

## **WOMEN AND PERSONAL LAWS: ANALYSIS THROUGH PROVISIONS OF INHERITANCE AND SUCCESSION**

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### **Abstract:**

India is a pluralistic society. Since the time of the Aryans India has been the home of eight major faith and religious groups. Different personal laws thrived in this country to regulate personal lives of the people in accordance with the faith. In India almost each community has its own personal laws, be it majority community or minority communities. Women have for a long time been marginalised in almost every culture and context without being protected by any system of law. From the cradle to the grave, females are the victims of numerous vicious acts such as discrimination, oppression and violence, within the family, at the workplace and in the society. In any family or society, the most important and often discordant issue arise from the right to inheritance and succession. Religion plays a major role in the succession of property by women as the personal laws of religious communities are mostly dominated by the scriptures of those religions. In India, the succession to property is based on religion of Hindus, Muslims, Christians, Parsis, according to The Hindu Succession Act, 1956, The Indian Succession Act, 1925, and The Personal Law of Muslims. The succession laws, codified separately to different religions, neglected the women and gave an unequal status to them. Time and again legislations have been passed to meet the needs of progressive society, yet there remains a large arena to be covered.

The work covers an analysis to inheritance and succession for various communities and status of women in them.

**Keywords:** Religion, Inheritance, Succession, Society, Family, Personal, Act, Hindu, Muslim, Neglect

### **I INTRODUCTION**

India is a pluralistic culture. Since the time of the Aryans India has been the home of eight major faiths and religious groups. Similarly satisfying has been the way that from the start ethnicity, strict fraternity and mutual amicability have been watched and continued as a hallowed obligation by the individuals in India. Therefore, different personal laws flourished to regulate personal lives of people in accordance with the faith. It is nevertheless characteristic that in mainstream nation like India, individuals having a place with different strict masteries have been surrendered to the

constitution opportunity to be represented by their separate individual laws as for certain delicate issues like marriage, separation and progression. The approach of safeguarding individual law for Hindus and Muslims in family matters was so carefully clung to, that the constitution broadcasts in Article 372 that the law authorize in the nation before the beginning of the constitution will keep on staying in power until adjusted or cancelled or altered by an equipped governing body or some other skilful position.

In India each community has its very own law. The Hindus, the dominant part network have their different family law; so have the Muslims, the greatest minority network. Littler minority networks, the Christian, Parsis and Jews, whose number, with regards to the complete populace of India, isn't extremely noteworthy, as well, have their own different family law. Individual laws in India manage marriage and separation, upkeep, guardianship and progression, joint family and segment, and can comprehensively be portrayed as 'Family Law'.

Individual laws are administered. The state could possibly be a definitive wellspring of their position, however it has made them lawfully and socially legitimate and has given its power to them.

## **II INHERITANCE AND SUCCESSION RIGHTS IN DIFFERENT PERSONAL LAWS**

In any family or society the most significant and frequently grating issue emerge from the privilege to legacy and progression. The inquiry and settlement of legacy and progression have been a difficult issue from times prehistoric and history is loaded with occurrences when the nonattendance of a reasonable and only settlement of these rights have prompted enormous pulverization and brutality.

In this manner, it was just normal to have laws and standards of legacy and progression in the family laws. Religion assumes a significant job in the progression of property by ladies as the individual laws of strict networks are for the most part ruled by the sacred texts of those religions. The progression laws, arranged independently to various religions, disregarded the ladies and gave an inconsistent status to them.

## **III INHERITANCE AND SUCCESSION RIGHTS UNDER HINDU LAW**

***The Hindu Succession Act, 1956*** marks a new era in the history of social legislation in India. This Act has been passed to meet the needs of a progressive society.

*Stridhan* – The word Stridhan is derived from Stri (woman) and dhana (property). The concept of stridhan is as old as the Rigveda. The principal definition contained in Manusmriti is “what was given before the nuptial fire (adhyagni), what was given at the bridal procession (adhyavanamika), what was given in token of love (dattam pritikarmain) and what was received from a brother, a mother or a father are considered as the six fold property of a women”<sup>1</sup>.

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property. Even in Manusmriti one can see that right to hold property had been respected. Since ancient times Stridhana was treated as women’s property. There are two systems of inheritance among the Hindus in India, namely, the “Mitakshara System” and the “Dayabhag System”. The Mitakshara System prevails in whole of India except in Bengal and its adjoining parts, whereas the Dayabhag System prevails across the country. According to Mitakashara, the preferential right to inherit is determined by family relationship, while in the Dayabhag it is determined by the capacity of a person to perform funeral rites.

***Hindu Law of Inheritance Act 1929*** : This was the earliest piece of legislation bringing woman into the scheme of inheritance. This Act conferred inheritance rights of three female heirs; son’s daughter, daughter’s daughter and sister.

***The Hindu Woman Right to Property Act 1937*** was hailed as opening of a crisp section throughout the entire existence of women's entitlement to property. This was the milestone bit of enactment giving proprietorship privileges of women. The act presented significant changes in the law of succession. This act realized progressive changes in the Hindu law all things considered and brought changes in the law of 'Coparceners' yet additionally in the law of partition, alienation of property, inheritance and adoption. The act presented new rights to widows without the right to enforce partition, in the property. In instance of separate property, the widow alongside children are qualified for equivalent share with that of the son, yet the widow didn't turned into a coparcener. A daughter had for all intents and purposes no inheritance rights.

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<sup>1</sup> R.K Agarwala- Hindu Law- Central Law Agency, Allahabad- pg 250

*The Hindu Succession Act, 1956* bases its standard of progression on the guideline of propinquity, i.e. preference of heirs on the basis of proximity of relationship. Section 14 c (i) of the act states as follows; “Any property possessed by a female Hindu, whether acquired before or after the commencement of this act, shall be held by her as full owner thereof and not as a limited owner”. The limited interest of Hindu female is converted into absolute rights.<sup>2</sup> The Hindu succession act changed the Hindu personal law and gave a women more prominent property rights, permitting her full possession rather than restricted rights in the property she acquired under section 14 with a fresh stock of beneficiaries/heirs under section 15 and 16 of the act.

#### ***The Hindu Succession (Amendment) Act 2005***

Following 50 years, the administration at last tended to some enduring gender disparities in the 1956 Hindu Succession Act (1956 HSA), which itself was way breaking. The 2005 Act covers imbalances on a few fronts; agricultural lands, Mitakshara joint family property, parental dwelling house, and certain widow's privileges. Another striking accomplishment of the 2005 Act (Sec.23) is the incorporation of all daughters particularly married daughters as coparceners in the Joint family property. The Hindu Succession (Amendment) Act 2005 looked to make two significant changes in the Hindu Succession Act 1956. To start with, it proposed to remove the gender discrimination in section 6 of the original act. Second, it proposed to omit section 23 of the original act, which disentitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family until the male heir chooses to divide their respective shares therein. The omission of section 4(2) of The Hindu Succession Act 1956 is another achievement of the 2005 amendment Act. Now woman also has inheritance rights over agricultural lands just as men.<sup>3</sup>

#### **IV INHERITANCE AND SUCCESSION RIGHTS OF MUSLIM WOMEN**

The body of Islamic law is referred to as Shari’a or “The Clear Path”. This body of law emanates primarily from four sources: The Qur’an, Sunna, Qiyas, and Ijma. The Muslim Law of succession and inheritance has been derived from Qura’nic verses and therefore, it is a divine law.

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<sup>2</sup> S.C Tripathi and Vibha Arora- Law relating to women and children- Central Law Publications, Allahabad- pg 200

<sup>3</sup> U P D Kesari - Modern Hindu Law, Central Law Publication, Allahabad- (Page 383)

The Verses IV: 1-14 and 176 of the Holy Qur'an deals with the matters of inheritance. Islam is the first religion to give women right of inheritance. In the Holy Quran daughters are given rights of inheritance from their parents, wives have a right of inheritance on husband & mothers have right of inheritance on their children (if they happen to die before her). The holy prophet by instituting rights of property, ownership & inheritance gave women certain safeguard. Islam, by giving woman the right to inherit, changed the status of women in an unprecedented fashion.<sup>4</sup>

The daughter is a primary heir; she always inherits in one of two capacities. A single daughter or two or more daughters, without a son (or sons) she inherits as an agnatic heir. The daughter's share is equal to one half of the son's; she however always has full control over this property. It is legally hers to manage, control, and to dispose off as she wishes in life or death.

Mother will get 1/3 share of her son's property (when there are no children) will get 1/6 share of her son's property (when there are children), maternal grandmother will get 1/6 share (only if there is no mother or grandfather), paternal grandmother gets a share of the total property (only if there is no mother or grandfather)<sup>5</sup>.

Mahr is a sum of money or some other property which the wife is entitled to get from the husband on marriage. It can be fixed at any time before marriage or at the time of marriage. In Islamic law, Mahr belongs absolutely to the wife. It may be either prompt (mu'ajjal) or differed Mahr. It is not in consideration of proceeding from the contract of marriage but it is an obligation imposed by the law on the husband as a mark of respect for the wife. If Mahr is not paid, the wife can claim it through court of law.

Widow's share is fixed i.e. one fourth if he dies issueless and one eighth in case husband leaves behind children and it gets precedence over all the inheritance she gets neither less nor more. Whether there are numerous inheritors or none at all. If there are more wives than one, they divide the one fourth or one eighth as the case may be, among themselves. A childless widow does not take her share from immovable property of her husband; but she is entitled to her proper share in the valuables of the household effects, trees, buildings and movable property, including debts to the deceased.

## **V CHRISTIAN LAW OF INHERITANCE AND SUCCESSION**

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<sup>4</sup> M. Hidayatullah and Arshad Hidayatullah- Mulla Principle of Mohemedan Law- Lexis Nexis', Butterworths Wadhwa, Nagpur- pg 46

<sup>5</sup> Anjani Kant - Woman and Law, published by APH Publishing Corporation, New Delhi, (Page 88-89)

The Indian Succession Act 1925, especially under section 31 to 49 of the act is applicable to Christian and Jews community. Christian of Travancore and Cochin are governed by their own succession laws.<sup>6</sup>

The Indian Succession Act 1925, states that everyone is entitled to equal inheritance, barring exceptions to Hindus, Sikh, Jains, Buddhists and Muslims, as they are governed under separate laws of succession. According to the law if the father died intestate (i.e. without a written will or any settlement of property), under section 33, the widow will get 1/3 of the property and the balance property will be shared equally between the sons and daughters. Under the Indian Succession Act 1925, there is no discrimination between sons and daughters with regard to the distribution of the intestate father's property. If he has left none but his widow, the whole property shall belong to his widow.

Christian law does not recognise children born out of wedlock; it only deals with legitimate marriages. It does not recognise polygamous marriages either. A child in the Womb is also entitled to a share of the property. Any money earned by a Christian woman is her own property. Nobody can take it away from her. She has the right to will away or gift away her own money, jewellery and other property to anybody she wants.

Even if a Christian woman's father spends money on gifts at her marriage, she is still entitled to a share in the property. Christian of Travancore and Cochin are governed by their own succession laws. The most controversial feature of the Travancore and Cochin Christian Succession Acts relates to the rights of a daughter to the property of her intestate parents. The Cochin act gives the daughter a share along with the sons, subject to the limitation that her share shall be one third in value of that of a son [Section 20(b)].<sup>7</sup>

## **VI INHERITANCE AND SUCCESSION RIGHTS OF PARSI WOMEN**

As ahead of schedule as 1835, The Parsi people group had spoken to that they were exposed to genuine detriments without a fixed written law. The Parsi Law Commission prescribed that a different law ought to be established for the whole Parsi people group; therefore, a separate act administering intestate succession among the Parsis was passed. This has now been consolidated in Section 50-56 of the Indian Succession Act, 1925. The law of succession appropriate to the

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<sup>6</sup> Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi pg 374-375

<sup>7</sup> Anjani Kant- Women and the Law-, published by APH Publishing Corporation, New Delhi pg 374-375

Parsis and their property before the year 1837 was the English Common Law subject to specific exemptions as to marriage and bigamy.

They wanted to refresh the Parsi intestate Succession Act 1865, which was established and the material changes by this act were, that the widow and daughters of a Parsi intestate in the Mofussil, who were just entitled for maintenance, got a share in the property of the deceased for the first time. The Mofussil Parsis, following Hindu traditions, barred Parsi woman from a share in the domain of the male. They had just right to maintenance and adoption. Like Hindu and unlike Muslim law, there were separate rules for the distribution of the assets of a male and a female. A Parsi woman is accorded no protection against arbitrary decision either. Where as in Muslim law a father cannot disinherit his wife or daughter, he can only will away one eighth of his property according to his wishes. A Parsi male is not bonded by any such law.

The son is entitled to an equal share of the mother's property along with the daughter; the daughter is not entitled to the same right when she inherits the property of her father. The son's share in his father property is twice that of a daughter.

Also, if a Parsi woman marries a non Parsi she would have to follow her husband's faith and bring up her children according to his wishes. Children of Parsi woman married to non-Parsi have no rights, as under Parsi law they are not considered Parsi. There is no satisfying explanation for such gender bias.

When a Parsi woman dies intestate, leaving her husband and children, the property is divided equally among the widower and children. Male is not bound by any such restriction. The widow gets only as much as any of her sons. The son is entitled to an equal share of the mother's property along with the daughter, if the intestate's parents survive him, then the father gets half the share of the son - that is the same as the daughter. But the mother gets only half the share of the daughter.

## **VII CONCLUSION**

From time to time certain amendments have carried out in the laws relating to marriage, divorce, maintenance, inheritance and succession under different personal laws. Time and again it had been noticed that unawareness led to exploitation but so has not been the case with inheritance and succession. Herein, in a time was there were law in itself held gender bias and women subjected to inequalities when the question of inheritance and succession came at front. But with progression of society better status than previously was granted to women but the social conditioning and societal pressure subdued women.

Taking example of Muslim personal laws, the women as mothers, wives, daughters and widows do not have equal rights, while Qur'an gives equality to them. The customary practices are highly discriminatory and it excluded daughters and others, like widows in the bottom line of the succession order.

The Parsis, a community with 90% literacy, a strong hold on the industrial and professional life of the country; although they are one of its smallest minority communities, have among the most unjust inheritance laws in the country today. This finally only goes to prove the discrimination and gender biases do not disappear with progressive education and availability of legislation.

Need is to modify and develop a new social conditioning and thought process to both the sexes as to rights and duties they are to abide by, to follow up on present laws and for formulation of novel legislations if needed.