
ANALYTICAL STUDY RELATING TO UNIFIED LAW IN THE GLOBALISED ERA IN RELATION TO INHERITANCE

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ABSTRACT

The Uniform Civil Code (UCC) proposes a unified legal framework to govern personal matters such as marriage, inheritance, divorce, and adoption, applicable uniformly across all religious communities in India. This paper analyzes the potential impact of the UCC on inheritance laws, comparing India's existing religious-based personal laws with those in the United States. The UCC aims to address inequalities, particularly gender discrimination, by establishing uniform standards that ensure equal rights for all citizens. Currently, Hindu and Muslim inheritance laws differ significantly, with gender biases evident in both. The study includes an analysis of the UCC's provisions in Uttarakhand, which introduces new classifications of legal heirs and ensures gender equality in intestate succession. Additionally, the ongoing Supreme Court case of *Ashwini Kumar Upadhyay v. Union of India* is examined to highlight the constitutional challenges and potential implications of implementing a UCC. Comparing U.S. and Indian inheritance laws reveals differences in legal frameworks, spousal rights, and gender equality. The U.S. employs systems like community property and common law, providing more equitable asset distribution irrespective of gender, while India's religious-based laws often favor male successors. The paper concludes that while the UCC holds promise for promoting social harmony, gender equality, and secularism, its successful implementation depends on acceptance by various religious communities and effective legal and policy frameworks. Further study is recommended to explore comparative inheritance laws, socio-legal impacts, case studies, reform proposals, and international perspectives to deepen understanding and inform future legal reforms.

Introduction

The Uniform Civil Code (UCC) proposes a unified legal framework that would apply uniformly to all religious communities in India, governing personal matters such as marriage, inheritance, divorce, adoption, and more. The primary objective of implementing a UCC is to replace the diverse set of personal laws currently existing for various religious communities with a single set of laws applicable to all citizens regardless of their religious affiliation. At its core, the UCC aims to foster social harmony, promote gender equality, and uphold the principles of secularism. By eliminating the disparate legal systems based on different religions and communities, the UCC seeks to establish a common legal foundation that treats all citizens equally before the law. This entails ensuring that individuals from different religious backgrounds are subject to the same set of rules and regulations in matters concerning their personal lives.

One of the key goals of the UCC is to address the inequalities and injustices inherent in the existing personal laws, particularly concerning gender discrimination. Currently, various personal laws provide differential treatment to men and women, leading to disparities in areas such as inheritance rights, divorce proceedings, and maintenance obligations. By establishing uniform standards across all communities, the UCC seeks to promote gender equality and ensure that all individuals, regardless of gender or religious affiliation, enjoy equal rights and opportunities under the law. The UCC aims to uphold the principle of secularism by promoting a legal system that is independent of religious considerations. Rather than privileging any particular religious community, the UCC seeks to establish a neutral legal framework that respects the diverse religious beliefs and practices of Indian society while also ensuring that no individual or community is unfairly disadvantaged by their religious affiliation. The Uniform Civil Code represents a significant reform initiative aimed at creating a more equitable, harmonious, and secular society. By replacing disparate personal laws with a uniform legal framework, the UCC seeks to promote social cohesion, gender justice, and the principles of secular governance in India.

Objective

- To analyse the effect of UCC in reference to Inheritance. Is UCC helpful?
- To conduct comparative study between US and India about Inheritance law.

Analysis

Inheritance serves as the customary means of transferring properties, titles, debts, rights, and responsibilities to the designated heir of an individual upon their demise. This transfer can be facilitated either through a legally documented will or in accordance with the laws of succession. The manner in which inheritance is regulated varies significantly across different religions, societies, and communities, reflecting diverse cultural norms and legal traditions.

Losing a family member is undoubtedly a profound and deeply distressing experience. However, the pain can be further exacerbated when disputes arise within the family regarding the inheritance of property. Unfortunately, such conflicts are not uncommon in India, often stemming from a lack of understanding or knowledge about property inheritance laws. In the current economic climate, characterized by inflation and soaring real estate prices, the importance of safeguarding property assets has become increasingly apparent. This necessity is particularly acute for legal heirs who must take proactive steps to protect inherited property both before and after the passing of the rightful owner. This entails adhering to requisite legal formalities and procedures to secure ownership rights.

Navigating the process of acquiring inherited property can prove complex, with the specific procedures and formalities varying depending on the unique characteristics of the property in question. Factors such as the nature of the property, the rights conferred upon legal heirs, and the number of individuals entitled to a share of the inheritance can all influence the legal process involved. While inheritance represents a fundamental aspect of wealth transfer and succession planning, it also presents a myriad of challenges and complexities, particularly in contexts where legal knowledge may be lacking. It is imperative for individuals and families to familiarize themselves with the relevant laws and procedures governing property inheritance to ensure a smooth and equitable transition of assets. By understanding and adhering to legal requirements, legal heirs can safeguard their rightful entitlements and mitigate the risk of familial disputes arising in the aftermath of a loved one's passing.

Inheritance in Hindu Law

1. Upon the demise of a Hindu individual, their assets and belongings are to be equally divided among their wife and children.

2. In the event of a son passing away before his father, the son's portion of the property shall be inherited by his wife and children.
3. A ruling by the Supreme Court stipulates that if a Hindu husband remarries while his first wife is alive, the second wife is not entitled to inheritance. However, offspring from the second marriage retain eligibility for inheritance.
4. Property owned by a Hindu female shall be inherited by her husband and children. In case of the predecease of any of her sons, the grandchildren from the deceased son shall receive a share of the property.

Inheritance under muslim law

1. In both Shia and Sunni inheritance laws, one-third of the deceased's property and possessions, after settling funeral expenses and outstanding loans, can be allocated as legacy.
2. According to common principles in both Shia and Sunni traditions, male successors are entitled to receive twice the share of female successors.
3. It is established in both Shia and Sunni inheritance laws that if a son is alive as a successor, the grandson cannot be allotted a share of the inheritance.

The concept of a Uniform Civil Code (UCC), also known as "One Nation-One Law," is enshrined in Article 44 of the Indian Constitution within the Directive Principles of State Policy. This provision mandates that it is the duty of the State to ensure the establishment of a uniform set of civil laws applicable to all citizens throughout the country.¹ One of the primary objectives of the UCC is to revolutionize inheritance laws, which currently vary based on religious scriptures and customs, by implementing a standardized legal framework governing key aspects of personal life such as marriage, divorce, inheritance, adoption, and maintenance. The proposed Uniform Civil Code aims to bring about a radical transformation in the inheritance landscape of India. By replacing personal laws with a common set of rules applicable to all citizens, regardless of their religious affiliations, the UCC seeks to eliminate disparities and ensure equitable distribution of property and assets among heirs. This shift

¹ Menon, N., 2014. A Uniform Civil Code in India: the state of the debate in 2014. *Feminist Studies*, 40(2), pp.480-486.

towards a uniform inheritance law holds the potential to revolutionize the legal landscape by promoting fairness, transparency, and justice in matters of inheritance.²

However, the introduction of a Uniform Civil Code in the realm of inheritance is not without its challenges and controversies. Critics argue that such a move may face resistance from certain religious communities, which may perceive it as an infringement on their religious freedoms and rights. Moreover, the implementation of a uniform inheritance law must navigate the complexities of accommodating the diverse cultural and religious traditions of India's minority populations while upholding the principles of equality and justice for all citizens. Uniform Civil Code emphasize the transformative impact it could have on inheritance practices in India. By establishing a common set of rules governing inheritance, the UCC has the potential to streamline legal processes, reduce disputes, and ensure the equitable distribution of assets among heirs. Moreover, it presents an opportunity to address existing disparities and discriminatory practices prevalent in inheritance laws, particularly concerning gender equality. While the concept of a Uniform Civil Code in inheritance may face obstacles and controversies, its implementation holds the promise of revolutionizing the legal landscape by promoting fairness, transparency, and justice in matters of inheritance. As India moves towards a more inclusive and equitable legal framework, the adoption of a uniform inheritance law could serve as a significant step towards achieving these objectives.³

Case: Ashwini Kumar Upadhyay v. Union of India (the case is not yet decided but is going on in the supreme court)

The petition filed by Ashwini Kumar Upadhyay challenging the laws of succession and inheritance presents a significant legal and constitutional dilemma before the Supreme Court of India. At the heart of this challenge lies the issue of gender equality and religious freedom in the context of personal laws governing inheritance and succession. The petitioner contends that existing laws, such as the Hindu Succession Act of 1956 and the Muslim Personal Law (Shariat) Act of 1937, discriminate based on both religion and gender. For instance, under Muslim personal law, a son often inherits double the share of a daughter, and Muslims are

² Dash, G., 2023. Insight Into The Uniform Civil Code: Constitutional And Societal Perspective. *Indian Journal of Law and Legal Research*, 5(4).

³ Saraswat, T., 2020. Interpretation Perspective wrt Viability and Application of Uniform Civil Code. *Issue 6 Int'l JL Mgmt. & Human.*, 3, p.945.

restricted in their ability to will away their entire property. In contrast, the Hindu Succession Act allows Hindus more flexibility in disposing of their property.

The constitutional basis of the challenge rests on Articles 14, 15, and 21, which guarantee equality before the law, prohibit discrimination on various grounds including religion and gender, and protect the right to life and personal liberty, respectively. The petitioner argues that these discriminatory provisions violate these fundamental rights enshrined in the Constitution. The petitioner's plea aligns with the long-standing debate surrounding the implementation of a Uniform Civil Code (UCC) in India. Article 44 of the Constitution urges the state to secure a UCC for its citizens, a provision that has been a subject of intense deliberation since the Constituent Assembly debates in 1948. While proponents argue that a UCC would promote gender equality and unify personal laws, opponents express concerns about religious freedom and cultural identity. The Supreme Court's potential judgment in this case could navigate through various legal, social, and political considerations. The Court may meticulously assess the constitutional validity of the existing laws in light of the petitioner's arguments and previous judicial precedents. It may scrutinize whether the differential treatment based on religion and gender indeed constitutes a violation of the fundamental rights guaranteed by the Constitution. The Court may delve into the historical context surrounding the UCC debate, particularly the landmark *Shah Bano* case of 1985. This case, which addressed maintenance for divorced Muslim women, reignited discussions on the need for a UCC. The Court's ruling in the present case may build upon or diverge from the principles established in the *Shah Bano* judgment. The Court may consider the broader societal implications of its decision, including its impact on gender justice, religious harmony, and cultural diversity. It may weigh the arguments for uniformity and equality in laws against concerns raised by various stakeholders, including religious communities and women's rights organizations.

The Supreme Court's judgment on Ashwini Kumar Upadhyay's petition holds immense significance for the legal and social fabric of India. It has the potential to shape the contours of personal laws, gender equality, and religious freedom, while also influencing the ongoing discourse surrounding the implementation of a Uniform Civil Code. The Court's decision, therefore, must carefully balance the competing interests and principles at stake, while upholding the constitutional rights of all citizens.

CASES Regarding Unified code:

1. Mohd. Ahmed Khan vs. Shah Bano Begum (1985)⁴:

Shah Bano Begum, a Muslim woman, sought maintenance from her husband, Mohd. Ahmed Khan, under Section 125 of the Criminal Procedure Code (CrPC), after he divorced her. The Supreme Court ruled in favor of Shah Bano, stating that Muslim women are entitled to maintenance beyond the iddat period. The Court emphasized the importance of a Uniform Civil Code (UCC) in eliminating contradictions based on religious ideologies and ensuring equal rights for women.

2. Sarla Mudgal vs. Union of India (1995)⁵:

The case involved a Hindu husband who converted to Islam and married again without dissolving his first marriage. Sarla Mudgal, a petitioner, challenged the validity of such second marriages under Islamic law. The Supreme Court ruled that a Hindu husband, upon conversion to Islam, cannot enter into a second marriage without legally dissolving his first marriage. The Court reiterated the necessity of a UCC to uphold gender justice and equality.

3. Shayara Bano vs. Union of India (2017)⁶:

Shayara Bano, a Muslim woman, challenged the practice of triple talaq (instant divorce) under Muslim personal law, which she argued violated her fundamental rights. The Supreme Court declared triple talaq unconstitutional, emphasizing its adverse impact on the rights of Muslim women. The Court highlighted the urgency of enacting a UCC to address gender discrimination and ensure uniform laws governing marriage and divorce.

4. Joseph Shine vs. Union of India (2018)⁷:

The case revolved around the constitutionality of Section 497 of the Indian Penal Code (IPC), which criminalized adultery but only applied to men. Joseph Shine, the petitioner, challenged the gender discrimination inherent in the law. The Supreme Court struck down Section 497,

⁴ 1985 (2) SCC 556.

⁵ 1995 SCC (3) 635.

⁶ 2017 (9) SCC 1.

⁷ 2019 (3) SCC 39.

emphasizing the need for gender-neutral laws and suggesting the enactment of a UCC to address inconsistencies in personal laws.

5. Indian Young Lawyers Association vs. State of Kerala (2018)⁸:

The case concerned the ban on the entry of women of menstrual age into the Sabarimala temple in Kerala. The Supreme Court examined the constitutional validity of the ban in light of gender equality and freedom of religion. The Court ruled in favor of allowing women's entry, highlighting the need for a UCC to harmonize conflicting rights and ensure gender equality across religions.

Usefulness of a unified code in Inheritance

Study of Uttarakhand applying UCC in the state.

According to experts, the Uniform Civil Code (UCC) establishes its own framework for intestate succession, diverging from the traditional class of successors outlined in Hindu, Muslim, and Christian personal laws. The UCC applies in cases where an individual passes away without leaving a will, but if a will exists, the UCC's inheritance laws do not come into play. The UCC introduces the concept of Class-I and Class-II legal heirs, along with two additional categories for other relatives. It prioritizes the devolvement of the estate among Class-I heirs, who are entitled to an equal share. If there are no surviving Class-I legal heirs, the estate passes to Class-II heirs. In the absence of both Class-I and II heirs, the estate is distributed to "other relatives," excluding Class-I and II legal heirs. Notably, the UCC ensures gender equality and diverges from the specific norms of Hinduism, Islam, and Christianity. While Hindu and Christian succession laws are codified, impacting only Muslims, Muslim personal laws are not codified, and Muslims are governed by customary practices outlined in the Muslim Personal Law (Shariat) Application Act, 1937. Therefore, there is no centralized law governing intestate succession for Muslims. According to Poria from Economic Law Practice, the Uniform Civil Code (UCC) unequivocally annuls any law, practice, custom, or usage in Uttarakhand that conflicts with its provisions. Essentially, any uncodified law inconsistent with the UCC will hold no legal validity in the state. In matters of intestate succession, inheritance laws will be dictated by the UCC's provisions regardless of an

⁸ AIRONLINE 2018 SC 243

individual's religion or personal law. Codified law pertains to a document that is consolidated into a single text and officially ratified. Examples include the Constitution of India and the Hindu Succession Act, 1956. Conversely, uncodified law refers to an unwritten and unconsolidated document, primarily relying on judicial precedents. An example is the Muslim Personal Law (Shariat) Application Act, 1937.

Comparing US and Indian Law

In the realm of estate planning, drafting a last will and testament is commonly perceived as the cornerstone for directing the distribution of one's assets after death. However, the efficacy of a will can be influenced by inheritance laws, particularly in select states within the United States. While the fundamental principle of a will remains intact across the nation, these laws introduce nuances that can significantly impact the outcome of asset distribution. In the United States, there exist three primary systems of inheritance laws, each governing how assets are allocated in the absence of a valid will or when a will fails to address certain assets comprehensively. These systems can vary from state to state, thus necessitating a keen understanding of the laws applicable in one's jurisdiction. Among these laws, some states have provisions that intervene to ensure equitable distribution of assets between partners or spouses, even if a will may suggest otherwise. This safeguard aims to prevent one partner from being unfairly disadvantaged in the event of the other's demise.⁹

Inheritance laws serve a crucial function in protecting the interests of beneficiaries and ensuring that assets are distributed in accordance with legal standards. They establish guidelines for who qualifies as a beneficiary and the extent of their entitlement, often extending beyond immediate family members to include children and sometimes grandchildren. This broader scope acknowledges the familial ties that may warrant a claim to inheritance, irrespective of the existence or specificity of a will. One of the key aspects addressed by inheritance laws is the risk of accidental disinheritance, particularly concerning children. In many states, provisions are in place to rectify situations where a will predates the birth of a child and fails to be updated accordingly.¹⁰ Such laws typically mandate that if a child is omitted from a will but their siblings are named as beneficiaries, the omission is presumed to be inadvertent, and the child

⁹ https://www.stoneking.co.uk/services/personal-law/international-cross-border/legal-services-uk-nationals-living-us?gad_source=1&gclid=CjwKCAjwqmwBhBVEiwAL-WAYVaNsBLn63CWMQl0thnWjssq6MHHECYoUPkAyrXpW2B28WiiRPbFSxoCEUQQA_vD_BwE

¹⁰ <https://www.investopedia.com/inheritance-laws-by-state-5113616>

is entitled to an equal share of the estate. This provision not only safeguards the interests of children but also underscores the importance of periodic review and updating of estate planning documents.

Understanding inheritance laws is essential for anyone engaged in estate planning, as they can have profound implications on asset distribution and the realization of one's wishes. By navigating these laws effectively, individuals can ensure that their assets are distributed equitably and in alignment with their intentions, thereby providing peace of mind for themselves and their loved ones.

Community Property

In community property states, spouses automatically own half of the assets acquired during their marriage. Upon the death of one spouse, half of their estate goes to the surviving partner, with the remaining half potentially distributed to other beneficiaries as per the deceased's will. However, the deceased could have chosen to allocate more than half to their spouse through a will. Community property includes income from employment, property purchased during the marriage using income from work, and separate property contributed to the marital community. Exclusions from community property encompass assets acquired before marriage, inheritances or gifts, and property designated to remain separate through a marital agreement.

Common Law

The majority of states, 38 out of 41, follow common law principles. Here, spouses are not automatically entitled to half of the marital assets. However, many states grant the surviving spouse the right to claim a portion of the deceased's estate, typically up to a third or half, regardless of the will's terms. This claim can be pursued through court petition. Property ownership under common law is determined by the name on the title or the source of income used for purchase.

Elective Community Property

Three states, including Alaska, Tennessee, and Kentucky, employ an elective community property system. While essentially common law states, they allow spouses to secure an automatic inheritance right by signing a written agreement or establishing a community

property trust. Residents and non-residents alike can create community property through such trusts.

Comparison

- **Legal Framework:** The U.S. has a uniform legal framework across states, while India's inheritance laws are governed by personal laws based on religion.
- **Spousal Rights:** U.S. inheritance laws provide spousal protection through community property or common law provisions, whereas Hindu Law specifies equal distribution among spouses and children.
- **Gender Equality:** Both systems have disparities in gender equality, with U.S. laws granting spousal rights irrespective of gender but some religious inheritance laws in India favoring male successors.
- **Scope:** U.S. laws cover a wider range of scenarios, including blended families and non-marital relationships, while Indian laws are more specific to religious communities.

While both the United States and India have legal frameworks for inheritance, they differ significantly in terms of governing laws, spousal rights, gender equality, and scope.

Conclusion

The Uniform Civil Code (UCC) represents a bold initiative aimed at fostering social cohesion, promoting gender equality, and upholding the principles of secularism in India. By proposing a unified legal framework applicable to all citizens regardless of their religious affiliation, the UCC seeks to replace the disparate set of personal laws currently existing for various religious communities. While the implementation of a UCC holds the promise of revolutionizing the legal landscape and promoting fairness and justice in matters of inheritance, its usefulness remains subject to debate and scrutiny. The primary objective of the UCC is to address the inequalities and injustices inherent in the existing personal laws, particularly concerning gender discrimination. By establishing uniform standards across all communities, the UCC aims to ensure that all individuals enjoy equal rights and opportunities under the law, irrespective of their gender or religious background. However, the effectiveness of the UCC in achieving these

goals depends on various factors, including its acceptance and implementation by different religious communities and stakeholders.

The UCC's potential impact on inheritance laws is significant, as it introduces a standardized legal framework governing key aspects of personal life, including marriage, divorce, adoption, and inheritance. By replacing personal laws with a common set of rules applicable to all citizens, the UCC seeks to eliminate disparities and ensure equitable distribution of property and assets among heirs. However, the implementation of a uniform inheritance law must navigate the complexities of accommodating diverse cultural and religious traditions while upholding the principles of equality and justice.

A comparative study between the United States and India reveals differences in inheritance laws and legal frameworks. While the U.S. has a uniform legal framework across states, India's inheritance laws are governed by personal laws based on religion. Spousal rights in the U.S. are protected through community property or common law provisions, whereas Hindu Law specifies equal distribution among spouses and children. However, both systems have disparities in gender equality, with U.S. laws granting spousal rights irrespective of gender, while some religious inheritance laws in India favor male successors. While the concept of a Uniform Civil Code holds the promise of promoting social harmony and gender equality in India, its implementation and effectiveness depend on various factors, including societal acceptance, political will, and legal complexities. As India navigates the path towards a more inclusive and equitable legal framework, the adoption of a UCC could serve as a significant step towards achieving these objectives. However, it is essential to address concerns and challenges raised by different religious communities and stakeholders to ensure a smooth and effective transition towards a uniform legal system.

The ongoing legal proceedings, such as the case of *Ashwini Kumar Upadhyay v. Union of India*, highlight the constitutional and social dilemmas surrounding the implementation of a UCC. The Supreme Court's potential judgment in this case holds immense significance for the legal and social fabric of India, as it has the potential to shape personal laws, gender equality, and religious freedom. It is crucial for the Court to carefully balance competing interests and principles while upholding the constitutional rights of all citizens. While the road towards a Uniform Civil Code may be fraught with challenges and controversies, its adoption could herald a new era of legal reform and social progress in India. By promoting fairness, equality,

and justice, the UCC has the potential to create a more inclusive and harmonious society where every individual is treated with dignity and respect under the law.

Scope for Further Study

1. **Comparative Analysis:** Conduct a more in-depth comparative analysis between the inheritance laws of different countries, including the United States, India, and other jurisdictions. Explore similarities, differences, and trends in inheritance laws, including spousal rights, gender equality provisions, and the treatment of assets in blended families.
2. **Socio-Legal Impact:** Investigate the socio-legal impact of implementing a Uniform Civil Code (UCC) in India, specifically focusing on its implications for gender equality, religious freedom, and social harmony. Examine the perspectives of various stakeholders, including religious communities, legal experts, and policymakers.
3. **Case Studies:** Undertake case studies to analyze the practical implications of inheritance laws on individuals and families, particularly in the context of disputes, litigation, and familial conflicts. Explore real-life scenarios to understand how inheritance laws are applied and interpreted in different circumstances.
4. **Reform Proposals:** Evaluate existing proposals for reforming inheritance laws in India and other countries, including suggestions for harmonizing personal laws, enhancing gender equality, and promoting social justice. Assess the feasibility and effectiveness of proposed reforms in addressing existing disparities and injustices.
5. **Legal Frameworks:** Examine the legal frameworks governing inheritance laws in federal and state jurisdictions within countries like the United States and India. Compare the role of federal and state laws, as well as the interaction between statutory laws and common law principles in shaping inheritance rights and obligations.
6. **Stakeholder Perspectives:** Explore the perspectives of various stakeholders, including legal practitioners, scholars, religious leaders, and civil society organizations, on the need for reforming inheritance laws and the potential challenges and opportunities associated with such reforms.

7. Empirical Research: Conduct empirical research to gather data on the practical implementation of inheritance laws, including the prevalence of disputes, the effectiveness of legal mechanisms for resolving conflicts, and the impact of cultural and social factors on inheritance practices.

8. International Perspectives: Broaden the scope of study by examining inheritance laws and practices in different cultural, religious, and legal contexts around the world. Compare inheritance systems in diverse societies to identify common trends, challenges, and best practices.

By exploring these avenues for further study, researchers can deepen their understanding of inheritance laws, contribute to ongoing debates on legal reform, and identify strategies for promoting fairness, equality, and justice in matters of inheritance.