

Inheritance Rights of Ancestral Property of Women: A Comparative Analysis of Hindu and Islamic Laws

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ABSTRACT: The inheritance rights of women have been a subject of legal, social, and cultural significance, reflecting the evolving nature of family structures and gender equity in these two distinct religious and legal traditions. Hindu law, characterized by a diverse range of customs and personal laws, has witnessed significant reforms over the years. The historical development of the Hindu Succession Act and its subsequent amendments in Section 6 of the Act has gradually expanded the rights of daughters in ancestral property. There is a progressive shift in favor of gender equality, culminating in landmark judgments from the Indian judiciary that have upheld daughters' rights as coparceners in Hindu Undivided Families (HUFs). Conversely in Islamic Law, there is no distinction between the rights of men and women for inheriting the ancestral property. But the amount of the property share of a women is half of that of a men. This article undertakes a comparative analysis of the legal frameworks governing daughter's rights in ancestral property within the contexts of Hindu law and Islamic law. The comparative analysis underscores key differences and similarities between the two legal systems, with a focus on the role of culture, tradition, and evolving social norms in shaping the legal landscape. The article also examines how legal reforms and judicial interpretations have influenced the practical application of these laws. By shedding light on the historical evolution and contemporary status of daughter's rights in ancestral property under Hindu and Islamic law, this study contributes to the ongoing discourse on gender equity and inheritance laws. It aims to provide a comprehensive understanding of these legal traditions, their implications for daughters, and the potential for further reforms in pursuit of gender justice within the legal contexts of India.

Keywords:

INTRODUCTION

The ability to acquire, possess, use, and alienate property based on one's whims and fancies is both an empowering right vested in individuals and a vital spark in the long battle for individual freedom. This right has frequently been vested in male members of society while alienating female members from using it. This means that, throughout the ages, almost everywhere in the world, women have been neglected and discriminated against in regard to property ownership, and they have been either outright refused or only given partial ownership, especially when the property in question involves ancestral property that is passed down from generation to generation at death. The scenario in India is not significantly different from the broader world picture.

The subcontinent's Hindu, Muslim, Christian, and Parsi populations have had to battle through inequity and persecution to obtain property rights through inheritance. During the ancient era, Hindu women were neither allowed to inherit property as coparceners, nor were they awarded a part of property as brides. However, the Hindu succession rules have been codified under the Hindu succession laws. Succession Act, as well as several subsequent changes, as well as according to legal decisions, women now have the right to inherit property from a male heir after the death of an intestate ancestor. In Muslim Law Things are not as straightforward in Muslim law, because the laws governing succession lack any explicitly codified legislation and are instead regulated by

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personal law in its totality, according to the Muslim Personal Law (Shariat) Application Act of 1937. Furthermore, various personal rules regulate the Shia and Sunni sects of Muslims.

DAUGHTER'S INHERITANCE RIGHTS TO ANCESTRAL PROPERTY

Hindu Law of Inheritance

Coparcenary is a legal concept that originated under the Mitakshara school of Hindu law from ancient Hindu jurisprudence. It is used to describe dual heirship or property ownership. The essential premise underpinning the coparcenary concept is the presence of a common male ancestor and his lineal male descendants within four degrees, which includes the ancestor, or within three degrees, which excludes the ancestor, establishes a Joint Hindu Family. Within a Hindu family, this notion serves as the foundation for common ownership and succession. A coparcenary consists of a male member of a joint family, his sons, grandchildren, and great grandchildren. A coparcener is born with the right to coparcenary property, but exact extent of their portion may only be determined by partition.¹ The proportion of a coparcener in a joint family cannot be established precisely since it changes, increasing when a coparcener dies and reducing when a new coparcener is born. The Hindu Coparcenary is narrower than joint family. Daughters were not recognised as coparceners in their own right under Hindu law prior to the introduction of the Hindu Succession (Amendment) Act of 2005. The amendment act included daughter has coparceners. This amendment was based upon the 174th Law Commission report titled "Property Rights of Women: Proposed Reforms under the Hindu Law" where it stated the excluding daughters from holding the ancestry merely based on the gender is unjust.²

Although, the daughters were made coparceners under the purview of the intervention by the judiciary was much needed to clarify regarding the application of the section. In the case *Prakash & Others v. Phulavati and Others*³, the Court held that the 2005 amendment act is prospective in nature and the law would be applicable only to "Living Daughters of the Living Coparceners". This was again upheld in the case of *Mangammal V. T.B. Raju*⁴. A contradictory view was given *Danamma @Suman Supur & Another v. Amar & Others*⁵ and it laid down that it is the birth that creates the coparcenary right and upheld the right of a daughter whose father died even before commencement of the amendment act.

It was in *Vineeta Sharma v. Rakesh Sharma*⁶ where the legislative intent of the amended section 6 of Hindu Succession Act was more crystallized. This decision of the Supreme Court held that the commencement of the amendment act is immaterial for conferring equal rights to the daughter as same as the son and that the rights of coparcenary are conferred on daughter by birth. It also upheld that the amendment is neither prospective nor retrospective but retroactive. Recently this was reiterated in the case of *Prasanta Kumar Sahoo & Co. v. Charulata Sahu & Ors*⁷ the daughters were given right to inherit the property even if their fathers have passed away before the amendment of the Act.

Muslim Law of Inheritance:

The development process of Islamic law in India can be identified from three stages. First, from the duration of Islamic law. Second, from the period of imperialism, and finally from what was marked as the beginning of

¹ *State of Maharashtra v. Narayan Rao*, (1985) 2 SCC 321

² Law Commission of India, "174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law" (May 2000).

³ (2016) 2 SCC 36

⁴ (2018) 15 SCC 662

⁵ (2018) 3 SCC 343

⁶ (2020) 9 SCC 1

⁷ 2023 LiveLaw (SC) 262

independent period. The Quran is regarded as divine revelation and is a major source of Islamic jurisprudence. Its fundamental principles demonstrate equality between men and women in all aspects of life. Despite this, it has been accused for ensuring discriminatory inheritance shares of property because women only receive half of what their male counterpart receives (for example, a son inherits a portion comparable to that of two daughters). Though Muslim women are meant to receive half of what their brothers receive, in practise, they are usually denied this right as well. In practise, women continue to endure gender inequity. It may be argued that Quranic laws are construed to fit the needs of male members, and hence women are given a lower status.

Maintenance compensates for women's limits in inheritance rights. This demonstrates the concept of reliance; the Muslim social system, which is fundamentally based on male domination, is viewed as limiting women's access to property rights. Though Islamic rules provide property rights to women in other cultures, they may not enjoy them to the same extent as their male counterparts. Women's rights are frequently negotiated in conjunction with other elements such as customary law, religion, gender ideology, or patrilineal systems of succession.

The Muslim Law of Inheritance is superstructure constructed on the foundation of pre-Islamic Customary Law of succession. In Islamic Law, there is no distinction between the joint family property and separate property. Under Muslim Law all properties are devolved by Succession. Thus the right of heir apparent does not come into existence till the death of the ancestor. Succession opens only on the death of the ancestor and the alone the property vests in the heirs. The institution of Joint Family is considered as a foreign concept in Muslim Law.

In addition to not recognizing joint family property, Muslim Law does not acknowledge the notion of survivorship. The deceased's heirs get their shares as tenants in common rather than joint tenants with rights of survivorship. They are co-sharers in their own right. Acquisitions made by one member are not placed in a common pot, nor are debts acquired by one to be borne by others. In the case of a joint venture, the partnership rules will apply, and the partnership will end with the death of one of the partners, unless there is proof to the contrary.

General Principles of Succession

Customary Principles of Succession:

The rule of inheritance in pre-Islamic Arabia was founded on comradeship-in-arms, and on this premise, even the wife and children were barred from inheritance. In the widest sense, inheritance law was founded on the concepts of agnatic preference and female exclusion. There were four basic principles of succession in Muslim Law and they are:

- The nearest male agnates succeeded to the entire estate of the deceased;
- females and cognates were excluded;
- descendants were preferred to ascendants and ascendants to collaterals;
- where agnates were equally distant to the deceased, they together shared the estate per capita⁸

Islamic Rules of Succession:

The Prophet added the following new principles to the aforementioned customary rule of succession concepts.

- Husband and wife are considered equal and entitled to inherit from each other
- Some close female relatives and cognates are recognized and enumerated as heirs, suggesting a broader circle of potential inheritors beyond just the immediate family.
- Parents and certain other ascendants are designated as heirs, even when there are descendants (children).
 - Individuals who were not previously entitled to inherit under customary law are designated as heirs. These newly created heirs are granted specific shares of the inheritance.

⁸ Tyabji, Muslim Law at p. 820

- The newly created heirs inherit alongside customary heirs and are not excluded from the inheritance.
- After allotting specific shares to the newly created heirs (sharers), any remaining property, known as the residue, is distributed to customary heirs (residuaries). This ensures that nothing is left unaccounted for.

Sunnis and Shias are the two largest Islamic sects in the nation. The former is also referred to as Hanafi. Although there are certain common norms, each of these faiths have separate laws addressing property devolution for both males and females, as well as testamentary and intestate succession.

Sunni law of inheritance

Sunni law divides heirs into two categories: related heirs and unrelated heirs. The former is classified into three categories: sharers, residuaries, and distant relatives. The latter category includes contract successors, acknowledged kinsmen, and universal legatees. Sharers, residuaries, and distant kindred are also referred to as Quranic heirs, agnatic heirs, and uterine heirs by Fyzee.⁹ Sunni law's primary principle of inheritance is that the closer eliminates the more distant, and that agnates are preferred over cognates.

Sharers who are present in the table of sharers obtain the property simultaneously, subject to the satisfaction of certain requirements that have been indicated. This suggests that there is a chance that after calculating the total share to be split, the shares to be divided are greater than the total. In such cases, the Aul doctrine is used, in which the denominator is enlarged to match the numerator, and then the shares are split proportionately. The Doctrine of Aul is used when the aggregate total of the shares awarded to multiple heirs based on their entitlement exceeds the unity, the Doctrine of Aul requires that each heir's part be proportionately decreased. This is accomplished by reducing fractional shares to a common denominator. Because this is accomplished by increasing the denominator, the doctrine has been called Aul, despite the fact that the shares are proportionately decreased.

The table of sharers for Sunni law is mostly dominated by females : wife, daughter, mother, true grandmother, son's daughter and son's son's daughter, uterine sister, consanguine sister and full sister. Despite this, various restrictions on the amount to which these members can inherit the share have been established. For one thing, a daughter is only entitled for half of the property (or, in the event of numerous daughters, two-thirds of the total share) if there is no son. In the event of a son, however, a daughter's function is immediately demoted to that of a residuary, and she loses her status as a sharer. Similarly, a son's daughter receives her part as a sharer only if there is no son, daughter, or son's son. Again, if both he and a son's daughter are present, a son's son is entitled to receive a portion of the property, and this indicates that a son's son is given precedence over a son's daughter. Furthermore, it is important to note that daughters always receive half of their father's portion. Another example of such discrimination is when a full sister is entitled to receive a half part of the property, but if a full brother is present, she is downgraded to a residuary. Finally, in the case of a consanguine sister, she can only inherit a portion if there is no consanguine brother present, and if there is a consanguine brother present, she has no share in the property.¹⁰ One thing to keep in mind here is that widows are entitled to one-fourth part if a child is present and one-eighth share if a child is not there. Muslim law, on the other hand, allows a man to have many wives. In the case of many widows, a portion of one-fourth or one-eighth is split evenly among them.¹¹

Shia law of inheritance:

Shias law of inheritance delves their property succession rights on two principles: (a) Nasab, or blood relationship, and (b) Sadab, or exceptional cause. The Nasab is split into two categories: (i) dhu fard (Koranic heirs or sharers)

⁹ Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (5th edn, Oxford University Press 013).

¹⁰ 25, AQIL AHMAD, MOHOMMEDAN LAW (Central Law Agency 2013).

¹¹ 10 PARAS DIWAN, FAMILY LAW 505 (Allahabad Law Agency 2013).

and (ii) dhu qarabat (blood relatives). The sadab is further separated into two parts: (a) zawjiyyat, or marital status, and (b) wala, or unique legal connection. Wala includes the right to emancipation, the liability for delicts done by the departed, and the wala of immanate. The first two have been outdated in India, while the third has been superseded by the escheat statute.

In the modern Muslim Law, Shia Law of inheritance is divided as Heirs by marriage, Heirs by consanguinity and State by escheat. In Shia Law of inheritance it is divided in three class of legal heirs. The Shia law list of sharers has nine sharers, three of which are males and the remaining six are girls. In the existence of any lineal descendant, the widow receives one-eighth share; in the absence of a lineal descendant, she receives one-fourth share. In the presence of a lineal descendant, two or more full or consanguine brothers, one such brother and two such sisters, or four such sisters with the brother, the mother receives a one-sixth part, whereas in all other circumstances she receives a one-third share. Sunni law applies in the case of the daughter, full sister, and consanguine sister. They only share if there is no son, full brother, or consanguine brother. Although their names are on the list of sharers, they are viewed as secondary, and their male counterparts are given precedence over them. When it comes to women, this is one of the most discriminating features of Muslim succession and inheritance rules.

Another issue to address was a spouse's entitled to the residual. The Doctrine of Return or Doctrine of Radd is applicable in Shia law. According to the doctrine, if the sharers' claim to the property has been met and no residuaries are available to take the residue, the excess share that remains belongs to the sharers. A spouse, on the other hand, can only take a portion if no other heirs are present. Initially, if a woman died and there were no other sharers, the husband was entitled to receive a half-share of the property as a sharer and the other half under the Doctrine of return. A widow, on the other hand, is only entitled to a quarter-share, with the remainder going to the government through escheat. In the case of *Abdul Hamid v. Peare Mirza*¹². The viewpoint that a widow was entitled to one-fourth of the estate was entitled as a sharer, exactly like her husband, and the remaining part under the Doctrine of Return.

Grandparents, brothers and sisters, and their descendants comprise the second class. If a sister has a brother, she is not entitled to a share; if she does not have a brother, she is entitled to a half-share in the case of a single sister, and a two-thirds share in the event of several sisters. Aunts and uncles and their descendants make up the third category. However, a distinction has been established here between paternal and maternal relations, with the former receiving twice as much as the latter. This indicates that when dividing property between a maternal aunt and a paternal aunt, the former will receive just one-third, while the latter will receive two-thirds.

COMPARATIVE ANALYSIS BETWEEN HINDU LAW AND MUSLIM LAW

In Muslim Law, there is no inheritance of ancestral property. The properties are considered as self-acquired property. Therefore there is a comparison of daughter rights to property in Muslim Law and ancestral property rights of Hindu Daughter.

For one being in a patriarchal country in India, women in India like women everywhere else, have had to battle for their rights. Prior to the 1937 Act, women had no part in the family property under Hindu law. Women were given special consideration under Muslim law when it came to property ownership. However, in a number of cases, the existence of a male relative either lowered the portion of property that a woman would receive as a sharer, or outright banned women from inheriting as a sharer at all, relegating them to the status of a residuary.

One significant distinction between Hindu Law and Muslim law are the requirements that must be met for a sharer to receive a share of the intestate property. The portion that a woman is to inherit is determined by the number of heirs who may place a legal claim on it under Hindu. However, additional requirements must be met under Muslim

¹² *Abdul Hamid v. Peare Mirza*, AIR 1935 Oudh 78.

law. For example, under present Hindu law, a daughter is entitled to inherit a portion of her father's property regardless of the presence of a son, and if a son is present, both of them are entitled to equal shares. This leads us to the problem of exclusion under Muslim personal law. Unlike in Hindu law, under Muslim law a female sharer is often excluded from having a share in the property, and relegated to being a residuary, in the presence of a specified male member. This is true not just for daughters but also for sisters, irrespective of whether they are consanguine or uterine, for they too are excluded from inheriting a share in the presence of consanguine or uterine brothers, respectively. Moreover, sons always receive double the share that daughters receive. The reason is still unclear and discriminatory in nature.

Under Muslim law, the notion of fulfilling preconditions to inherit a share has additional consequence. The Heirs shares are liable to vary based on the requirements met. For example, widows receive one-fourth shares in the presence of lineal descendants, but one-eighth shares in their absence. This means that the portion that one is to inherit may alter based on the fulfilment of certain requirements. This is different in Hindu Law where constant state of fluctuation due to the births and deaths of people eligible to inherit a share of the property in question. The share is predetermined in Muslim Law but not in the case of Hindu Law. The similarity between Hindu Law and Muslim Law lies only in the case rights of widow inheriting the property.

CONCLUSION

India has been and continues to be a patriarchal country, as seen by the property rights granted to women regarding succession. Hindu women's property rights were non-existent about a century ago. Women now have property rights that are roughly equivalent to those of males, thanks to law, court rulings, and later revisions. For Muslims, personal law is still uncodified, therefore they are regulated by their traditions and practises. Their laws were advanced enough at the time to grant property rights to some groups of women within a household. However, they have also precluded others from being sharers, necessitating a comprehensive revision to maintain equality by current standards. To summarise, the emergence of these laws has significantly reduced the inequality between males and females in terms of succession and property rights. However, more work is needed in this area to ensure complete equality without gender discrimination.

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