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‘ANALYSING THE JEWISH LAWS ON SUCCESSION AND INHERITANCE’

AUTHORED BY – ANMOL TANWAR

ABSTRACT

Jews are the ethnic group of people that have been historically derived from the ancient Hebrews. Jews currently reside in many different countries the world over and share amongst them identical practices despite having amalgamated well into the cultures of the basic population of all these countries. It is a ethno-religious group that began to disperse from Israel and Judea after the conquest of these respective countries. Because of this dispersion Jews began to settle in large numbers in the nearby countries. Though they have adopted most common practices and regional cultural highlights (for example, many Indian Jewish women wear mangalsutra and green glass bangles with their own tradition of wearing white gowns during the marriage ceremony) of the places that they have settled in, they have retained the distinctive elements and practices of their religion. Despite their best efforts to merge into the societies that they had settles in, their own stringent laws of Judaism propelled them to lead a life that was pretty isolated and community-exclusive. Wherever they went, they lived in closed communities and primarily engaged in commercial occupation. Israel, the country with majority Jewish populace was created in 1948. In order to describe and discuss Jewish laws on succession and inheritance, it becomes imperative for us to know the source of their laws and the reasons as to why they were framed so which will be discussed henceforth. Further, the traditional laws on succession and inheritance and inheritance peculiar to the Jews and their societal impact have been discussed, followed by the laws in Israel that govern today’s succession laws of the Jews along with observations on all the loopholes that it has fixed. Finally, the succession laws that apply to Jews in India have also been discussed.

INTRODUCTION

Inheritance and its laws are central to the societal and legal institutions of approximately all societies around the world. These laws not only lay down the rules for succession of property after the death of the owner but also help define familial relations to a great extent. These laws provide legitimacy to familial relations by recognizing their existence in law. These laws also

shape the hierarchical structures of families. These rules however were made and determined by the familial structure present at that point of time and became ill-suited for the modern and post-modern structures. With the change in family dynamics all around the world, there is a need for the law to adapt and change as well. However, there is not a lot of change that can be seen. The Indian Succession Act of India caters to the Jewish community at large and though it differs from classic Jewish law to a great extent in terms of equal treatment of men and women, it is unable to face the challenges created by the modern and post-modern world.

SOURCE OF JEWISH LAW

The Jewish law is very different from the law of the state of Israel (which has a majority population of Jews. Israel, in 1965, passed a widely secular piece of legislation that is comprehensive called the Succession Law that embodies within itself a variety of the aspects of the Western Law and doesn't necessarily include the traditions that are exclusive to the Jewish community.

The Jewish law, traditionally called *Halakhah* has its roots in Torah. The content or more specifically the tenets are said to be conveyed to Moses, coupled with a huge set of oral laws that have been passed down from generations galore. Wherever there have been inconsistencies, things have been fixed through the process of *midrash*, which is a method of interpretation and construction. The oral laws were eventually recorded on written platforms by Rabbi Judah the Prince. This was called the *Mishnah*. The third tractate of the fourth order, *Baba Bathra* deals with aspects of inheritance and succession. Post this, with time the Jewish law has undergone significant changes and inclusions as according to the time it was applied in and used in. Some of these changes also include commentaries which make Jewish laws much more complex to comprehend. The Jewish scholars have had many intellectual debates regarding the ever – changing personal law for Jews. As one of the scholars puts it, Jewish law is a concoction of the laws laid down in the Scripture with interpretations and amplifications thereof in Talmud and Midrash and the reforms and innovations superadded by the Talmudical law, the post-Talmudic codes, the Commentaries and the Responsa, the customary laws and the takkanot of the various communities, and lastly, the rational and the ethical principles deduced from them¹.

¹ Haim H. Cohn, 'Jewish Law in Ancient and Modern Israel' 1971.

TRADITIONAL JEWISH LAWS ON SUCCESSION AND INHERITANCE

Most of Jewish laws are derived from biblical references and illustrations rather than from just exclusive framed directions or rules regarding succession. The essential focus of these biblical passages (from where these laws are sourced) seem to be on the retention of the tribes of Israel, by effectively ensuring that the property is passed down and maintained in the patrilineal line. Along with the discussion of very basic traditional inheritance laws, the disputable facts and loopholes have also been discussed with focus on how inheritance works for the women in this ethnic group.

The seminal Biblical source for the laws on succession is contained in *Numbers 27:8-11* and it conveys, if a man dies with no sons, but has a daughter then his entire property is passed down to the daughter. If he has no children, his brothers and sisters will be entitled to his property. If he doesn't have brothers and sisters, then his property will go back into his father's brethren's possession. And if none of these above mentioned exist, his property will be succeeded by his nearest kin. This rule, seems to exclude any female heir except for a daughter, this also being subject to a condition that she have male siblings. This rule is a very rudimentary form upon which the Jewish law is formulated (in essence of *Baba Bathra*). The *Baba Bathra* has its subjective interpretation of this passage and makes an attempt to fill the unwritten gaps and amend certain loopholes. It fixes the confusion regarding precedence for example, and puts forth that, as a general rule: whosoever has precedence in inheritance, his offspring have also precedence. The father, thus has precedence over all of his offspring.²

One of the significant issues with these laws is the clarity of the order of succession. One such question arises when, for example, if a father is survived by two persons, his daughter and his dead son's daughter, who will procure the property? In such a situation, the dead son's daughter inherits the entire property and the daughter gets nothing. All of these discussions are included in the Talmud.³ Provisions that enable a daughter to inherit property were also brought about by certain recorded incidents and was never in fact present in the original tenets.

The story of Zelophehad's daughters was apparently since when the daughters began to be

²*Baba Bathra* 8:2, THE MISHNAH 376.

³ TALMUD BAVLI *Baba Basra* 115b.

deemed as qualified to inherit property from their fathers.⁴ This was a very late development. The Jews traditionally preferred to keep the property within the tribe and daughters would usually be married off to men of other tribes, which makes them outsiders, which in turn destroys the very essence of keeping the property within the tribe. Nevertheless, there is still the question that the modern scholars keep asking, regarding the clarity over priority of males over females throughout the entire order of succession. The Jewish law itself describes the order of succession as:

“a parentelic system, conferring the right of inheritance on all kin of the deceased in the agnate (paternal) line of descendants and ascendancy”.⁵

Eventually, the Rabbis contributed significantly into the understanding of the order of succession. They interpreted and enumerated the rules with increasing clarity with each passing generation. Thus, the explicit order of succession in the Jewish Law of Inheritance was of such order: The son, his descendants, the daughters, the daughters' descendants, the father, the brothers, the brothers' descendants, the sisters, the sisters' descendants, the grandfather, the father's brothers, the brothers' descendants, the father's sister, their descendants and so on. Evidently the males are more favored over females in this law. In fact, the Jewish law of inheritance has inherently weaved into itself three ways in which it favors men over women.⁶ Primarily, the daughters though entitled to inherit property after considerable amount of debate and backlash, their inheritance of the entire of their father's property is subject to the strict condition of her having no surviving brothers. Secondly, the mother her kin are never considered a party to succession of property. They cannot have the rights of an heir, despite being close relatives. Thirdly, the husband always inherits from the wife but the wife cannot inherit from the husband.

This discriminatory disposition has, by and large, mitigated in the modern day adaptation of the Jewish Laws for succession. The idea of wills and testaments were always alien to the ancient Jews⁷, as the method and who the property would be inherited by was already determined by the stringent societal laws formulated and everyone had to abide by it. But of late, testamentary bequests and devises have been employed to soften these rules a little. The *Baba Bathra* portrays

⁴ Uri Yadin, 'The Proposed Law of Succession' 1953 2(2) OUP 143 <<http://www.jstor.org/stable/pdf/837295.pdf?refreqid=excelsior%3A6459a371f713844baadd7c3421a98e2d>> accessed 14 August 2023.

⁵ Elon Menachem 'The Principles of Jewish Law' 1975 446.

⁶ Mary f. Radford 'The Inheritance Rights of Women Under Jewish and Islamic Law' (2000) 23(2) BCICLR <https://lawdigitalcommons.bc.edu/iclr/?utm_source=lawdigitalcommons.bc.edu%2Ficlr%2Fvol23%2Fiss2%2F2&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed 19 August 2023.

⁷ Richard H. Heirs 'Transfer of Property by Inheritance and Bequest in Biblical Law and Tradition' (1994) 147.

testamentary disposition of property and a means of abrogated the framed order of succession.⁸

However, men are allowed to give away property during their lifetime. Though the orthodox observation of piety does not encourage the giving away of property, this action is not explicitly prohibited in the written laws. These are three different ways to 'gift' away property in three ways, an irrevocable gift of property in which the donor may retain the right to a usufruct during life (*mattenat bari*), gift made in contemplation of death (*mezavveh mehamt mitah*), and a gift on the death bed (*mattenat shekiv me-ra*).⁹

SPECIFIC RULES OF INHERITANCE FROM A MARRIAGE

Husband from a wife: As per tradition, if the wife predeceased the husband, then the husband had an undisputed entitlement to the wife's entire estate and whatever she brought with her as dowry.¹⁰ The father of such sons who lost their wives had to ensure that they got the *ketubah* along with their share from his own property.¹¹ This methodology reeked of unfairness, especially, when it came to instances of marriages that were of very short durations, amendments were made to this effect of mitigating the exercise of total inheritance by the husband of all of the wife's estate. *Takkanot*, an enactment to enable the calling for return for the entire dowry material of the wife to the wife's family if the wife passed away childless within a year of marriage and one-half of the dowry if the wife died childless within two years.¹²

Wife from a husband: Inheritance of widows has not even been mentioned in the Bible. Under the Jewish law of marriage though, a widow is entitled to receive her *ketubah* amount from the husband's estate.¹³ Apart from the *ketubah* amount to be paid, the widow is entitled to maintenance from her husband's heirs. Eventually the law provides that, the heirs can redeem themselves of the obligation to maintain the widow by giving her *ketubah* from her husband's property.¹⁴

⁸ *Baba Bathra* 8:5 THE MISHNAH 377.

⁹ Elon Menachem 'The Principles of Jewish Law' (1975) (453-455).

¹⁰ Rev. Dr. M. Meilziner 'The Jewish Law of Marriage and Divorce in Ancient and Modern Times' (1987).

¹¹ Elon Menachem 'The Principles of Jewish Law' (1975) 380.

¹² Rev. Dr. M. Meilziner 'The Jewish Law of Marriage and Divorce in Ancient and Modern Times' (1987) 255; Elon Menachem 'The Principles of Jewish Law' (1975) 448.

¹³ N.S. Hecht 'An Introduction to the History and Sources of Jewish Law' (1996) 295.

¹⁴ Alina Kofsky 'A Comparative Analysis of Women's Property Rights in Jewish Law and Anglo-American Law' (1988) 333.

CURRENT POSITION OF JEWISH SUCCESSION LAWS

In order to understand the current status of the Jewish succession laws, it becomes imperative to be familiar with the changes in geography and ethnicity that took place over time. Despite all the changes and adaptations, the characteristic feature of Jewish law of succession- discrimination in favor of male issue, still stood very strong. The Jewish people have as per records gone through forming Jewish majority states twice throughout the course of history. Each time they have formed a majority state, most of their laws have undergone fundamental transformations, especially crucial ones like succession laws. Current laws that govern Israel are essentially the product of contemplations and improvisation that embrace the traditional Jewish law as well as keeping it secular. The Jewish autonomy has considerably reduced over the community's authentic laws and the flexibility with which they used to exercise the same. With the formation of Israel into a secular state that houses many other religious and ethnic groups other than majority of Jews in the country. Thus the legislations regarding succession are framed to accommodate the general interest with minimal imposition by the state to obey rules. The Succession Law of 1965 in Israel governs succession and property rights and this legislation has jurisdictions over the estate of any individual who had been residing in Israel at the time of their death. There are two ways in which property rights are recognized in two ways, testamentary and intestate succession. The rules contained the succession law mentions the persons who are eligible to be heirs and the order of precedence. The will or the testament is basically an individual making his customized decision regarding his property. Making wills is not essentially a concept that is embraced by the orthodox Jewish succession laws, but sometimes the rules are bent to enable changes like property rights to female heirs which are not provided for in the original text of the Jewish laws. The validity of the will is determined by its execution according to statutory formalities, along with the signature and the required attestation. Adding to this the testator must be mentally capable, adult and free from duress, fraud and undue influence.¹⁵ Its when the person attains demise without formulating a testament, will the state come into the picture with intestate succession. Most laws of intestate succession encapsulate the essence of Jewish laws of inheritance, though gender discrimination has been successfully overcome. Intestate succession in Israel puts much focus on the expressive function of the legal structure in general and intestate rules in particular, the suggestion here being that, while making the intestate rules, the lawmakers always consider the different values, normative consequences, and expressive function of the rules. Section 55 of the succession law, entails what exactly a family in Israel entails. This

¹⁵ Succession Law, 1965.

becomes essential to determine the distribution of property rights in cases where there is no direction by a testament. The rules, thus, direct the entire estate to the family. Personal circumstances and discretion become irrelevant during application of these rules. According to Israeli law, the family is composed of two spheres; one being the dynastic model, which is based on kinship, the other is the conjugal model, which is based on partnership. Descendants are primarily entitled to the whole estate, and they take everything that's left over after passing over a designated portion over to the surviving spouse, should there be one. The development in succession laws is also tangentially affected by the societal restructuring with regard to family. Nuclear families are the norm which implies that descendants are preferred to ascendants. The multi generational family has been regarded redundant in this day.¹⁶ If the owner has descendants or parents, the spouse is entitled to half of the estate. If there are only siblings and their descendants or grandparents who outlive the decedent, the spouse is entitled to two-thirds of the estate. In addition, in this latter case, if the spouse had been married to the decedent for at least three years and the couple had lived together in an apartment owned by the decedent, the spouse is also entitled to the apartment. When the owner has no descendants, siblings, parents, or grandparents, the spouse takes the entire estate (Succession Law 1965, Section 11). The spouse also receives the chattel (movable property), including the car, which belonged to household. Thus it becomes apparent that modern emphasis on conjugal relations in terms of property rights is new development given how discriminatory Jewish law had been. The emphasis on dynastic relations which have been prominent is slowly fading away. The secular law, fixes so many such loopholes that pre-existed in the Jewish succession laws. It clarifies the position of adopted children and step-parents which wasn't mentioned in the religious tenets of Judaism. Adopted children can inherit only from their adoptive parents but not from their biological parents, which is a little counter intuitive but there was an amendment to this effect in 2012, making the adoptive child/children eligible to inherit their adoptive relatives property. Added to this, adoptive children can also inherit from their biological parents. However, a partner cannot be considered a parent to a child that is not born to then biologically unless the entire adoption procedure is complete for inheritance purposes. While the kinship rules are quite stringent, the laws are relaxed on partnership. Cohabiting partners are entitled to the same share of property as a married couple is, given that neither of them was married to another person during the time of the decedent's death. The opinions about a same sex couples are pretty ambivalent but the atmosphere is that of gradual

¹⁶ Shelly Kreiczer-Levy 'Succession Law in Israel: Individualism and the Family' (2013) 28(2) ISR <<https://www.jstor.org/stable/pdf/43771876.pdf?refreqid=excelsior%3A58d7dc1d36faba9307446a1a1f18cc1c>> accessed on 24 August 2023.

acknowledgement. This can be sense by a district court's decision to consider a cohabiting same sex couple eligible for purposes of inheritance. Post this the supreme court decided positively on the registration of gay marriage in one case, thus setting the tone for eventual property rights to be granted, recognized and exercised.¹⁷

JEWS IN INDIA

The Jewish community in India is one of the large numbers of ethnic groups who had come from outside the borders and now have considered India their permanent home.

They blended very effortlessly into the culture and incorporated their own traditional practices into the ones in India. Currently India houses around 6000 Jews who have completely accepted the Indian identity. They have contributed significantly to the entrepreneurial and cultural arena. There are three branches of Jewish identity that exist India, the Cochin Jews, the Bene Israeli Jews and the Baghdadi Jews. They are differentiated majorly according to the chronological order of the arrival on the subcontinent and the identity they formed in the places they settles as per the functional historical forces at the that respective point in time.

SUCCESSION LAWS FOR JEWS IN INDIA

There is no explicit legislation that governs the succession of the Jews in India. It is a considerably small minority and is governed by the secular succession act which is the Indian Succession Act, 1925.

The reformed and regulated version of the succession act of 1865, the Indian Succession Act, 1925 amalgamates the Hindu Wills Act, the Probate and the Administration Act and also the Parsi Intestate Act. It is indicated in the Preamble of this Act that it intends to consolidate the law applicable to intestate and testamentary succession. It is greatly influenced by the rule of English Law. This Act covers for succession of all communities saving the Hindus and the Muslims. The Indian succession act, 1925 applies to people of European Origin, Indian Christians, Jews, Parsis, Jains, and Sikhs.

Post the passing of the Indian Succession Act 1865, it was strongly followed that Jewish personal

¹⁷3. HCJ 3045/05 Ben Ari v. Director of Population Administration (2006) IsrSC 61(3) 537.

laws would not be recognized for succession through testament and intestacy.¹⁸ The Bombay High Court, upheld the Jewish law in a case in 1875, against the provisions of the Act of 1865, where a suit was filed by the wife for dissolution of the marriage.¹⁹ Thus ever since this case, courts have usually let the Jewish personal law prevail over such matters.²⁰

CONCLUSION

The Jewish laws of succession depict a clear affinity toward protecting the property within the tribes, a characteristic trait of fiercely keeping their property exclusive. Women were barely supported with inheritance until a very long period of time. But upon the formulation of secular laws the inheritance laws became easier on the general population (though the laws regarding inheritance by kinship remains stringent). The importance of inheritance through conjugal ties has been recognized. All in all, many issues with ancient Jewish laws, like gender discrimination, spousal rights, rights of adopted children alike have been rectified as much as possible.

Israel as state of late has claimed to be a Zionist state, and the recent developments of Israel passing the Nation State Bill shakes the secular foundations upon which the nation had seemed to build itself. This change has all possibilities of posing a veiled threat to all the laws that were framed with secularism as a background.

Apart from these potential discrepancies, the Israel Succession Law. 1965 is a great improvement on the ancient orthodox Jewish law.

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¹⁸ Gabriel v. Mordakai, 1 Cal. 148

¹⁹ Benjamin v. Benjamin, 50 Bom. 369

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