Journal of the Indian Law Institute*, October-December 2004, Vol. 46, No. 4 (October-December 2004), pp. 577-587

¹⁶ *Mohd. Ahmed Khan v. Shahbano Begum*, AIR 1985 SC 945.



Under the *Sarla Mudgal case*¹⁷, the judge, Kuldip Singh, told the Union Govt. to follow the instructions of Art. 44 and to deposit an affirmation explaining what measures had been taken. He also said, "Previous governments have been exclusively negligent in their duty to follow Art. 44." So, the Apex Court asked the Union Government, via the PM of India, for reconsideration towards Art. 44 again and try to make sure that all of India's citizens have the same civil code. But in *Ahmedabad Women's case*¹⁸, a petition was filed to challenge parts of Muslim, Christian, and Hindu non-statutory and statutory laws that discriminated against women. This time, the Supreme Court was a little more cautious and said that getting rid of gender inequalities in customary laws is a matter of state policy that the Court usually doesn't care about. The ruling was challenged because it appeared that the Supreme Court had relinquished its position as a watchdog to defend the idea of equality in matters of personal laws in India's various groups.

In India, the position surrounding personal law for Christians was unique. In their case, the courts appeared to take a more progressive stance regarding gender equality. In *Swapna Ghosh case*¹⁹, decided in 1989, the Calcutta federal Court opined that sec.10 & 17 of the IDA²⁰ of 1869 must be deemed invalid, but nothing occurred until 1995. Therefore in 1995, the Kerala HC in *Ammi E. J. case*²¹ and the HC of Bombay in *Pragati Verghese case*²² invalidated sec. 10 of the IDA²³, of 1869 because it violated gender equality.

Significantly, the highest court in India appears to have reversed course on the issue of a gender-just code. On 23 July 2003, in a landmark judgment, the Apex Court, in response to a writ filed by priest John Vallamattom, and by some members on behalf of the communal, dared the legitimacy of sec. 118 of ISA²⁴. The said section was thrown out because it went against Article 14 of the Constitution. He was also worried about the differences between the marriage laws of different religions, and he emphasized that parliament needs to legislate on common marriage laws. Keeping in mind that "required connection" in spiritual and communal laws in an educated society is absent, a division jury led by the CJI, V.N. Khare, expressed disappointment that art. 44, which mandates the government to "endeavor" to make a UCC for whole nationals of India, is not implemented yet. With this, SC also stated that Union Government has not passed a UCC for the nation till now. A UCC law would facilitate national unity by eliminating ideological contradictions²⁵.

Recently Hon'ble Supreme Court ruled in *Arunachala Gounder*,²⁶ that in case the self-owned property of a male Hindu who died without a will would be passed down through inheritance, not succession. Also, the daughter will be able to inherit this property and any other property that comes from splitting a family property. Hence it is also noticed that if a woman dies without children, the estate she has come from her father will go to the successors of her father, and if the estate came from her husband then it would go to her husband's heir.

When it ruled in 1956 that girls would have the same right to inherit as sons from the holdings of ancestral property, the Supreme Court placed the final nail in the coffin of male dominance in the partition of Hindu ancestral property. The jury decided that daughters, regardless of whether the father remained alive on 09, September 2005, would have equal rights of co-ownership in Hindu Joint Family properties. This is because Sec. 6 of the HSA²⁷ says that this right is given to a person at birth. If there was no will, daughters can get the benefit. If there was a will, they can't. However, daughters who assert coparcenary rights will be unable to challenge how the current coparceners sold or distributed family assets before December 20, 2004.²⁸

CONCLUSION

The lives of millions of women from all categories continue to be most directly impacted by personal laws in India. But despite international agreements & changes to domestic laws, women are still treated unfairly and discriminated against, especially when it comes to marriage, divorce, adoption, child custody, and the right to own and inherit property. In this kind of situation, a gender-just code is a must. Therefore, a UCC is important for protecting the deprived, promoting national unity and solidarity, protecting the human rights of women in India no matter what religion they belong to, and bringing India's laws in line with the legally binding international human rights instruments that India has already signed.

¹⁷ *Sarla Mudgal & Ors. v. UoI & Ors.*, (1995) 3 SCC 635.

¹⁸ *Ahmedabad Women's Action Group (AWAG) v. Union of India*, AIR 1997 SC 3614.

¹⁹ *Swapna Ghosh v. Sadananda Ghosh & Anr.*, AIR 1989 Cal. 1.

²⁰ *The Indian Divorce Act*, 1869.

²¹ *Ammi E. J. v. Union of India*, AIR 1995 ker.252

²² *Pargati Verghese v. Cyril George Verghese*, MANU MH 0064 1997.

²³ *The Indian Divorce Act*, 1869.

²⁴ *The Indian Succession Act, 1925* | Legislative Department | Ministry of Law and Justice | GoI. <https://legislative.gov.in/actsofparliamentfromtheyear/indian-succession-act-1925>. Accessed 12 Jan. 2023.

²⁵ *Supra* Note 11.

²⁶ *Arunachala Gounder (dead) v. Ponnuswamy's*, AIR 2022 SC 605

²⁷ *The Hindu Succession Act*, of 1956.

²⁸ Sil, Fox Mandal-Prerona. "Property Rights of Daughter in India: Post-Supreme Court Ruling, 2022." *Lexology*, 24 June 2022, <https://www.lexology.com/library/detail.aspx?g=75cc6bed-c424-47de-b17e-4715cb8b2872>.