

Rethinking Property in a Plural Society: Women's Inheritance and the UCC- Personal Law Debates in India

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Abstract: *This paper examines women's inheritance rights in India through the contested relationship between the Uniform Civil Code (UCC) and personal laws. It argues that the conventional opposition between legal uniformity and cultural pluralism is inadequate for understanding the persistent gap between women's formal entitlement to property and their effective control over it. Drawing upon feminist political theory, legal scholarship, judicial interventions, and accounts of women's lived experiences, the paper demonstrates how inheritance is shaped not only by statutory provisions but also by family structures, kinship obligations, community norms, economic dependence, and social sanction. The analysis traces the trajectory of inheritance reform from constitutional debates and landmark judicial interventions to contemporary disputes over the UCC, highlighting the limitations of treating legal reform alone as sufficient to achieve substantive equality.*

IndexTerms - Women's Rights, Property Law, Inheritance, Family Law, India

I. INTRODUCTION

Questions of gender and land rights have long been sites of social and political contestation, and India offers a particularly revealing context to examine these tensions, given the extraordinary diversity of its legal, cultural, and social formations. In the Indian context, these contestations unfold within an exceptionally plural social and legal order, on the one hand, and the constitutional guarantees of gender equality, on the other. The post-independence state sought to address women's economic subordination through constitutional guarantees and legislative reform, premised on the expectation that formal legal recognition would progressively dismantle barriers to ownership and inheritance. Yet the uneven consequences of these interventions suggest that the persistence of gendered inequality cannot be explained solely in terms of implementation deficits or institutional capacity. Rather, it points towards deeper conceptual and structural assumptions within the frameworks through which property, family, and legal personhood have been constituted.

Since the 1980s, the question of reform has increasingly been organised around the opposition between a Uniform Civil Code and religious personal laws. Advocates of the UCC have generally approached uniformity as a means of securing equal citizenship and removing discriminatory practices embedded within community-specific regimes. At the same time, its critics have emphasised the dangers of homogenisation and the constitutional significance of religious and cultural pluralism. At the same time, scholarship on postcolonial political economy has drawn attention to the changing relationship between property, legality, class formation, and respectability under conditions of economic liberalisation. Read together, these perspectives suggest that the conventional UCC–personal law binary is insufficient for understanding women's inheritance. Both universalist and communitarian positions can, in different ways, leave intact assumptions about the family, social obligation, and legitimate forms of ownership that constrain women's effective command over property. The resulting dispute consequently becomes entangled with larger questions of secularism, minority rights, community identity, and national integration, often displacing the material question of what enables women actually to acquire, retain, and exercise control over land.

Against this background, the chapter revisits the trajectory of women's inheritance rights from the constitutional debates surrounding personal law reform to contemporary judicial interventions. Land is treated here not simply as an economic asset but as a resource through which security, bargaining power, social status, and familial belonging are constituted. The examination of landmark judgments alongside feminist legal scholarship reveals the limitations of approaches that treat equality primarily as a matter of formal entitlement. It also demonstrates the difficulty of pursuing gender justice through a rigid opposition between legal uniformity and cultural autonomy. The paper therefore explores the possibility of a more contextually attentive normative approach—one capable of taking India's plural social formations seriously without allowing cultural difference to become a justification for substantive gender inequality.

The paper contributes by situating women's land rights at the intersection of law, material inequality, identity, and lived social relations. It advances the broader concern with rights as historically situated practices rather than self-executing legal abstractions, showing how the meaning and effectiveness of a right depend upon the institutional and social relations within which it is exercised. The analysis of the UCC–personal law debate further demonstrates that the difficulty lies not simply in choosing between universalism and pluralism, but in interrogating the assumptions that both may carry about the individual, the family, and property. By bringing feminist political theory into sustained conversation with personal-law jurisprudence and women's lived experiences of

inheritance, the chapter seeks to shift the question from whether women are formally recognised as equal heirs to what conditions enable that equality to become materially meaningful. In this sense, it treats law not merely as a doctrinal instrument but as a lived and contested terrain through which gendered relations of property and power are continuously negotiated.

II. MATERIAL COST OF LEGAL RECOGNITION- MEASURING WOMEN'S ECONOMIC GAINS IN INDIA

Even though land is often seen as an economic asset, it encompasses broader social and cultural significance in a pluralist society. Despite the passage of the Hindu Succession Act[i] nearly seven decades ago, the fraction of women exercising their right to inherit a share in their natal family property remains dismal. Notable amendments to the legislation have ensured complete gender parity since 2005[ii]. Yet, women make up only a meagre 14 percent of landowners and possess 11 percent of agricultural land in rural landowning households, averaged across all states (Agarwal, 2021). While the need to push for women's unmediated land rights has gained recognition among policymakers over the years, the means to resolving the issue through simplified legal reforms alone, without considering the complex social, cultural, and institutional barriers, have failed to affect substantial outcomes (Hasan, 2018). For legal reform to translate into real, lasting change for women, comprehensive strategies become crucial, such that they account for the expanded notions of social practices ingrained in family structures and communal values.

In recent times, the discourse on the matter sparks contention once again as the BJP-led government rolled out the much-debated Uniform Civil Code in the state of Uttarakhand last year, to adjudicate matters on land inheritance[iii]. The measure is proposed in opposition to the existing laws that are sourced from diverse religious scriptures and cultural practices, commonly referred to as personal laws. The legislation is not just fraught with implementation challenges but also obscures the disproportionate socioeconomic impact it could have for women if a consensus is not reached. As land is a key element of kinship and family ties, it also serves as a tool for structuring social realities on the ground. Several ethnographic accounts by Indian scholars demonstrate a complex interplay of individual agency and social obligations that push women to persistently forgo their material gains to ensure cohesion with families and communities (Sharma, 1980; Agarwal, 1994; Basu, 1999; Rao, 2005). This entails that for any legislation to be efficacious, they are required to be integrated with social norms and practices that define land rights for different cultural groups.

The normative frame employed by the uniform civil code in proposing gender-just reforms in the same manner has implications for the social construction of values and obligations in general, and the relative role of family, community, and state, in particular. By advancing a uniform template of reform, the UCC does not merely intervene in legal arrangements but also reorders the moral economy through which responsibility, authority, and social membership are distributed and legitimised in these communities. Such a framework implicitly prioritises the state as the principal arbiter of justice, while recasting the family and community as sites of potential obstruction rather than as complex arenas of negotiation, care, and dependency (Sangari, 1995).

There could be a range of responses to such initiatives. The responses are shaped not only by ideological commitments to equality or tradition but also by historically sedimented experiences of legal intervention, communal vulnerability, and differential access to state power. For women in particular, responses to such reform are often mediated by concerns related to social belonging, material security, and the risks of alienation from kinship networks on which everyday survival may depend. While historical developments around the code can shed light on its applicability as a possible solution with respect to accommodating diverse cultural groups, the inherent flaw that remains unnoticed lies in its liberal framework that regards women as 'autonomous agents' against their intricate relations and embedded lives. As such, the liberal abstraction which presumes a subject capable of exiting oppressive arrangements and mobilising legal remedies independently, sits uneasily with the realities of gendered dependency and social sanctioning that structures the lives of women (Nedelsky, 2011).

For Zoya Hasan, the linear notion that assumes more laws translate to more rights and subsequently, more justice is delusional. Her critique draws attention to the persistent gap between formal legal guarantees and substantive outcomes, particularly in societies marked by deep social stratification and entrenched power asymmetries. Legal proliferation, in this view, may generate symbolic inclusion without dismantling the material and cultural constraints that inhibit women's agency. As such, the liberal assumption that emphasizes the promise and performance of law for its emancipatory potential is found inept (dowry laws, etc.) in countering the substantial biases inherent in the overlapping patriarchies[iv] of the state and the religious communities in India. These overlapping patriarchies operate through both formal institutions and informal norms, producing a mutually reinforcing structure in which legal reform is frequently neutralised by extended social practices. Thereby, legal remedies for women are rendered fragile and uneven (Sangari, 1995).

The material cost to women in a country like India is significant, as it restricts their ability to leverage assets for their own or their children's sustenance. Studies demonstrate the extent to which women's social status is tied to their economic worth (Agarwal, 1994; Chattopadhyay and Duflo, 2004; Luke and Munshi, 2011; Duflo, 2012; Klaus, 2013). Land inheritance, in particular, determines access to land and is the primary source of income opportunity from productive activities for rural women due to cultural restrictions on labour market participation (Mookerjee, 2017). In a study curated by the World Bank, Deininger Klaus, and Aparajita Goyal (2013) highlight the significance of women's inheritance in the intergenerational transfer of land. Their findings suggest that when integrated with local institutional frameworks, women's land rights can yield favorable outcomes for household welfare and agricultural productivity. To that extent, the failure of progressive legislation to cut through the stronghold of social practices is difficult to come to terms with. What is more disconcerting is the fixation on the binary legal frames of the uniform civil code and personal laws that continue to dominate the discourse on women's inheritance and are projected as the only viable alternatives.

III. FROM CONSTITUTIONAL PROMISE TO CONTEMPORARY CONTESTATION- REVISITING THE UCC-PERSONAL LAW DEBATE

While the inception of modern nation-states in the West mandated uniformity in legal practices and conscious measures to paper over cultural differences to ensure national unity, the postcolonial state of India, contrarily, opted to embrace and safeguard cultural diversity by accommodating the distinct practices of different segments. This warranted confronting the dangers of directly inviting the new State into all spheres of civil society. Yet, functioning in the colonialist framework and ideology meant that its inherent strategies, which were ill-suited for Indian society, also got imbibed and projected as an essential instrument of social reform (Agnes, 2001). During the period of Company rule, the endeavour to standardise native practices was halted and supplanted by the policy of non-interference. This was not merely driven by benevolence, reverence, or the recognition of the fact that meddling with religious beliefs and traditional institutions would result in social upheaval, but rather advanced by an economic rationale to “incorporate community-based forms of surplus extractions” (Anderson, 1993: 168). Whatever the reason, the fact remains that at the cusp of state formation, many of these traditional practices on civil matters remained untouched by the fear of being subsumed under one omnibus legislation. The idea of one common civil code was neither collectively consented to nor thoughtfully modeled by integrating progressive elements of the diverse religious and traditional belief systems known to the land.

Scholars of colonial jurisprudence in India demonstrate how British administrators, from the late eighteenth century onwards, committed to applying religious laws in matters of family and inheritance, did so, relying only on a small circle of clerics. Far from reflecting timeless culture or religious tradition, personal laws in India were born as a product of complex colonial and postcolonial history in which state power, interpretation bias, elite control, and entrenched patriarchal norms converged to transform fluid customary practices into rigid legal regimes. As Purushottam Bilimoria, Bimal Krishna Mitilal, and other Indologists note, this process of codification transformed what had been a plural, negotiable, and locally varied practice into rigid categories of personal laws that were taken to represent unified religious traditions, institutionalising the elite, patriarchal interpretations of scriptures within legal systems.

During the debates in the Constituent Assembly, Dr. B.R. Ambedkar demonstrated his will to remedy this by the adoption of a Civil Code. Opposing the delegates in Congress, Hindu Mahasabha, and Muslim League, who wished to immortalise personal laws, he said, "I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, discriminations, and other things, which conflict with our fundamental rights." [v]

Despite his effort, Ambedkar did not obtain anything more than an article (Article 44) of the Directive Principles of State Policy: "The State shall endeavour to secure for the citizens a [uniform civil code](#) throughout the territory of India."

Post-independence, as political solutions were meted out to disadvantaged groups and cultural minorities following the initial decades, concerns regarding the family/private sphere suffered benign neglect from the political leadership. Eventually, when the matter resurfaced, it surged in the most contentious manner conceivable. The Shah Bano judgment (1985) became a politicised maintenance lawsuit that saw the judiciary decisively revive the promise of the code by invoking Article 44 of the Constitution. While the focal point of the events primarily revolved around Muslim women's entitlement to maintenance and the abuse of unilateral divorce, thereby highlighting gender disparities in family laws, the discourse soon got entwined with and preceded by considerations for national unity on one hand and safeguarding minority rights on the other. Concerns regarding the inheritance rights of Indian women soon followed in the Pratap Singh case (1985), Mary Roy case (1986), Masilamani Mudaliar case (1996), Madhu Kishwar case (1996), and the like. While some judgments were hailed, some witnessed a conscious side-stepping by the judiciary. Since the critics of the Shah Bano ruling saw it as an overstepping of judicial discretion (in support of which they have made very plausible arguments), the institution found itself in a quandary, not knowing the safe way to address legal issues that intersect with religious and cultural practices in a diverse society. The impetus eventually was put on the Parliament to eliminate gender-based discriminatory provisions and bring all legislation in line with the core values of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). Following the Sarla Mudgal case (1995), the plea for a UCC disconcertingly got appropriated to target Muslim personal laws. The Mudgal judgment did not acknowledge the incidence of bigamy among Hindu men practiced without recourse to any conversion, let alone take note of the lacunae in the Hindu Marriage Act that satisfactorily assumed ceremonial rituals to be the sole proof of marriage. By singling out Muslim personal laws and making reference to their national commitment, the court not just ignored the discriminatory provisions of Hindu laws, but it also made UCC susceptible to majoritarian appropriation. The need for UCC again resurfaced in the Danial Latifi case (2001), but it failed to satisfy the minds of reasonable people, including the progressive women's group, thereafter (Chhachhi, Khan, Navlakha, Sangari, Malik, Menon, Chakrabarty, Hasan et al, 1996).

In the aftermath of the Shah Bano (1985) and Sarla Madgal (1995) judgement, where Hindu right-wing groups politically maneuvered and orchestrated public opinions on the issue of reforms, against the social identity of Muslims, and spun a nefarious narrative that questioned their national commitment, the developments that followed led to an impasse. The trust deficit that it created in the political leadership concerning the rights of religious minorities has since not been overcome, and every effort to start a dialogue has been met with an austere response from minority and indigenous sects.

Since the question of women's inheritance in India is subsumed within the broader domain of family law, alongside issues such as marriage, divorce, and maintenance, it becomes exceptionally difficult to address it in isolation or to resolve it through narrowly framed legal reform. Inheritance is not merely a question of property distribution; it is deeply entangled with normative assumptions about family structure, kinship obligations, and gendered expectations of care and dependency. As a result, reforms aimed at women's inheritance rights inevitably encounter resistance not only on legal grounds but also at the level of social practice, where property claims are perceived as disruptive to familial harmony and the continuity of the community. The clubbing of inheritance with other familial institutions obscures its economic significance and redistributive potential, rendering women's claims vulnerable to moral regulation, informal coercion, outright rejection (due to politicisation), and selective enforcement within the household and community.

Feminist scholars like Zoya Hasan, Nivedita Menon, Flavia Agnes, and the like have mostly argued for personal laws to be made more equitable and gender-just for women to preserve religious diversity. Given that they are primarily asserting their views in the face of the changing political climate and growing communalism, they stress allowing the institution of personal laws to exist not just for the legal presence it has but also because it extends group-differentiated rights to religious minorities. But efforts to ensure the internal standardisation of women's land rights have also faced obstruction in the past. In the Mary Roy case (1986), the Travancore Christian Succession Act was challenged in the apex court, which firmly declared the impugned law inoperable since the enactment of the Indian Succession (Amendment) Act, 1951. But post-verdict, Roy's ordeal increased as she came under severe attack from the church. There were further attempts to overturn the judgment. Likewise, in the Madhu Kishwar case (1996), upon observing mounting unrest among sections that lived by the discriminatory provisions of the Chotanagpur Tenancy Act, the Supreme Court refrained from declaring the law unconstitutional and striking it down. In more recent times, the Khuran Sunnath Society, an organization working for Muslim women, based in Kerala has been at the forefront of demanding reforms in inheritance rights. When the Society's plea was declined by the Kerala High Court in 2015, they, along with other progressive organizations, comprising the Forum for Muslim Women's Gender Justice, approached the apex court for relief. Even as the hearing is impending, there is a growing backlash against these groups from the religious heads. Similarly, Hindu women have faced opposition from family members [Prakash v. Phulavati (2015), Danamma v. Amar (2018), Vineeta Sharma v. Rakesh (2020)] even after the 2005 amendment to the Hindu Succession Act and repeated legal interpretations by the courts.

IV. CAUGHT BETWEEN FALSE CHOICES - REVISITING GENDER JUSTICE IN CONTEXT

While UCC can take a majoritarian form, personal laws in their present form are not of any help either. The religious interpretations that these laws are based on not just sanction patriarchy but also resist any kind of egalitarian relations between men and women, both within and outside the household. Defending the statusquo of personal laws on grounds of defence of minority rights/religious freedom is no different, in theory, than the endorsement of UCC on the grounds of its defence of national integrity; neither of these positions gives primacy to gender equality-their defence is either arbitrary, conservative, self-interested, or politically motivated. Exit options, as Ayelet Shachar (2001)[vi] argues for in-group members, are also less effective in the Indian context, as social dependency invariably allows the community's interest to override a woman's individual rights (Shah Bano case). Ambiguity in law always works against the interests of women (Sarla Mudgal case). Hence, any reform from within will require active intracommunity interlocution to arrive at and agree upon finer interpretations of religious texts. In all of this, it is important to recast this discussion with regard to the rights of women as citizens and recognise them as both agents and beneficiaries of change. (Chhachhi, Khan, Navlakha, Sangari, Malik, Menon, Chakrabarty, Hasan et al, 1996).

In essence, the UCC, while endorsing formal equality in inheritance, inadvertently constructs a legal personhood of Indian women that is starkly disconnected from their social reality. The legal framework aims for equal treatment under the law, but its implementation alone doesn't obliterate the gender biases inherent in broader societal networks that partake in its practice at the grassroots level. Had legal recourse been sufficient, it would have been reflected in the escalated gains of those governed under the Hindu Succession Act, which has been gender equal for almost two decades since the last amendment. Another thing that is repeatedly pointed out by scholars like Agarwal, Basu, Rao, etc., is that guarantees in legal ownership of property for women don't necessarily translate to *de facto* control over it. Society recognises women as daughters, wives, mothers, sisters, and occasionally as working women who supplement the household income, but seldom as individuals. The major impediment, then, for UCC or any law claiming to be gender-just would be to reach out to include women who find themselves grappling with unfavourable circumstances, which unfortunately is a disproportionately high population. The Economic Advisory Council's report on '*Status of Women in India*' (2022)[vii] shows an increasing decline in women's workforce participation owing to the lack of education and the subsequent shift from a highly labour-intensive to a skill-intensive job market. Legal consistency aside, such legislation only complicates matters for women.

In the given situation, to ensure women's economic independence, it is important to expand the purview of the legal framework to include efforts that build a consensus in support of women's ownership of land. Since the lived reality of Indian women is influenced predominantly by religion, and on some occasions, meta-ethnic cultures, its potency must be given due consideration for a sustainable solution. Much of women's personhood is heavily informed by the means of their socialisation, and religion acts as a formidable cultural agent in defining acceptable roles for them. Making women's experiences central to the discourse is not an effort to produce an omnibus solution that alters women's legal claim within the existing power structure, but instead to initiate and effect change by curating a solution specific to women's needs. An effective feminist resolution to matter will be inherently evolutionary and mutable. The solution meted out will differ across communities and even within communities. Fair inheritance distribution

requires considering all the significant variables of a woman's life-these include her socioeconomic relations and support system, source of income, responsibilities, denials (education, opportunity, etc.) in the past, marital status, health, and several other pertinent factors.

Furthermore, the legal aspect of the proposed solution is essential to guard against infringement. In the wide corpus of scholarship on family laws, there have been explicit disagreements on the pragmatic use of legal recourse and its effectiveness in providing a remedy or initiating social change. Particularly in India, achieving equitable rights for women necessitates a transformed cultural environment, which can only be achieved through a concerted effort towards ideological change. A meaningful approach to gender justice must therefore move beyond the assumption that uniformity necessarily produces equality or that cultural pluralism can justify unequal rights. What is required is a context-sensitive framework that places women's material security and agency at its centre, while recognising the social relations within which property rights are exercised. The question, ultimately, is not simply whether women are recognised as equal heirs, but whether the legal, institutional, and social conditions exist for that recognition to become substantive economic power

NOTES

[i]The Hindu Succession Act (1956) is a central legislation enacted to codify and reform the law relating to intestate succession (succession without a will) among Hindus, including Buddhists, Jains, and Sikhs. It governs the devolution of property, both movable and immovable, of a deceased Hindu by laying down uniform rules of inheritance, classification of heirs, and their respective shares. The Act marked a significant departure from traditional Hindu law by introducing statutory rights of inheritance for women, though these rights were initially limited and unequal.

[ii]The Hindu Succession (Amendment) Act, 2005, further strengthened gender equality by granting daughters equal coparcenary rights in joint family property, placing them on par with sons in matters of inheritance, ownership, and partition.

[iii]With respect to land and property inheritance, the Code aims to standardise rules of succession and ownership, replacing religion-based personal laws with a single statutory regime. The move has been justified by the state as advancing gender equality, legal uniformity, and administrative clarity, particularly in inheritance rights. However, it has also generated significant debate regarding constitutional validity, federal competence, cultural pluralism, and the lived implications for women, especially in contexts where legal equality may not translate into substantive control over property. The Uttarakhand UCC represents the first comprehensive state-level implementation of a Uniform Civil Code in independent India, reviving national debates on the balance between gender justice, religious freedom, and legal pluralism.

[iv]Overlapping patriarchies, as articulated by Kumkum Sangari, refers to the coexistence and mutual reinforcement of multiple patriarchal structures that operate simultaneously in women's lives rather than a single, uniform system of male dominance. Sangari argues that patriarchy functions through interlocking sites of power, including family, caste, community, religion, state, and market, each of which shapes and constrains women's agency in distinct but connected ways. In the Indian context, Sangari highlights how state law, religious personal laws, community norms, and kinship structures often intersect to regulate women's sexuality, labour, and property rights. For instance, while the constitutional state may formally guarantee equality, religious or customary laws may legitimise gender hierarchy within the family, and community enforcement mechanisms may discipline women who attempt to assert legal rights. These layers do not operate independently; rather, they overlap, producing compounded forms of subordination that cannot be addressed through legal reform alone.

A key insight of Sangari's framework is that women's oppression cannot be understood solely as private or cultural, nor solely as a failure of law. Instead, it emerges from the convergence of patriarchies that claim authority in different registers: moral, cultural, legal, and economic. This explains why reforms such as gender-equal property laws or protective legislation often fail to deliver substantive justice: they confront one site of patriarchy while leaving others intact. The concept of overlapping patriarchies is crucial for feminist critiques of personal laws, the Uniform Civil Code, and liberal legalism, as it reveals why formal equality often coexists with persistent gender inequality and why women's citizenship is continually mediated through family and community structures rather than recognised as autonomous in practice.

[v]Ambedkar, B. R. (1948, November 23). *Speech on religion and the scope of state reform*. In Constituent Assembly Debates (Vol. VII). Government of India.

[vi]In *Multicultural Jurisdictions* (2001), Ayelet Shachar uses "exit options" to describe the formal ability of individuals, especially women, to leave, appeal, or opt out of a community's internal legal or normative authority when that authority imposes discriminatory or coercive rules (particularly in matters of family, marriage, and property). Shachar argues that exit options are meant to counter intra-group oppression by allowing vulnerable members to seek protection from the state or an alternative legal forum without abandoning their identity altogether. However, she cautions that exit options are often illusory in practice, because social dependency, economic vulnerability, emotional ties, and fear of ostracism frequently make exit costly or impossible, especially for women embedded in family and kinship structures. Exit is a *formal safeguard*, not a sufficient remedy; without material support and institutional backing, it fails to neutralise patriarchal power within communities.

[vii] The Economic Advisory Council to the Prime Minister (EAC-PM) released the report *Status of Women in India* (2022) to provide a data-driven assessment of women's socio-economic position in India. The report synthesises national datasets (including

PLFS, NFHS, Census, NSS) to track trends over time and across states. Core focus areas included: Labour force participation, education-employment mismatch, structural constraints, sectoral shifts, regional variation, and policy implications. The report underscores that legal equality alone is insufficient to improve women's economic status; structural and social conditions, including unpaid care work and labour market design, critically shape outcomes.

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