
PROSPECTS AND LEGALITY OF UNIFORM CIVIL CODE FOR SUCCESSION

Advaith Pabbathi, OP Jindal Global University

Meghana Reddy, OP Jindal Global University

INTRODUCTION

Uniform Civil Code stands for a set of laws that shall not apply to everyone irrespective of their religion, it does not stand for Uniform Common code. It seeks to displace the various personal laws already in force, which differ according to one's religious identity. A standard civil code must be provided for individuals throughout India's territory, according to Article 44 of the Constitution, one of the Directive Principles of State Policy. However, as stated in Article 37, directive principles serve as guiding principles for governmental policy and are not subject to legal enforcement.¹

By guaranteeing that every citizen, irrespective of religion, has the same inheritance rights, UCC could aid in the promotion of gender equality. Women, who frequently experience discrimination due to traditional religious laws, should pay particular attention to this.

All citizens, regardless of religion, would be subject to the same laws under UCC. By making all residents feel connected, this would support secularism and national integration.

An inheritance set of rules with UCC would be more comprehensible and consistent. Inheritance rights would be clearer to everyone as a result, and any disagreements that could arise would be simpler to settle. UCC would simplify the enforcement of succession disputes by establishing a uniform set of laws for all citizens. As a result, courts wouldn't have to apply various religious rules in various situations.

¹ Benu BP, "BL Explainer: What Is the Uniform Civil Code All About?" (*BusinessLine*, July 14, 2023) <https://www.thehindubusinessline.com/blexplainer/bl-explainer-what-is-the-uniform-civil-code-all-about/article67045868.ece>

The current succession laws in India are as follows:

1. **Hindu law:** Individuals can write wills under the 1956 Hindu Succession Act. Legally recognized wills are exempt from inheritance laws. Without a will, property can be inherited. Gender equality in property inheritance requires that daughters receive an equal share as sons. The law distinguishes ancestral and self-acquired property. Up to four generations of male descendants get undivided ancestral property. A grandchild has a hereditary right to ancestral property but not their grandparent's self-acquired property. A voidable marriage's unwed child is a lawful heir. The Act does not apply to Special Marriage Act of 1954 couples unless both are Hindus, Jains, Sikhs, or Buddhists. These successions are governed by the 1925 Indian Succession Act.
2. **Muslim law:** Under the Muslim Personal Law (Shariat) Application Act, 1937, a Muslim man can leave only one-third of his assets in a will with his heirs' approval. The remaining estate goes to the wife and heirs. An heir cannot inherit property if he does not pay the deceased's obligations. Female heirs get half of male heirs' portion. A Muslim woman gets an eighth of her husband's property if she has children, otherwise a quarter. Muslim law doesn't recognize unwed children. The Act does not apply to Special Marriage Act, 1954 couples. Such succession follows the 1925 Indian Succession Act.²
3. **Christian law and Parsi law:** Indian Succession Act, 1925 governs Christian and Parsi succession. A will can leave all or part of properties. The property is split equally between sons and daughters. Christian law does not recognize children outside wedlock. Christian wives receive predetermined shares. If the deceased has children, his widow gets one-third of the inheritance, and the rest goes to them. She receives half of the estate if the heirs are not children, and the rest go to other relatives. She inherits everything if there are no offspring or relatives. If a Parsi man dies leaving a wife and children, each son and wife receive double the portion of each daughter. If he dies leaving children but no wife, each son gets twice as much as each daughter. Each child and husband shall receive equal part

² Mathur A, "Explained: How a Uniform Civil Code Will Impact Succession and Tax Laws" (*India Today*, June 29, 2023) <https://www.indiatoday.in/law/story/uniform-civil-code-impact-on-hindu-undivided-family-tax-exemption-succession-laws-2399830-2023-06-29>

if a Parsi woman dies leaving her husband and children. If a Parsi man dies leaving one or both parents, children, and a wife, the father will receive half the part of a son and the mother half the share of a daughter. The parent or parents of a Parsi woman who dies with her children and husband receive half of each child's share.

INHERITANCE AND SUCCESSION

There are clear gender and religion biases in Indian succession law. Public interest litigation (PIL) that aims to abolish discrimination and standardize succession laws was just filed. The Supreme Court has requested the government's help in crafting a secular civil code that respects all faiths and does not discriminate based on gender. Inheriting someone else's rights or title to property is called "succeeding" to such property under the law. Succession can be either intestate or testamentary. In the event of an intestate death, property is distributed in accordance with the tenets of the deceased's religion. An individual passes away intestate. After a person dies, their estate is distributed according to their last will and testament. For matters of intestate succession, Hindus adhere to the Hindu Succession Act and Muslims to their respective laws. Indian law regarding succession is followed by Christians and Parsis.

There are two main schools of thought in Hindu personal law. There are two primary schools of Hindu law. Both Bengal and Assam adhere to the Dayabhaga school of thought. The second is the Mitakshara School of Thought, which is widely practiced in India. These legal philosophies are typical of Hindu Personal Law and offer a framework for the transfer of property. The two schools take different stances on succession rules. The Dayabhaga school is known for its strict adherence to tradition for the sake of "spiritual benefit." This suggests that whoever offers the greatest spiritual benefit to the departed will be rewarded for their efforts. Succession laws in the Mitakshara school are predicated on kinship ties. Success is possible for the deceased person's closest blood relatives, according to this theory.

Coparcenary rights are unique to Hindu law. Only inheritances qualify for coparcenary rights. According to Hindu law, a man's right to his property was absolute and unalienable. The coparceners' claims, however, ultimately determined his right to his ancestors' land. Coparcenary cannot be legally established between the parties. Women were not included in the coparcenary

under the Mitakshara school of inheritance law, but they were under the Dayabhaga school. The Mitakshara legal system, which shifted power, gave preference to sons over daughters. Under this arrangement, sons have the right to petition for the division of their father's estate for as long as he is alive. Distribution of assets is governed by the survivorship rule rather than the rules of succession. Since such an interest was not created by the Dayabhaga school of thought, the inheritance of the father resulted in the transfer of the property. In the past, bequests of property were illegal under Mitakshara Laws. The Hindu Succession Act of 1956 had a provision in Section 30 that allowed for this kind of distribution.

By creating a uniform succession framework for all Hindus, the Succession Act does away with the division between the two schools of Hinduism. The Supreme Court's judgement on Hindu daughters' rights to their family property after the 2005 amendment to the Hindu Succession Act mainly addresses coparcener rights. The question at hand was whether, after the amendment took effect, a daughter's coparcenary rights were contingent on her father's continued viability. Daughters' coparcenary rights are recognized by the Supreme Court to begin at birth and not at the time of the father's death. The court ruled that the new provision applies to all daughters of coparceners, both living and dead.

Section 6 of the 2005 amendment act grants daughters' coparcenary rights in agricultural land like other coparcener possessions. For *Tukaram Genba Jadhav & Ors. vs The Bombay High Court*³ relied on the Supreme Court's *Accountants and Secretarial Services Pvt. Ltd. vs Union of India*.⁴ The court noted that Section 4(2) of the Hindu Succession Act of 1956 applies to agricultural lands except for fragmentation, ceiling fixation, and devolution of tenancy rights. If a State or municipal law addresses a specific Act provision, it takes precedence.

The High Court, unfortunately, misunderstood the ruling. Property transfers and inheritances, except for agricultural land, are now governed by the Concurrent List rather than the State List, according to a recent Supreme Court ruling. Devolution of tenancy rights on agricultural property was previously managed by state statute. This issue was resolved by the repeal of section 4(2) of

³ Aironline.In, "AIROnline-Tukaram Genba Jadhav and Others" ([aironline.in](https://www.aironline.in/legal-search-by-parties-name/Tukaram+Genba+Jadhav+and+others)) <https://www.aironline.in/legal-search-by-parties-name/Tukaram+Genba+Jadhav+and+others>

⁴ "Accountant+and+secretarial+services+(p)+Ltd | Indian Case Law | Law" (<https://www.casemine.com>) <https://www.casemine.com/search/in/accountant%2Band%2Bsecretarial%2Bservices%2B%28p%29%2BLtd>

the Succession Act, 1956. The Court ruled that the girl has the same coparcenary rights to the agricultural land as her brother.

According to the Hindu Succession Act, a Hindu male's estate is distributed among his "class I" relatives in the case of his death. The surviving spouse, children, parents, and other relatives are all welcome to apply. If there are no legitimate heirs or if they renounce their right to inherit in writing, the estate will pass to the second class of heirs. If there are no living or interested class I heirs, the inheritance will pass to the class II heirs. When a Hindu woman dies, her husband and any children she may have inherit her property. If there are no children from the marriage, the husband's legal heir would inherit the property. This indicates that the husband's heirs have a stronger claim to the property than the wife's parents and siblings, particularly regarding the wife's accumulated wealth. The individual's father's heirs, or in his absence, the heirs of her marriage, will receive any property she has obtained through her biological family.

Hindu women will continue to be denied equal property rights unless the government updates the Succession Act of 1956. Gender-based succession strategies are unnecessary. The Succession Act of 2005, which is supposed to protect and promote coparcenary rights, has a primary succession structure that is discriminatory. Hindu testamentary succession is regulated by Section 30 of the Succession Act of 1956. Property acquired by an individual Hindu or through a coparcenary is equally transferable, according to Hindu scripture. Section 21 of the Hindu Adoption and Maintenance Act, 1956 (HAMA) allows a testator to disinherit a dependent who is unable to care for herself, such as a widow, a daughter who has not yet married, or a disabled child. A testator can leave their entire fortune to a son or anybody else they choose. The dependent lacks nourishment because of this arrangement, which is unfair.

If a widow seeks financial support from a dependent who received an inheritance from the deceased through a will, section 22 of the Hindu Adoption and Maintenance Act (HAMA) does not require the estate to provide such maintenance unless a charge has been specifically established in accordance with section 27. When no charge is proven, the widow cannot sue a transferee for reimbursement. The transferee is not required to support the widow under the Hindu Adoption and Maintenance Act (HAMA) or the Code of Criminal Procedure (CrPC), 1973, if the widow is unaware of section 39 of the Transfer of Property Act, 1882.

Unless a charge has been established in accordance with Section 27 of the Hindu Adoption and Maintenance Act (HAMA), the estate is not obligated to provide maintenance to a widow who seeks support from a dependent who received an inheritance from the deceased through a will. If there is no evidence of wrongdoing, the widow cannot pursue legal action against the transferee. If the widow does not know about section 39 of the Transfer of Property Act of 1882, the transferee is not obligated to provide for her under HAMA or the Code of Criminal Procedure of 1973.

Disagreement exists over whether people should have unrestricted freedom to sell whatever they want. Supporters argue that this freedom is crucial. To enhance social, economic, and egalitarian conditions, however, advocates suggest that the legal system should consider additional factors that may affect dependent individuals. The Quran is the source of Islamic law regarding inheritance and succession. Sunni and Shia are the two largest branches of Islam, and they practice distinct sets of beliefs and rites. Islamic succession law is based on pre-Islamic customary law and a patriarchal family structure. There is no need to rewrite the user's text. Differences between the Sunni and Shia inheritance systems can be seen in the Shia's focus on the deceased's immediate relatives and the Sunni's recognition of Agnatic heirs, who can trace their ancestry through either male or female lines. Inheritance is not barred based on gender under Shia law. Inheritance is not limited to men; women can receive inheritances as well. Sunni and Shia Muslims perceive Quranic Laws differently, when determining who is. While Shias accept Quranic injunctions about succession, Sunni communities use them to guide their inheritance customs. In addition, a woman who loses her husband and has no surviving children receives a quarter of his estate. On the other hand, a Muslim widow who has produced offspring receives an eighth of the inheritance. Furthermore, agricultural land is not subject to Muslim personal limitations.⁵

Inheritance and succession are still governed by local customs in India, despite the country's secular nature. Consequently, Ashwini Upadhyay, a prominent member of the BJP, initiated a public interest litigation (PIL) campaign for uniform succession laws. This PIL asks the Law Commission to investigate the current state of succession and inheritance laws and make

⁵ Law commission of India and Government of India , “Consultation Paper on Reform of Family Law ” (Government of India 2016) <https://archive.pib.gov.in/documents/rlink/2018/aug/p201883101.pdf> accessed September 23, 2023

recommendations for harmonizing them internationally. The goal of this movement is to ensure that all women are treated fairly and with respect.

The restrictions on succession and inheritance are challenged on the grounds that they are discriminatory based on religion and/or gender. The right to life and freedom, guaranteed by Article 21 of the Indian Constitution, is violated, as is the dignity of women. Articles 14, 15, 21, and 44 of the Constitution protect people of all faiths and genders from discrimination. Despite being free for 76 years, the Centre does not meet the minimum requirements. The Indian Constitution guarantees women full citizenship rights, but laws that discriminate against them based on their gender or religious beliefs are in direct opposition to these guarantees. The creation of a Uniform Civil Code to ensure individuals' equitable inheritance and succession rights was the result of three additional Public Interest Litigations (PILs) brought before the Supreme Court.⁶

PROS AND CONS OF IMPLEMENTATION OF UCC IN INDIA

Pros:

1. **Uniformity and Equality:** The implementation of uniform legislation would guarantee that all individuals, irrespective of their religious affiliation, adhere to a standardized set of regulations pertaining to the processes of succession and inheritance. The implementation of this measure is to mitigate the existing inequities that are prevalent across different personal laws. The aforementioned ideal of equal protection under the law, as stated in the Indian Constitution, is upheld. This implies that individuals possess an equitable entitlement to inherit assets, irrespective of their gender, religious affiliation, or social class.
2. **Simplification:** The Uniform Commercial Code (UCC) has the potential to streamline the legal framework by substituting the intricate network of individualized laws with a singular, standardized code. This has the potential to enhance persons' comprehension of their legal rights and responsibilities. The implementation of a streamlined legal framework

⁶ “UNIFORM CIVIL CODE FOR SUCCESSION AND INHERITANCE” (*Lexlife India*, July 3, 2021) <https://lexlife.in/2021/07/03/uniform-civil-code-for-succession-and-inheritance/>

has the potential to mitigate legal problems and litigation pertaining to inheritance, hence alleviating the strain on the Indian judicial system.

3. **Gender equality:** is a prominent advantage of the Uniform Civil Code (UCC) as it has the capacity to eradicate discriminatory practices in inheritance based on gender. In the context of personal laws, it is frequently observed that women are subject to restrictions on their entitlement to ancestral property. However, the implementation of a Uniform Civil Code (UCC) has the potential to confer equal rights to women in this regard. This transformation has the potential to enhance women's economic empowerment, disrupt conventional patriarchal conventions, and foster gender equality within society.
4. **Secularism:** The Uniform Civil Code (UCC) of India is in accordance with the nation's dedication to secularism, thereby guaranteeing that legislative measures remain uninfluenced by religious convictions. The statement underscores the principle of official neutrality in religious affairs, wherein no preferential treatment is given to any particular religious community. The preservation of a distinct division between matters of religion and state is of utmost importance to uphold India's democratic and secular nature.
5. **Legal Aspect:** In subsequent years, the legislature, judiciary, and civil society organizations have sought to reform personal laws or create a civil code. *Mohd. Ahmed Khan v. Shah Bano Begum*⁷, *Jordan Diengdeh v. S.S. Chopra*,⁸ and *Sarla Mudgal v. Union of India*⁹ are notable cases in this subject. In *Shah Bano*, the court said Article 44 is a “dead letter” and that a unified Civil Code will support “cause of national integration by removing disparate loyalties to laws which have conflicting ideologies”. It said that the legislature must ensure a unified civil code for citizens. A beginning is needed for the Constitution to have meaning. In 1995, the Supreme Court asked the prime minister to revisit Article 44 to create UCC in India in the *Sarla Mudgal Case*. In 1997 and 2000, the Ahmedabad

⁷ Frontline T, “1985: Shah Bano Case” (*Frontline*, August 15, 2022) <https://frontline.thehindu.com/the-nation/india-at-75-epochal-moments-1985-shah-bano-case/article65730545.ece>

⁸ “*Jordan Diengdoh v. Swaranjeet Singh Chopra*, Delhi High Court, Judgment, Law, Casemine.Com” (<https://www.casemine.com>) <https://www.casemine.com/judgement/in/560909ace4b014971117060d>

⁹ “TOWARDS A UNIFORM CIVIL CODE: JUDICIAL VICISSITUDES [from *Sarla Mudgal* (1995) to *Lily Thomas* (2000)] on JSTOR” <https://www.jstor.org/stable/43953817>

Women Action Group Case and Lily Thomas Case¹⁰ highlighted that the court did not order the government to implement UCC in the Sarala Mudgal case.

Drawbacks:

1. **Resistance and opposition:** Religious organizations have opposed UCC vehemently, especially those who worry that it will violate their right to religious autonomy. The implementation of the Uniform Civil Code (UCC) has the potential to incite protests and elicit political backlash, so engendering social upheaval. Certain societies may perceive it as an endeavor to standardize a wide range of religious and cultural customs.
2. **Cultural Sensitivities:** India is a country characterized by its diversified population and a multitude of cultural practices and customs. Over the course of centuries, personal laws have undergone significant transformations to suit the wide array of distinct activities. The implementation of the Uniform Civil Code (UCC) may not sufficiently account for the distinct cultural and socioeconomic characteristics prevalent in different communities. The implementation of such an approach could potentially be perceived as forcing a standardized solution into a culture characterized by cultural diversity.
3. **Legal complications:** The UCC, despite its aim to streamline the legal structure, has the potential to generate a fresh array of intricate regulations that may not be substantially more comprehensible to the general populace. The process of transitioning from personal laws to a uniform code may give rise to confusion and uncertainty, particularly in the early stages of adoption.
4. **Implementation:** One of the primary challenges in implementing the Uniform Civil Code (UCC) in India pertains to ensuring its uniform enforcement across the country's extensive and heterogeneous population. Educating individuals about the newly implemented legislation and ensuring their adherence would necessitate a substantial administrative endeavor. The shift from individualized legal systems to a standardized code may give rise

¹⁰ Sarda K, "Explained: How the Lily Thomas Case Verdict Sealed Fate of Convicted MPs & MLAs" (*India Today*, July 7, 2023) <https://www.indiatoday.in/law/story/lily-thomas-verdict-rpa-act-changed-disqualification-laws-convicted-mps-mlas-explainer-2403496-2023-07-07>

to legal conflicts and ambiguities over the practical implementation of the revised legislation.

5. **Political will:** The successful implementation of the Uniform Civil Code (UCC) necessitates a robust display of political determination, which has frequently engendered significant controversy within the realm of Indian politics. Successive administrations may exhibit reluctance in adopting a decisive position on the issue, driven by concerns over potential loss of backing from specific religious constituencies.¹¹

In brief, the proposition of implementing a Uniform Civil Code in India pertaining to matters of succession and inheritance presents potential advantages in terms of promoting equality, simplicity, and secularism. However, this proposal is not without substantial obstacles, including cultural sensitivities, political resistance, and the intricate nature of its execution. Achieving an optimal equilibrium between the advantages and disadvantages outlined above is a multifaceted and continuous endeavor within the legal and social framework of India.

DICHOTOMY BETWEEN RELIGIOUS OR SECULAR LAW

Let's examine further normative issues from the Uniform Civil Code literature. I shall now discuss secular-religious law conflicts instead of legal pluralism and conflicts of laws. When secular and religious laws apply, the Indian higher judiciary grants overriding jurisdiction. The judge must follow precise procedural rules to resolve such disputes, which causes the discrepancy. This operation must be sensitive to religion and culture. Consider the cultural importance of practices and develop solutions to promote gender equity. To establish a comprehensive legal procedure, the judicial system must interact with religious academics about the numerous juridical opinions that are essential to religious interpretations.¹² Thus, these criteria must be considered to achieve a judgement that promotes gender equity and the Constitution. Religious studies should aid secular judgment. Despite a careful protocol, demonstrations will occur due to the possible danger to major factions' political interests. However, internal community support is needed to oppose these

¹¹ Desouza PR, "Politics of the Uniform Civil Code in India" (2015) 50 Economic and Political Weekly <https://www.jstor.org/stable/44002900>

¹² "Uniform Succession and Inheritance - Supreme Court Observer" (*Supreme Court Observer*, January 13, 2023) <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-v-union-of-india-uniform-succession-and-inheritance-background/>

protests. The tension between individual and group rights is another normative issue that requires a position. This argument holds that individual and group rights are valuable and must be supported. Based on human autonomy, individual rights allow people to pursue their goals, identities, and actions. However, group rights, which safeguard communal identity, promote cultural variety that benefits society. Practical situations show that these two sets of rights conflict.

Again, like the last two circumstances, we must take a stand on a conflicting set of rights. Give one of the two alternatives precedence. Recent societal reactions against intercaste weddings, especially in Northern India, have highlighted this dilemma. If young couples marry outside their castes and tribes without parental authorization, they may be shunned or killed. The couple breached caste and communal divisions by exercising their rights. Individuals are accused of damaging communal reputation. The "khap" panchayat governs many North Indian territories and issues instructions. The organization is known for promoting violence to recover communal "honour." The khap is a committee of respected community elders. Many khaps have ordered their family members to execute transgressors in the past decade. Modern, democratic India must not support such measures under the cover of collective rights. Although these killings occurred in India, the Indian government has taken no action to prosecute them. The political authorities realized that punishing these khaps would be politically costly in a country where traditional ideas are influential. In conflict, individual rights must trump group rights.¹³

CONCLUSION

The Indian government and religious groups who fear UCC may violate their rights must work together to improve laws and society. Discussion with persons who fear UCC will infringe their religious rights, surveys, camps, etc., can accomplish this. The government must successfully promote UCC's benefits to concerned citizens. The government must add marriage, divorce, succession, and inheritance bits by piece to enhance the UCC. The government must hold regular discussions with UCC opponents to identify the real issue. The Supreme Court of India called Goa's UCC a "Shining Example" for its qualities. Goa's UCC includes compulsory marriage registration, polygamy or bigamy ban, uniform marriage age, consent of men and women to marry,

¹³ Menski W, "The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda" (2008) 9 German Law Journal 211 <http://dx.doi.org/10.1017/s2071832200006416>

consent of both men and women to lawful separation, etc. These features support countrywide UCC implementation. Implementing the UCC Bill may be best done by a high-level committee. The committee must raise awareness and find the problem. India follows the rule of law; thus, no other force can dominate. However, due to people's personal views, religion, and law overlap, so the government must respond. Uniform Civil Code is ideal legislation to promote secularism and consistency to Indian personal and civil laws. The government must execute the aforesaid ideas since UCC opponents are misled.