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**COMPARATIVE ANALYSIS OF INHERITANCE LAWS UNDER
DIFFERENT PERSONAL LAWS IN INDIA: THE CASE FOR A
UNIFORM CIVIL CODE**- Chintan Kedia¹**1. Abstract**

India is a country harboring diverse religions, customs, and beliefs, each having their own set of personal laws governing inheritance. Inheritance has always been a controversial topic in India. A uniform civil code for inheritance is necessary to ensure that all the citizens are treated equally and fairly regardless of their religion, gender, or regional customs. A uniform civil code promotes the principle of equality and non-discrimination. In India, the inheritance laws vary based on religious beliefs, which often leads to discrimination and inequality. A uniform civil code for inheritance would promote gender equality and eliminate discrimination, as well as simplify the legal process for inheritance. It would also help in achieving the goal of a secular nation and ensure that all citizens are governed by the same laws. Therefore, it is essential to implement a uniform civil code for inheritance in India to uphold justice and equality for all citizens. This research paper tries to compare the inheritance laws of Hindus, Muslims, Christians, and Parsis and tries to provide a solution to such differences through the application of a Uniform Civil Code. This paper employs a comparative analysis approach, the personal laws related to the inheritance of Hindus, Muslims, Christians, and Parsis have been compared. A Qualitative Doctrinal Research methodology has been implemented. All the information is gathered from Acts, statutes, Research Papers, Judicial Precedents, and Books.

KEYWORDS: Uniform Civil Code, Hindu, Muslim, Christian and Parsi.

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2. Introduction

Inheritance of property refers to the transfer of ownership of assets and possessions from one person to another after their death. It is a legal process that involves the distribution of the deceased person's property among their heirs, according to their wishes or the laws of the land. Inheritance laws vary from country to country, but most jurisdictions have laws that govern the distribution of property. In many cases, the property is passed down to the deceased person's spouse and children, or other close relatives, depending on the circumstances.

Inheritance can be a complex and emotionally charged issue, particularly when it comes to family-owned businesses and heirlooms. It is important for individuals to plan for their inheritance by creating a will and specifying how they want their property to be distributed after their death.

In India, inheritance for different religions is governed by different laws. Some are codified some are still uncodified. Following is the history of inheritance laws of Hindus, Muslims, Christians, and Parsis.

2.1 Hindu Law

Inheritance in a Hindu family is through coparcenary. A child is a coparcener as soon as he/she is born into the Hindu family. The property is divided equally among the coparceners after the Karta's death. Traditionally, the Karta was the eldest living Hindu male in the family but, after the landmark judgment of *Mrs. Sujata Sharma vs Shri Manu Gupta & Others*², the senior-most female in a Hindu family can also become the Karta. The Karta is responsible for dealing with the financial and legal interests of the family.

Hindus had 2 schools namely, Mitakshara and Dayabhaga.

The Mitakshara School is followed more commonly and spreads to all states other the West Bengal and Assam. They followed the rule of propinquity. Male agnates were preferred over cognates. The sons had a right to the property by birth. The father along with his sons was the owner of the property. The Coparcenary came into existence on the birth of a son. The

² *Sujata Sharma v. Manu Gupta*, 2015 SCC OnLine Del 14424

coparceners had fluctuating shares. There existed a community of ownership and unity of possession. The property was divided into obstructed heritage and unobstructed heritage.

The Dayabhaga School is followed only by small groups of Hindus and is prevalent in Assam and West Bengal. They followed the principle of religious efficacy. Women could be coparceners. The sons did not have a right by birth. Coparcenary arises only after the death of the father. The father had absolute ownership of the property. The coparceners had fixed and determinate shares. There existed only unity of possession. All property was obstructed heritage.

The Hindu Succession Act, 1956³ applies for inheritance if a Hindu person dies. It provides for a uniform law of succession for all Hindus. It has done away with the separate schools of Hindu Law. The Mitakshara's dual way of devolution of property has been done away with. It deals with intestate as well as testamentary succession. The 17th Report of the Law Commission of India under the Chairmanship of Justice B.P. Jeewan Reddy amended The Hindu Succession Act, 1956 in 2005. The amendment incorporated substantial changes to the old Hindu Succession Act by allowing daughters to be equal coparceners as sons.

Section 2 of The Hindu Succession Act, 1956⁴ lays down the application of the Act on different castes of the Hindu religion. In the case of *Prakash v. Phulavati*,⁵ the court held that the Hindu Succession Act, 1956 was not retrospective. It was only applicable when the father and the daughter were alive as on 2005. This was overruled by the case of *Vineeta Sharma v. Prakash Sharma*⁶, saying that the father need not be alive as of 2005 for the Act to apply. The Court held that coparcenary is not transferred from a living coparcener to a living daughter rather they are transferred from father to daughter. Also, as the rights occur from 2005, it does not mean that the daughter has to be born after 2005. The Act is neither prospective nor retrospective it is retroactive.

³ The Hindu Succession Act, No.30, Acts of Parliament (1956) IND

⁴ The Hindu Succession Act, §2, No.30, Acts of Parliament (1956) IND

⁵ *Prakash v. Phulavati*, (2016) 2 SCC 36

⁶ *Vineeta Sharma v. Rakesh Sharma*, (2019) 6 SCC 164

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Section 14 of the Hindu Succession Act, 1956⁷ explains that the property of a Hindu female will be her Absolute property. Before the Act, females had only limited interest in the property given to them by inheritance, partition, maintenance, at or after marriage, by purchase, or any other way whatsoever. The Act made it such that the females will have absolute interest in the property and not limited.

2.2 Muslim Law

Like most of the Islamic Laws, inheritance is not codified. It follows Muslim personal laws for inheritance. There is no distinction between movable or immovable property. The senior most member inherits all property as an absolute owner. The succession opens up upon the death of the propositor. Muslim personal laws follow Rule of exclusion where the nearer heir excludes the remoter one.

Muslim's have two traditional schools namely, Shia and Sunni (Hanafi)

Under the Shia school Rule of Representation is followed. Shia school excludes the person if there is intentional death caused. Under Shia school the property devolves as per the Rule of Representation. There are no distant kindred recognised. Only Sharers and Residuaries. The descendants of shares take as sharers and the descendants of residuaries take as residuaries. Inheritance under Shia school depends on two relations:

1. Consanguinity (Nasab)
2. Heirs by Special Cause (Sahab)

Under the Sunni School per capita method is followed. Sunni school does not exclude the person in cases of intentional death. Inheritance under Sunni school is as per the personal laws of them. The heirs are divided into 3 categories:

1. Shares: They have fixed and determinate shares. They will always inherit the property. There are 12 sharers.
2. Residuaries: They get whatever is left after giving to the Sharers. Their shares are not fixed and determinate.

⁷ *The Hindu Succession Act, §14, No.30, Acts of Parliament (1956) IND*

3. Distant Kindred: They are distant relatives. Certain relatives are given preference. Their shares are not fixed and determinate.

The share of each heir is decided by the table of Sharers⁸.

2.3 Christians Inheritance

Succession for Christians was governed by the British Indian Government enacted, Indian Succession Act, 1865⁹ which was later replaced by the Indian Succession Act, 1925¹⁰. Sections 31 to 45 in Part V of the Indian Succession Act deal with Intestate Succession. Christian customary practices influence the inheritance laws of their community and have also been interpreted in the same way by the courts. The Act has recognised 3 types of heirs for a Christian namely, Spouse, Lineal Descendants and Kindred. Illegitimate children were excluded from the scope of the Act. The Supreme Court in *Jane Anthony Vs. Siyath*¹¹ increased the scope of the Act and gave inheritance rights to illegitimate children.

2.4 Parsis Inheritance

Succession for Parsis is governed by Sections 50 to 56 under Chapter III of the Indian Succession Act, 1925¹². Parsi Inheritance does not differ between the rights of the widow and the widower, unlike the Christian laws. The Parsi laws are very ambiguous.

3. Uniform Civil Code

3.1 History

Article 44 of the Indian Constitution¹³, which directs the State to bring about a Uniform Civil Code all across India was an agenda in the Constituent Assembly Debate on 23rd December 1948. Article 44 was Draft Article 35 which the Constitution drafters wanted to include in the Fundamental Rights. The debate for bringing a Uniform Civil Code triggered conflict within the Constitution drafters. The Muslim members wanted to keep personal laws outside the

⁸ Table of Sharers - [Table of Sharers for Muslim Inheritance](#)

⁹The Indian Succession Act, No.X, Acts of Parliament (1865) IND

¹⁰ The Indian Succession Act, Part V, No.39, Acts of Parliament (1925) IND

¹¹Jane Anthony Vs. Siyath 2008 (4) KLT 1002

¹² The Indian Succession Act, Chapter III, No.39, Acts of Parliament (1925) IND

¹³INDIA CONST. art. 44.

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scope of the Draft Article. They wanted a proviso clause to be added which operationalised the Article only after the prior consent of the community.

Mohammad Ismail Khan, a member of the Drafting Committee, wanted a proviso clause stating that any group, section or community of people shall not be obliged to give up their personal laws for the enforcement of a Uniform Civil Code. He also argued that if personal laws of a person are interfered with, it will affect the way of life of the people who have been observing these laws for many generations and ages. He furthered the argument by adding that the Secular state which the Committee envisioned to create should not interfere with the way of life and the religion of the people of the country. He placed reliance of precedents from European Countries like Yugoslavia, which is a kingdom of the Serbs, Croats and the Slovenes, who are obliged under treaties to provide for the rights of the minorities especially granting the Mussulmans suitable provisions for the matters of family laws and their personal status.

The Muslim committee members were of the view that a Uniform Civil Code would be in violation of the Freedom of Religion. They believed that it would create disharmony within the Muslim Community and it would be wrong to interfere with the personal laws of communities without their consent.

To control the Muslim leaders, K.M.Munshi, a member of the Drafting Committee stated that the isolationist outlook on life must be done away with for a better country. He said that religion must be restricted to spheres which actually require religion, the rest of the life must be regulated, controlled, unified, codified and modified in a manner which promotes national unity. He also mentioned that having a Uniform Civil Code is not to claim tyranny over a minority rather is it more tyrannous towards the majority.

Further the Chairman of the Drafting Committee, Dr. B. R. Ambedkar, clarified the position for the opposing Muslim leaders. He brought forth the argument that the Muslim personal laws, were not uniform throughout the whole of India. The North-Western Frontier Provinces were not subject to the Shari Law, they were governed by the Hindu Law in matters relating to succession. Until 1937, when the legislature interfered and passed an enactment for the application of the Shariat Law to the entire country, many Muslim provinces were governed

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by the Hindu Laws. He refuted the arguments made by the Muslim leaders stating that the Draft Article 35 was only proposing that the State shall endeavour to secure a Civil Code for the citizens of the country, it does not say that the State shall enforce the Civil Code upon all the citizens. The parliament may make a provision which makes it such that the Code shall apply only to those who have accepted to be bound by the Code, so the application of the Code in its early stages shall be entirely voluntary.

3.2 Interpreting Article 44

Article 44 of the Indian Constitution, 1950 directs the state to bring about a Uniform Civil Code throughout India. It has been a very controversial debate about having a Uniform Civil Code for the entire country as it will compromise the personal laws of certain religious communities while giving a preference to the others. The focus of the interpretation should be the “UNIFORM” Code. Even though the expressions ‘Uniform’ and ‘Common’ are used interchangeably, they have different meanings. The state must strive for a Uniform code rather than a Common code.

Imposing the majority community’s beliefs and laws on to the minority would lead to a Common law rather than a Uniform law. Uniformity means that the laws of all the communities must be governed by uniform principles of justice. Each personal law must be viewed through the perspective of social and gender justice. Article 44 must be read with Article 14 of the Indian Constitution¹⁴ which gives the Fundamental Right to equality before the law.

Article 14 allows for classification of people as per their religion as held in the case of *State of Bombay v. Narasu Appa Mali*¹⁵. Revision of the personal laws must be done by the Parliament to promote uniformity. Article 25 of the Indian Constitution, 1950¹⁶ defines India as a secular nation. It states that a citizen in India can follow any religion they want and no one shall be discriminated on the basis of their religion. The Freedom of Religion granted by Article 25 of the Indian Constitution is subject to ‘other provisions of the Part’, so other provisions on Part III can affect the Freedom of Religion of a citizen. Article 14 promoting

¹⁴INDIA CONST. art. 14.

¹⁵*State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84

¹⁶ INDIA CONST. art. 25.

Equality should be read with Article 25 to provide for a Uniform Civil Code which is equal for all the religions.

3.3 Goa and Other Countries

The state of Goa and the Union Territory of Daman and Diu are both governed by a Uniform Civil Code. The Code originated from the Portuguese Colonies that governed Goa during the pre-independent era. The Goan Civil Code is an Indian version of the Portuguese Legal System.

The Portuguese Civil Code was retained in Goa after the merger of Goa with the Indian Union in 1961. In 1981, a committee was established to determine whether the applicability of the separate personal laws can be extended to the state of Goa. This was opposed by the Muslim Youth Welfare Association and the Goa Muslim Women's Association. So, Goa and Daman and Diu are the only states/union territories in India that are governed by a Uniform Civil Code.

As per the Code, the registration of marriage, birth, divorce, etc., are all voluntary. Muslims can not practice polygamy in Goa and they cannot practice triple talaq to get divorce. All assets and liabilities of a spouse is kept jointly by the husband and the wife. The Code also states that no child can be completely disinherited by their parents.

Countries like the United Arab Emirates, Bangladesh, Germany, Japan, Russia and many more have already adopted a Uniform Civil Code for governing laws related to Marriage, Inheritance, Succession and other personal law related matters. This can be countered by the fact that the countries mentioned above do not have a diverse set of people following personal laws as India. The diversity of personal laws in India is a cardinal reason that India needs a Uniform Civil Code.

3.4 Independent India

India is a diverse country having people from different cultural backgrounds who follow different practices. Article 44 of the Directive principles of State Policy¹⁷ states that the state has to create a Uniform Civil Code for the citizens of India. The implementation of the

¹⁷ INDIA CONST. art.44.

Uniform Civil Code is to set laws that govern personal matters of different religions. The Uniform Civil Code is made with the idea that everyone has to be treated equally regardless of their religion.

The UCC seeks to ensure equality for all citizens, irrespective of their religion, gender, or caste. It is an essential aspect of India's secular character and would promote national integration by providing a common set of laws that are applicable to all citizens. The UCC would also help to eliminate practices that discriminate against women, such as triple talaq, which is a form of instant divorce practiced in Muslim personal law.

3.4.1 Uniformity

As we can see that every religion has their own way for the devolution of property among the heirs. This leads to a lot of confusion. Muslim Inheritance is by personal laws which are not codified making it hard for the courts to provide justice based on the uncodified laws. Muslim Law also allows for Polygamy which again makes Inheritance questionable. There is no uniformity within the personal laws of different religions. One of the most significant landmark cases for the existence of a Uniform laws applicable to all citizens irrespective of their religion is the case of *Mohd. Ahmed Khan v. Shah Bano Begum*¹⁸, which was decided by the Supreme Court of India in 1985. In this case a question arose as to the maintenance of Muslim women after their divorce. The husband contended that he was not responsible for providing maintenance after divorce as per the Muslim personal laws. The Supreme Court held that the husband had to provide maintenance under Section 125 of the Code of Criminal Procedure¹⁹. The Court added that Section 125 of the Code of Criminal Procedure will be applicable to all citizens irrespective of their religion. Hence, we can infer from this judgement that certain laws are applicable to all religions. A Uniform Civil Code will further this idea.

This idea for a Uniform Civil Code was furthered in *Shabnam Hashmi v. Union of India*²⁰. The Juvenile Justice (Care and Protection of Children) Act, 2000 was considered as a secular law being a small step towards achieving a Uniform Civil Code. The court held that Personal

¹⁸ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556

¹⁹ *The Code of Criminal Procedure, §125, No.2, Acts of Parliament (1974) IND*

²⁰ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1

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Laws cannot direct the operation of the JJ Act, 2000 and cannot interfere when a person chooses to adopt a child under the Act.

Justice Vikramjit Singh has iterated that the Directive Principles under Article 44 of the Constitution, which has envisioned the presence of a Uniform Civil Code, is an unaddressed constitutional expectation. India is a secular nation and it is a necessity that religion must be kept separated from the law. It is the task of the Courts to interpret the laws of the land, not keeping in mind the religion of the parties before the court, rather keeping in mind the legislature's intent and the prevailing precedents²¹.

The Uniform Civil Code will make a uniform personal law for all religions in India. This will deal with succession, marriage, divorce, maintenance and adoption. This was the vision of the makers of the Constitution as enshrined under Article 44 of the Indian Constitution.

3.4.2 Equality

The personal laws of different religions and communities inherently have a gender bias. This leads to injustice commonly towards women. Women face a lot of difficulties in matters of inheritance. Gender inequality in inheritance laws has a significant impact on women's economic empowerment and their ability to assert rights in the society. It reinforces patriarchal thinking and deprives women of their rightful share in the property. For example, under the Hindu Succession Act, 1956 only males used to have right by birth over the ancestral property. After the Amendment in 2005 even females have been given equal status as the males in right over the ancestral property. But still certain families discriminate against the females by given them lesser shares. In the landmark judgement of *Sarla Mudgal v. Union of India*²², decided by the Supreme Court in 1995, dealt with the issue that whether a Hindu husband who converted to Islam and married again was guilty of bigamy. The court held that marrying a second wife after converting to Islam while the first marriage was not dissolved makes the husband guilty of bigamy. The Supreme Court also put forth the idea of implementation of a Uniform Civil Code regulating the laws of all religions. The Court stated that the country would not be able to progress if personal laws on religion continued to

²¹ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1

²² *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635

govern different communities. The Court observed that a Uniform Civil Code will help in promoting gender equality and social justice in the country.

Justice Kuldip Singh in his concurring judgement, in the above-mentioned case, has opined that Article 25 guarantees religious freedom to the citizens while Article 44 attempts to divest religion from personal laws and social relations. He furthered that, secular matters like Marriage, Inheritance, etc. cannot be brought within the ambit of the guarantee provided under Articles 25, 26 and 27. Fundamental rights relating to religion would not be affected by the implementation of a Uniform Civil Code because the personal laws can be superseded by an act of the legislature. The Supreme Court directed the Government to implement the Directive of Article 44 and to file an affidavit for the same.

The need for the enactment of a Uniform Civil Code was furthered by a three-judge bench in the case of *Ahmedabad Women Action Group (AWAG) v. Union of India*²³. The personal laws were challenged as violative of Fundamental Rights of women. The petitions sought declaration that the Muslim Personal Law providing for polygamy and unilateral talaq by males was violative of Articles 14 and 15, and 13, 14 and 15 of the Indian Constitution. The court cited *Maharshi Avadhesh v. Union of India*²⁴, stating that the matters have to be looked in depth with the help of the legislature.

4. Conclusion

The delay in giving effect to Article 44 and implementing a Uniform Civil Code for India by the Legislature is regretted by the Supreme Court as given in *John Vallamattom v. Union of India*²⁵. The court had reiterated that matter of secular nature like Marriage, Succession, Inheritance, etc., cannot be brought under the guarantee enshrined under Articles 25 and 26 of the Constitution. The court was of the view that a Uniform Civil Code will help in national integration of the country by removing contradictions based on different ideologies.

In conclusion, the Uniform Civil Code is an important issue for India as it seeks to promote equality, secularism, women's rights, and national integration. While the implementation of

²³*Ahmedabad Women Action Group (AWAG) v. Union of India* (1997) 3 SCC 573

²⁴*Maharshi Avadhesh v. Union of India*, 1994 Supp (1) SCC 713

²⁵ *John Vallamattom v Union of India*, (2003) 6 SCC 611

the UCC is a complex issue, it is necessary to ensure that all citizens are treated equally under the law, irrespective of their religion, gender, or caste. The UCC can help India to progress as a nation by promoting diversity and equality, while respecting the country's religious and cultural heritage.



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