
A CONSTITUTIONAL CRITIQUE OF PERSONAL SUCCESSION LAWS IN INDIA

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ABSTRACT

This article explores the dual legal framework governing inheritance in India, focusing on the coexistence of the Indian Succession Act, 1925, and various personal succession laws applicable to different religious communities. While the Indian Succession Act provides a comprehensive and codified structure for testamentary and intestate succession, its application is limited by Section 29 of the ISA, which excludes Hindus, Muslims, Buddhists, Jains, and Sikhs from its intestate inheritance provisions. As a result, most citizens continue to be governed by personal laws derived from religious traditions, leading to inconsistencies in the distribution of property after death.

It also analyses how this fragmented system affects the clarity, efficiency, and predictability of inheritance law. It further discusses the challenges posed by communal resistance to legal reform and the prolonged delay in realizing the directive under Article 44 of the Constitution, which calls for a Uniform Civil Code.

WHAT ARE INHERITANCE LAWS?

Succession law, or inheritance law, governs how a person's property and other assets are distributed after their death. It outlines who inherits, in what order, and under what conditions. These laws can be broadly categorized as either:

1. **Testamentary Succession** - If a will exists, the property is distributed according to the testator's wishes¹, with certain legal restrictions.
2. **Intestate Succession** – Process of distributing a deceased person's property when they die without leaving a valid will. The laws governing intestate succession vary depending on the deceased's religion.

Each personal law has its own set of rules and provisions regarding intestate succession. These laws define the order of priority among the natural legal heirs, taking into consideration factors such as marital status, gender, and blood relations.

THE INDIAN LEGAL SYSTEM – SUCCESSION LAWS

India follows a pluralistic legal framework in matters of succession and inheritance, meaning that different communities are governed by different sets of laws based on their religion. This creates a dual legal system, where two parallel streams of inheritance law operate:

1. **The Indian Succession Act, 1925 (ISA)** - The Indian Succession Act, 1925 is often cited as a secular and comprehensive law, but its applicability is not universal. While the Act aims to provide a uniform framework for testamentary and intestate succession, its actual reach is restricted by religion, especially in cases of intestate succession. S29 of the ISA² states that Part V, governing matters of intestate succession, shall not be applied to the property of any Hindu, Muhammadan, Buddhist, Sikh, or Jaina. Only in the matters of testamentary succession or inheritance shall this act be applied to citizens of all religions.

¹ Understanding the Indian Succession Act (1925), Law Crust, <https://lawcrust.com/indian-succession-act/>

² Section 29, Indian Succession Act, 1925

2. Personal Laws - Each religious community is governed by its own personal laws that governs matters like marriage, divorce, and inheritance. They are, often, derived from religious texts and are generally, not codified or partially codified.

- i) **Muslim Personal Law** – The Muslim Personal Law (Shariat) Application Act, 1937³ governs the application of Islamic personal law (Sharia) to Muslims in India in matters such as inheritance, succession, marriage, divorce, maintenance, gifts, and guardianship. Prior to this Act, many Muslim communities in India were governed by customary practices, which often deviated from traditional Islamic principles. Sharia is derived from multiple scriptural and interpretive sources like the Quran, Sunnah, and Hadith.
- ii) **Hindu Personal Law** – The Hindu Succession Act, 1956 applies to Hindus, Buddhists, Jains, and Sikhs⁴. It was enacted to unify and modernize various schools of Hindu law and customary practices under one comprehensive legal framework. The Act lays out a hierarchical order of inheritance, giving preference first to Class I heirs such as sons, daughters, widow, and mother.

CONSTITUTIONAL CRITICISMS

Such co-existence of multiple succession laws leads to several discrepancies in the rights of citizens purely based on religion, raising serious questions regarding the constitutional guarantee of equality. Now, equality is a fundamental and foundational concept of the Constitution. It means that all individuals are treated the same way, under the law, without arbitrariness based on factors such as race, gender, religion etc. Article 14 enshrines this principle by guaranteeing all citizens equal protection and equal treatment under law. It prohibits discrimination and fosters a sense of social cohesion and national unity.

However, the determination of inheritance rights through personal laws, allow citizens of different religions, different treatments in identical legal situations making for complete defiance of the principle of equality. For example, under Muslim Law, a male shall inherit twice as much as a female, but, in Hindu Succession Law, inheritance is largely gender neutral.

³ Rachit Garg, Muslim Law of Inheritance, Ipleaders, <https://blog.ipleaders.in/muslim-law-of-inheritance/>

⁴ Section 2, Hindu Succession Act, 1956

Such disparities between codified and personal laws create a fragmented legal framework and allow for an ideological sense of legal and social separatism and a subsequent reinforcement of religious identity over national legal identity. Such social separatism encourages and fuels the idea of communal lobbying where religious groups seek to preserve such laws that favour theological interests, thereby undermining the secular nature of the Constitution which may prominently be seen in the case of All India Muslim Personal Law Board⁵. Such resistance is not merely ideological but also manifests organised protests, political pressures, and public campaigns against legislative and judicial reforms culminating communal polarization and social unrest. This not only obstructs the implementation of progressive laws but also deters elected governments from taking bold legislative steps, fearing backlash from conservative factions.

This persistent fragmentation and resistance starkly contradict the constitutional vision encapsulated in Art. 44 of the Indian Constitution⁶ which provides that, "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India." The persistence of religious-succession laws is a direct defiance of this directive which aims to unify India's legal framework and promote national integration.

This was also recognised in the Supreme Court case of *Sarla Mudgal and Ors. v. Union of India*⁷, it was strongly emphasized that the constitutional mandate under Art. 44, stating that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India" is an unequivocal directive intended to introduce a uniform law. The Court described this as a decisive step towards national consolidation, expressing concern that successive governments had failed to act upon this directive since 1949. And lastly, the Court concluded that there exists "no justification whatsoever to keep in abeyance the introduction of a uniform civil code".

RECOMMENDATIONS AND FUTURE OUTLOOK

From a legal standpoint, the purpose of any statutory framework is to govern the affairs of a nation on the basis of justice, reason and equality, not to satisfy any religious doctrines. Subsequently, the question arises whether there is any need for a segmented system of legal

⁵ <https://aimplb.org/aims-objectives/>

⁶ INDIA CONST. Article 44

⁷ *Sarla Mudgal and Ors. v. Union of India and Ors.*, AIR1995SC1531

framework, when a unified code can tackle the needs arising in situations regarding inheritance. Allowing all parts of the Indian Succession Act to be applied to all citizens of India, barring other exceptions, would make the application of succession laws uniform and fair.

In 1954, when then Prime Minister Pandit Jawaharlal Nehru, defended the introduction of the Hindu Code Bill⁸ which included the Hindu Succession Act, 1956, instead of a Uniform Code, in the Parliament stating, "I do not think that at the present moment the time is ripe in India for me to try to push it through". However, this hesitation, which may have been politically cautious for a newly independent nation, cannot justify decades of inaction, where even after seventy years of independence, establishing a Uniform Code remains an aspiration rather an integration. Such prolonged lack of recognition by the authorities deepens religious division and fuels separatism. The legal pluralism must now be placed in a Uniform Civil Code and Article 44 must be brought out of cold storage, not merely as a legislative measure but as a moral commitment to equality, morality and justice for all.

⁸ Roshani Rai, Jawaharlal Nehru and The Hindu Code Bill, *International Journal of History* Vol.6, 2024