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## Gender injustice in inheritance laws of India

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*India has various personal laws that deal with matters of inheritance and succession. These personal laws that were developed from the different religions practised within India, often promote and propagate patriarchal structures of power and resources. Women have always been viewed in lower regard than men in succession matters. This gender discrimination is violative of the fundamental rights of women in India. This paper analyses the history of personal laws regarding inheritance practised in India and identifies the gender disparity within these laws. Legislations like the Hindu Succession (Amendment) Act 2005, the Muslim Personal Law (Shariat) Act 1937, and the Indian Succession Act 1925 need to be scrutinized from a gendered perspective to ensure that the right to equality for women is not violated. To improve the social standing of women in society, it is necessary to ensure that women be economically empowered for which inheritance rights play a crucial role. The paper also investigates a possible solution to the Uniform Civil Code to combat gender discrimination in personal laws.*

**Keywords:** *personal laws, gender discrimination, family law, Islamic law.*

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### INTRODUCTION

In India, matters regarding inheritance and succession are governed by personal laws. Hindus, Muslims, Christians, and Parsis practice laws that are derived from various customs of their practising religions. Despite varying beliefs, something that is common in personal laws regarding inheritance is gender injustice against women. The various scriptures from which

personal laws are developed promote patriarchal structures of power and resources and portray women as subordinate to men. In the twentieth century, the British occupation of India crystallized certain customs and legal doctrines. The emerging set of laws regarding inheritance remained largely conservative with respect to the rights of women and ensured the existing patrilineal and patriarchal hold over land.<sup>1</sup> The ownership of land and capital in developing countries has tended to be very heavily biased towards the male members of the family. It is typically much harder for a woman to start a business enterprise, even of a very modest size, given the lack of collateral resources.<sup>2</sup> Any type of asset ownership helps women in gaining respect and appreciation from family and society. Inheritance laws in India do not favour women, despite numerous provisions in the Indian Constitution guaranteeing equality to all citizens regardless of caste, colour, sex, region, religion, and language. Article 14 and Article 15 of the Indian Constitution ensure the fundamental right to equality and equal protection under the law for all citizens without any discrimination.

Women possess a relatively small portion of all property in India. While assessing productive assets like farmland, the statistics are even worse. The established system of personal laws denies women access to obtain financial stability. As the concentration of assets increases within the hands of men, the disparity between the status of men and women in society widens. This can lead to discrimination against women in multiple other forms. With prevalent practices like “son-centred economy” and dowry, inheritance laws should be amended to protect the interests of women.

## **SUCCESSION UNDER HINDU LAW**

A Hindu father in a male-controlled family adored complete power. Manu said that three persons, a wife, a son, and a slave are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong. Similarly, Narada believed in the view that a son could be independent only if his

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<sup>1</sup> Prem Chowdhry, *Understanding Women's Land Rights: Gender Discrimination in Ownership* (Sage Publications 2017)

<sup>2</sup> Amartya Sen, *Development As Freedom* (Anchor Books 2000) 208

parents are dead; during their lifetime he is dependent even though he is grown old.<sup>3</sup> According to the joint family system and the law of inheritance in Hindu law, women and children were considered as chattels and had no right to possess property. Women's existence in society was always attached to her family as "a woman is not entitled to independence; her father protects her in her childhood, her husband in her youth, and her son in her old age."

However, the property rights of women varied based on geographical factors. They also depended on the status of the woman in the family and her marital status: whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property one is looking at: whether the property is hereditary/ancestral or self-acquired, land or dwelling house, or matrimonial property.<sup>4</sup> The major two schools that laid down the rules of succession in Hindu law were Mithakshara and Dayabhaga. The Dayabhaga School was commonly followed in Bengal and eastern regions of India and the Mithakshara School was followed in other parts of the country. The Namboodiri or Marumakkattayam, the matriarchal system was followed exclusively in the southern part of India.

In the Mithakshara School, the concept of Kartha was formulated. Kartha was the eldest male member of the family and was the manager of the collective property. It also recognized the institution of the coparcenary. Coparcenary was a body consisting of male members of up to three to four generations. Every male member, at birth, within three generations, becomes a member of the coparcenary. A person's share diminishes at the birth of a male member and enlarges at the death of a male member.<sup>5</sup> Upon the death of a male coparcener, the share is divided between the other male coparceners, and no share is inherited by the deceased's female descendants or widow. The Dayabhaga School followed the concept of succession based on the closest legal heir, indicating that in absence of a male heir, the daughter was

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<sup>3</sup> Anchit Bhandari & Urvashi Jaswani, 'A Critical Analysis of Gender Inequality in the Existing Legislation relating to the Property Rights in India' (*Manupatra*) <<http://docs.manupatra.in/newsline/articles/Upload/06EF3D18-696B-4E5F-A61E-80646EC0E664.pdf>> accessed 25 July 2022

<sup>4</sup> Satyajeet Mazumdar & Anurag Gupta, 'Gender Issues and Land Rights under Hindu Personal Law in India' (*Centre for Social Justice*) <<https://www.centreforsocialjustice.net/wp-content/uploads/2016/09/Gender-Issues-and-Land-Rights.pdf>> accessed 25 July 2022

<sup>5</sup> *Ibid* at 7

likely to inherit her father's ancestral property. Unlike the Mithakshara School, women had a better legal standing regarding inheritance in the Dayabhaga School. Women were completely deprived of the right to property in the Mithakshara School which resulted in their complete dependence on the male members of the family- husband, father, brother, and son. The only right to property they had was the right to *Sthridhan*, which was a "gift" given by the father at the time of the marriage of the daughter.

The Hindu Women's Right to Property Act, of 1937<sup>6</sup> was one of the first initiatives to ensure gender justice in Hindu inheritance laws. However, the Act lacked any considerable material gain for a Hindu widow. This Act was replaced by the Hindu Succession Act in 1956 which laid down a uniform and comprehensive system of inheritance that applied to people under the Mithakshara and Dayabhaga schools and all other schools such as the Marumakkatayam, Aliyasantana, and Nambudri systems. According to this Act, the limited estate provided to women was to be converted to an absolute one. It strengthens the widow's rights to the deceased's property as well as recognized the rights of other female heirs of the deceased.<sup>7</sup>

However, the shortcomings of The Hindu Succession Act, 1956 were clearly depicted in the case of *Om Prakash v Radhacharan*<sup>8</sup>. Narayani Devi was banished from her husband's home upon the death of her husband. She lived with her natal family and within the next 40 years, gathered a considerable amount of property. However, she died intestate in 1996. Her mother claimed the right to her property, but Narayani's late husband's brothers contested the claim. The Supreme Court after relying on Section 15<sup>9</sup> of the Hindu Succession Act 1956, ruled in favour of her husband's relatives and they inherited her property, leaving nothing to her mother who supported Narayani all her life. This injustice would not have occurred if the gender roles were reversed – the property would have remained within her family if Narayani Devi were a man.<sup>10</sup> The next step of development that can be observed in the Hindu

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<sup>6</sup> Hindu Women's Right to Property Act 1937

<sup>7</sup> Hindu Succession Act 1956

<sup>8</sup> *Om Prakash v Radhacharan* (2009) Civil Appeal No. 3241/2009

<sup>9</sup> Hindu Succession Act 1956, s 15

<sup>10</sup> Devendra Damle *et. al.*, 'Gender discrimination in devolution of property under Hindu Succession Act, 1956' (2020) National Institute of Public Finance and Policy New Delhi, 7

<<https://www.nipfp.org.in/publications/working-papers/1902/>> accessed 25 July 2022

laws of inheritance is the Hindu Succession (Amendment) Act, 2005 (HSAA). The major development that was brought by the amendment act was the removal of gender bias and providing equal and same rights to daughters as given to sons. The Act removed gender discrimination within the inheritance of agricultural land and allowed married daughters to be coparceners in the joint family property. It disproves the idea that a daughter only belongs to her husband's family after marriage.

However, the amended act consists of some ambiguities. One ambiguity is that the daughter upon marriage becomes a member of two joint families simultaneously, her natal and matrimonial family. This uncertainty is further complicated when the logic is applied to her own daughter as at birth, she will be part of two families as well i.e. her father's and her maternal grandfather's, and marriage leads to her becoming part of a third family. To correct such ambiguities, a possible solution propagated by feminist legal scholars is simply to abolish the concept of a joint family system.<sup>11</sup> Another aspect that the amended act does not resolve is the rules of succession for a Hindu female dying intestate as prescribed under Sections 15 and 16 of the HSA. The injustice that occurred in *Om Prakash v Radhacharan* is more likely to happen with the recent economic empowerment of women. In 2021, a mother filed a petition claiming the assets of her childless daughter, who passed away the same year due to COVID-19 problems. Devina and her husband Chetan both passed away and had no children. Even though Devina's property was wholly self-acquired, Chetan's mother, Lily, laid a claim to it after their deaths under the discriminatory section 15 of the HSA, 1956.<sup>12</sup>

## SUCCESSION UNDER ISLAMIC LAW

The Islamic law of succession is derived from the reformation of the pre-Islamic customary law of succession that was based on the patriarchal form of family. There are two main schools of Muslim law, namely, Sunni and Shia. Indian Muslims are mainly Sunni from the Hanafi

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<sup>11</sup> Rebecca Cardoso, 'Inheritance Laws Analyzed through the Lens of Gender Justice' (2020) Asia Pacific Law & Policy Review (APLPR), 160- 161

<sup>12</sup> Sunil Baghel, 'Why can't a woman's parents inherit her property?' (*The Times of India*, 24 December 2021) <https://timesofindia.indiatimes.com/india/why-cant-a-womans-parents-inherit-her-property/articleshow/88460549.cms>> accessed 24 July 2022

school.<sup>13</sup> The Sunni and Shia systems differ a lot in the matter of succession. The Prophet incorporated some changes into the pre-Islamic customary law of succession, and this superimposition of the principles of the customary law of succession caused differences between Sunnis and Shias, leading to the formation of two distinct systems of succession. Pre-Islamic customary principles of succession were based on the principle of agnates and exclusion of women. The descendants were given more preference than the ascendants. Relations by affinity, i.e., husband and wife could not inherit each other's property. However, the Prophet modified these pre-Islamic rules of succession to formulate the Islamic rules of succession. Islamic law recognizes ascendants along with descendants and allowed them to inherit the property. Female relatives (sisters and daughters) as well as relatives by affinity (husband and wife) were entitled to inherit. However, it is to be noted that both in Sunni and Shia schools, the woman receives half the share of the man's share of the property. Furthermore, "*a widow receives only one-eighth of the property of her husband on his death if they have children and one-quarter share if there are no children born of the marriage.*"<sup>14</sup>

In Shia law, a childless widow is not entitled to a share in the land belonging to her husband. However, a childless widower is not barred from inheriting his wife's property in the same law. In the case of *Hammed Khan v Peare Mirza*,<sup>15</sup> the childless widow was entitled to inherit the property in the rare circumstance of there being no other legal heirs under the doctrine of radd. The Muslim Personal Law (Shariat) Act was passed in 1937 with one of its objectives being to reverse practices of gender discrimination and empower women regarding property rights. However, with the exclusion of agricultural lands from the act's purview, it still carried tones of gender inequality in it. Despite having Quranic rights to inherit property, it is observed that Muslim women often are not aware of their rights. Some Muslim women forgo their rights in fear of the patriarchal system within families. This problem exists within the Hindu community as well.

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<sup>13</sup> Sona Khan, 'Inheritance of Indian women: A Perspective' (2000) 27 (2) India International Centre Quarterly, 139-154 <[https://www.jstor.org/stable/23005497#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/23005497#metadata_info_tab_contents)> accessed 24 July 2022

<sup>14</sup> Prachi Ojha, 'Women's Right To Intestate Succession: Thoughts On Gender (Dis)Parity In India' (*Advaya Legal Blog*, 11 April 2018) <<https://www.advayalegal.com/blog/womens-right-to-intestate-succession-thoughts-on-gender-disparity-in-india/>> accessed 24 July 2022

<sup>15</sup> *Hammed Khan v Peare Mirza* (1935) AIR Oudh 78

## SUCCESSION IN THE CHRISTIAN COMMUNITY AND THE PARSI COMMUNITY

Christians in India follow the Indian Succession Act 1925 in matters regarding succession. According to the Indian Succession Act 1925, if the deceased is not a member of the Hindu, Muslim, Buddhist, Sikh, or Jain community, their succession to immovable property will be governed under this act. The act also lays down rules of succession for the Parsi community too. Inheritance laws for Indian Christians varied widely with the difference in geographical location and religious sects. Prior to the Indian Succession Act, 1925, the Travancore Succession Act, 1916, and The Cochin Christian Succession Law, 1921 which was especially used in the southern region of India, discriminated against women in matters of property. While dealing with a succession of immovable property, a widow could only have a lifetime interest. Daughters were given a share that was one-third the value of a son's share or Rs. 5000, whichever was lesser in value.<sup>16</sup> In the case of *Mary Roy v State of Kerala*<sup>17</sup>, the petitioner approached the court seeking an end to the discriminatory practice of giving only a small share of the father's property to the female members of the family under the Travancore Syrian Christian Succession Act, 1916 and Cochin Succession Act 1921. Mary was forced to vacate while she was residing in one of her father's properties by her brother, causing her to file a lawsuit challenging the constitutional validity of the Travancore Succession Act. The court opined that personal laws cannot be prioritized above the Constitution of India and that Mary Roy's fundamental rights were violated. The court declared that 1/3<sup>rd</sup> of the property be given to the widowed mother, 1/3<sup>rd</sup> would be given to the daughter and the remaining 1/3<sup>rd</sup> would be given to the son.

The judgment faced immense backlash from the Syrian Christian community who claimed a "violation of personal law by the judiciary". This explains how Inheritance laws guided by a patriarchal mindset allow unfairness to women in intestate succession. The irony is that the law framed more than one and a half centuries ago discriminating against women in succession rights continues even today. The Indian Succession Act 1925 discriminates between

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<sup>16</sup> Bina Agarwal, 'A Field of one's Own: Gender and Land Rights in South Asia' (2008) 58 Cambridge University Press India

<sup>17</sup> *Mary Roy v the State of Kerala* (1986) AIR 1011

father and mother in the devolution of property. In absence of lineal descendants, one-half share of the property is reserved for the widow and the other half devolves to the father if living. In his absence, it passes to his mother, brothers, and sisters and issues of predeceased brother or sister. It is only when a brother, sister, or their issues do not survive that she inherits the entire other half of the property.<sup>18</sup>

The Parsi community in India at first did not have its own laws. Zoroastrianism was carried by the Parsi immigrants to India as they fled religious persecution by the Arab rulers of Persia. They embraced the traditions of the region where they had originally sought refuge in India. The Parsi Intestate Succession Act, 1925 was incorporated in Chapter-III, Part-V of the Indian Succession Act 1925. The disparity in the social standing between Parsi men and Parsi women can be understood by how children of Parsi fathers by non-Parsi women are considered Parsi but children of Parsi women by non-Parsi men have no rights under the Parsi law. In the case of intestate succession, the daughter only inherits half the share of the son from the father's property. In its *110th Report*, the Law Commission of India examined the inheritance laws for Parsis and suggested that the distinction established between sons and daughters in the case of a male intestate's property must be eliminated. The Parsi community introduced amendments to ensure equality between men and women.

## **GENDER JUSTICE THROUGH A UNIFORM CIVIL CODE**

Uniform Civil Code is a possible solution that is often put forward to combat gender discrimination in the personal laws in India. The crystallization of personal laws by the British administration has had a degrading effect on the status of women regarding inheritance and succession. India is a country that has a diverse population comprising of different religions, sects, and tribes, and imposing a uniform civil code will harm the secular fabric of the country. Communities passionately hold onto traditions and customs that have been practised continuously for centuries and establishing a uniform code of inheritance might evoke an

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<sup>18</sup> Archana Mishra, 'Breaking Silence - Christian Women's Inheritance Rights under Indian Succession Act, 1925' (2015) 9 (9) Chotanagpur Law Journal <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2542728](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2542728)> accessed 25 July 2022

unfavourable reaction from people. The most sustainable method to eradicate gender discrimination is to amend laws to ensure that women are treated equally to men in matters of inheritance. It is necessary to not infringe on the faith and practices of different sections of society to make sure that women are empowered in a harmonious manner.

## CONCLUSION

The law of a country reflects the people and the various cultures within it. The personal laws of India are a result of the rich history and evolution of Indian society. However, for centuries, women have been considered inferior and treated unjustly. This can be clearly seen from the history of succession laws in India. The effects of these discriminatory laws are still present in society. Women hold only a small portion of land in India, and this has hampered their economic empowerment and emancipation. The history of Hindu inheritance laws clearly indicates the patriarchal set-up of power structures and resources. Despite the many amendments to the Hindu succession laws, women are yet to be treated equally in property matters across the country. The Islamic laws of inheritance treat women as equal successors of property. However, a lack of awareness and proper implementation can be observed. The Indian Succession Act 1925 that governs the succession matters of Christians and Parsis has seen some developments in gender justice, however, still has a scope for improvement to meet the needs of the present day.

There's no uniformity in the different personal laws of India since they are derived from different religions and traditions. A possible solution that is often discussed to combat gender discrimination in these personal laws is establishing a Uniform Civil Code. However, considering the diverse demographic of India, establishing a uniform code will go against the notion of secularism in India. To uplift women, amendments must be made to these personal laws without infringing the faith of the religions.