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ANALYSIS OF WOMEN’S RIGHT TO SUCCESSION AND INHERITANCE UNDER HINDU AND MUSLIM LAW

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ABSTRACT

This chapter examines the property rights of Hindu and Muslim women under their respective personal laws, with a focus on comparing their inheritance rights. It highlights significant reforms in Hindu women's property rights brought by the Hindu Succession (Amendment) Act, 2005, which granted women equal birthrights in the Mithakshara joint Hindu family property. The chapter also analyzes the property rights of Muslim women, shedding light on disparities in the inheritance laws of different communities. Additionally, it introduces readers to legislative changes in pre- and post-independence India regarding women's rights to joint family and coparcenary property, aiming to raise awareness about the ongoing discrimination women face in inheriting family property.

INTRODUCTION

The position of women in Indian society has historically been inferior to that of men, particularly in matters of property and inheritance. Rooted in a patriarchal system, ancient Hindu law intentionally denied women economic freedom and equality, relegating them to dependent roles within the family. This inequality was further reinforced by influential figures like Manu, who declared that a woman must be dependent on her father, husband, or sons throughout her life¹. Despite India's constitutional commitment to gender equality, disparities in women's property rights persist, particularly under personal laws.

This assignment explores the property rights of women under Hindu and Muslim law, with a focus on succession and inheritance. While reforms, such as the Hindu Succession (Amendment) Act, 2005, have sought to improve the status of Hindu women, disparities remain—both between different categories of women (mothers, widows, and daughters) and across religious communities. By examining the legislative framework governing testamentary

¹ Manu chapter ix

and intestate succession, this paper seeks to provide a comparative analysis of the rights granted to women under Hindu and Muslim personal laws, shedding light on the ongoing struggle for gender equality in matters of property.

WOMEN'S RIGHT TO SUCCESSION AND INHERITANCE IN HINDU LAW

• BACKGROUND

In India, Hindu personal laws concerning marriage, divorce, and succession were historically governed by Shastric and Customary laws, varying across regions and schools like Mitakshara and Dayabhaga. The Mitakshara school recognized two modes of property devolution: survivorship for joint family property and succession for individual property. In contrast, the Dayabhaga school relied solely on succession. Mitakshara law divided property into Joint Family Property and Separate Property. A joint Hindu family included all descendants from a common ancestor, but only male members, like sons and grandsons, formed a narrower body called a coparcenary. Female members, including wives and mothers, were excluded from the coparcenary, although women had certain rights to property under the concept of stridhan, which was their absolute property.

Stridhan allowed women full rights to dispose of property during maidenhood or widowhood but imposed restrictions after marriage. Women's estate, however, granted limited power of disposal, with property reverting to heirs of the last male owner upon a woman's death. Under Mitakshara law, women were excluded from inheriting coparcenary property, holding only the right to maintenance. Despite this, pre-independence legislation like the Hindu Law of Inheritance Act, 1929, and the Hindu Woman's Right to Property Act, 1937, introduced some improvements in women's property rights, though limitations persisted.

• PRE-INDEPENDENCE DEVELOPMENT

In pre-independence India, the Hindu Law of Inheritance Act, 1929 was the earliest legislation which brought the Hindu females into the scheme of inheritance. Three female heirs – son's daughter, daughter's daughter and sister were conferred the right of inheritance under the Act. The second landmark legislation was the Hindu Women's Right to Property Act, 1937 which brought revolutionary changes and also tried to ensure that in the Mitakshara coparcenary, the widow of the deceased would take the same interest which her deceased husband had in the

joint family property at the time of his death. She was made entitled to claim partition as a male owner. However, in all cases, she was as a limited owner. The widow though a member of a joint family and having right in coparcenary interest, was not a coparcener². Although these legislative enactments conferred new rights of succession on certain women, they failed to protect women against discrimination.

- **POST-INDEPENDENCE DEVELOPMENTS**

With the dawn of independence, the framers of the Constitution took note of the inequality which had been perpetuated against women depriving them of social and economic justice as envisaged in the Preamble to the Constitution of India, **Fundamental Rights in Part II (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties in Part IVA [Article 51 A (e)]**. Despite these constitutional mandates, women continued to be subjugated and deprived of her rights including property rights. Consequently amidst strong resistance from orthodox Hindu sections, the Hindu Succession Act was enacted in 1956 and came into force on 17th June 1956.

THE HINDU SUCCESSION ACT, 1956

The Hindu Succession Act, 1956 was made applicable to all Hindus including Buddhists, Jains and Sikhs and lays down a uniform and comprehensive system of inheritance and applies to those governed by Mitakshara and Dayabhaga schools as well as other schools. Not only this, it was an answer to the need of progressive society and an improvement over the old Hindu textual law particularly the law relating to succession among Hindus, for example, the non-inclusion of female relatives to inherit the property and giving preference to males. It tried to remove the existing inequality between male and female with respect to rights to property in the joint family property and also brought revolutionary changes so as to recognize the right of inheritance of Hindu females at par with males. But even this step of legislation was also not free from criticism pertaining to gender bias.

Hindu Succession Act, 1956 came under heavy criticism for retaining only males as coparceners in a joint family Mitakshara coparcenary. **Section 6 of the Act** provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the

² Narasimhanchari v. Andalammal, (1978) 2 MLJ 524

commencement of this Act, then his interest in property would devolve by rule of survivorship³ and not in accordance with the Act.

However, **Proviso to Section 6** incorporates that when Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession in accordance with the Act and not by the rule of survivorship. Therefore, it is evident from the Act that Hindu females could not inherit ancestral property by birth right and were excluded from joint family coparcenary under the Mitakshara system. For instance, if a joint family property was divided, then each male coparcener took his share and the female got nothing. Only when one of the coparceners died, she got a share in the interest as an heir to the deceased coparcener.

Moreover, by virtue of **Section 4 (2) of the Act**, women have been placed in an unequal position in comparison to of males with regard to inheritance rights in agricultural land. Further, Section 23 again disentitled a female heir to seek partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares.

Moreover, **Section 24 of the Act** made three kinds of widows- intestate's pre-deceased son's widow or the widow of a pre-deceased son of a predeceased son or widow of the brother, disqualified in succeeding to the property of the intestate on their re-marriage during the lifetime of intestate. Thus the Hindu Succession Act, 1956 instead of promoting gender equality, perpetuated gender discrimination through some of its provisions. Some of the provisions of the Act have been amended by the Hindu Succession (Amendment) Act, 2005.

Apart from the criticism the Hindu Succession Act 1956 reformed the personal law of Hindus and conferred upon Hindu women absolute and full ownership of property instead of limited rights to property. **Section 14(1) of the Act** provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner.

Further through the **Explanation appended to sub-section (1) of Section 14** different methods

³ Before Act 39 of 2005, Section 6 of Hindu Succession Act, 1956 - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in Mitakshara coparcenary property, his interest in property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act

by which woman may have acquired property are enumerated or would acquire property and states that ‘property’ includes both movable and immovable property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person whether relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also such property held by her as stridhana immediately before the commencement of this Act.

The object of Section 14 is two-fold:

- to remove disability of a female to acquire and hold property as an absolute owner.
- to convert any estate already held by a woman on the date of the commencement of the Act as a limited owner into an absolute estate.

However, where a female Hindu female, after the commencement of this Act, is given any property with certain limitations, she would hold that the property is subject to those limitations and cannot acquire those properties as an absolute owner. The limitations are set out in **sub-section (2) of Section 14** which runs as follows: —Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property”. **Section 14(2)** is an exception to Section 14 (1) and it enacts a well established principle of law that if grant is given subject to certain restrictions, the grantee will take the grant subject to those restrictions. Thus, in the absence of any provision in will, gift, decree, order of civil court, award or any other instrument prescribing any restricted estate on a Hindu female, she would take an absolute estate. Section 14(2) applies to instruments, gifts, decrees, awards, etc. which create an independent right or new title in favour of the Hindu female for the first time and not in recognition of pre-existing rights.

Punithavalli Ammal v. Ramalingam and Anr. (1964)⁴

The Supreme Court, in this [case](#), held that Section 14(1) gives an absolute right to women and it cannot be curtailed in any manner by making any presumption or interpretation of the law. It further held that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which

⁴ Punithavalli Ammal v. Ramalingam and Anr. (1964)

were previously limited.

Radha Rani Bhargava v. Hanuman Prasad Bhargava (1966)⁵

The Supreme Court, in this [case](#), reiterated its stand and held the woman to be the absolute owner. Such ownership cannot be challenged on any basis. However, it can be challenged if it can be proved that the widow transferred or alienated the property before the enactment of Section 14 and such transfer or alienation was made without any reasonable cause or legal necessity. Thus, this is the only situation in which the absolute ownership rights of the woman can be challenged.

Pratap Singh v. Union of India (1985)⁶

Section 14(1) faced a lot of criticisms wherein the Hindu men stated it to be unconstitutional on the ground that it infringes the right to equality guaranteed under [Article 14](#). However, the Supreme Court in [Pratap Singh](#) held that the provision was, in no way, a violation of either Article 14 or [Article 15\(1\)](#). It was constitutional since the rights of women need to be strengthened.

Agasti Karuna v. Cherukuri Krishnaiah (2000)⁷

The Court held in this [case](#) that women had absolute right over the property of the deceased husband under Section 14. Any transfer or alienation of such property by the wife after the commencement of the Act cannot be challenged by any of the heirs.⁷

The general rules of succession to the property of a Hindu female dying intestate is that the order of succession devolves according to **section 15 and 16 of the Act**. **Section 15(1)** provides that if a Hindu female dies intestate, then her property will devolve according to the rules set out in Section 16 as, firstly upon the sons and daughters (including the children of any predeceased son or daughter) and the husband; secondly, upon the heirs of the husband; thirdly upon the mother and father; fourthly upon the heirs of the father; and lastly upon the heirs of the mother. However if a female Hindu, dies issueless leaving behind no child or grandchild, then different rules will govern the matter of succession to her property, depending on whether she has inherited property from her father or mother or from husband or father-in-law. Section

⁵Radha Rani Bhargava v. Hanuman Prasad Bhargava, AIR 1966 SC 216

⁶Pratap Singh v. Union of India, (1985) 3 SCC 455.

⁷**Agasti Karuna v. Cherukuri Krishnaiah**, (2000) 3 ALD 623 (Andhra Pradesh High Court).

15 does not apply to the property held by a Hindu female with restricted rights i.e. provided in Section 14(2) at the time of her death but applies to cases where she becomes a fresh stock of descent.

Under subsection 2 (a) of section 15, if a Hindu female inherits any property from her father or mother, and she dies without children or grandchildren, then her property devolves on the heirs of her father.

REFORMS IN SUCCESSION LAW THROUGH STATE AMENDMENTS

Acknowledging the discrepancies in regard to Hindu women's position in Mitakshara coparcenary, certain states, viz., Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in India, took cognizance, that for economic and social justice to prevail, women must be treated with equality. Accordingly, the Kerala Joint Hindu Family System (Abolition) Act, 1975 completely and fully abolished male's right by birth to property and brought an end to the joint Hindu family system. No one can claim any interest in ancestral property on ground of birth in the family. By making amendment to section 6 of the Hindu Succession Act, 1956, the States of Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka in 1986, 1989, 1994, 1994 respectively, declared that daughters are coparceners in Joint family property. As per the Amendment Acts of these four states, only a daughter who was unmarried at the time of the amendment would be entitled to be a coparcener by birth in her own right in coparcenary property and be subject to similar liabilities and disabilities as incurred by sons. Thus, by virtue of these amendments, dual rights have been conferred on daughters, as on one hand, she becomes coparcenary property right owner in her natal joint family, and on the other hand, she becomes a member of the marital joint family after her marriage.

LAW COMMISSION OF INDIA

State amendments brought sweeping reforms in their respective places. But, Hindu women in other states of India continued to be subjugated to inequality in relation to their property rights because of the shortcomings of the Hindu Succession Act, 1956. To ameliorate the position of Hindu females, initiative was taken up the Law Commission of India which in its 174th Report on —Property Rights of Women: Proposed Reforms under Hindu Law under the Chairmanship of Justice B. P. Jeevan Reddy, made important recommendations, stating that discrimination against women is writ large in relation to property rights, social justice and

demanded that women should be treated equally both in the economic and social system.⁸The recommendations of the Law Commission of India found reflection in the Hindu Succession (Amendment) Act, 2005 with the amendment of section 6 and omission of sections 4(2), 23 and 24 which had under Hindu Succession Act, 1956 (original Act) perpetuated a gender bias and inequality. In the year 2008, the Law Commission of India in its 207th Report under the Chairmanship of Justice A. R. Lakshmanan, recommended the proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a Hindu female dies intestate leaving her self-acquired property with no heirs. This proposal has not been incorporated in the Act till date.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

The Amendment Act, 2005 deleted Section 4 (2) of the Hindu Succession Act 1956, and paved the way for women's inheritance in agricultural lands becoming equal to that of males. The amendment has done away with the discriminatory state-level tenurial laws and benefited many women who are dependent on agriculture for their sustenance.

The Hindu Succession Amendment Act, 2005 has addressed a very pertinent matter relating to the rights of daughters in the Mitakshara coparcenary and thus elevated the daughter's position by amending section 6 of the Hindu Succession Act 1956. The amended Section 6 deals with devolution of interest in coparcenary property.

Section 6(1) provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener. But this provision applies to both married and unmarried daughters before the commencement of the Amendment Act, 2005.

Any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December, 2004, shall not be affected or invalidated by

⁸ 174th Report on —Property Rights of Women

the provision in Section 6(1) [**Proviso to section 6(1)**].

Further any property to which female Hindu becomes entitled by virtue of sub-section (1) of section 6, shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by her by will and other testamentary disposition [**section 6(2)**].

The provision also provides that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara Law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided, as if a partition had taken place [**section 6(3)**].

Further the daughter is allotted the same share as is allotted to a son [**section 6 (3) (a)**] and that the share of the predeceased son or a predeceased daughter as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter [**section 6(3) (b)**]. Further the share of the pre-deceased child of a predeceased son or of a pre deceased daughter as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter [**section 6(3)(c)**].

The Explanation appended to section 6(3), highlights a important fact that the interest of a Hindu Mitakshara coparcener, shall be deemed to be the share in the property that would have been allotted to him, if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Thus, by virtue of amended section 6, the daughter of a coparcener has become a coparcener in the Mitakshara joint family property and has the same birth right as that of son with same rights and liabilities. Daughters will now get a share equal to that of sons at the time of notional partition, just before the death of the father, and an equal share of the father's separate share.

Though the amended Section 6 is a significant advancement towards gender equality and economic security for daughters, yet other females such as mothers have not been given recognition as coparceners. Justice and equality cannot be secured for one category of women at the expense of another. Therefore, the law must be changed to confer all Hindu women equal

property rights in ancestral as well as separate property. **Section 23 of the Hindu Succession Act, 1956 has been omitted by the Amendment Act, 2005**, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home. **The Amendment Act, 2005 has also omitted section 24** which had disqualified certain widows on remarriage from succeeding to the property of intestate. Now the widow of a predeceased son or the widow of a pre-deceased son of a pre-deceased son or widow of the brother can inherit the intestate's property even if she has remarried.

Moreover the Amendment Act, 2005 has added some more heirs to the list of Class I heirs who are daughter's daughter's daughter, daughter's son's daughter and son's daughter's daughter and daughter's daughter's son.

Prakash & Ors. v. Phulavati and Ors. (2016)⁹

In the case of Phulavati, the daughter acquired the property from her deceased father who had acquired it from his adoptive mother. The appellant in the present case contended that the respondent had a right over only the self-acquired property of the father. However, at this time, the 2005 Amendment was introduced and the respondent now claimed share as per the amendment.

The Supreme Court held that —only living daughters of living fathers could become coparceners and no remedy would lie if the father died before the commencement of the Hindu Succession (Amendment) Act, 2005. Therefore, no retrospective effect could be given to the Act and in the case of a pre-deceased father, the property would devolve as per the rules of survivorship. Therefore, such a daughter whose father died before the date of commencement of the Act could only have a right in his self-acquired property and not coparcenary property.⁹

Danamma v. Amar Singh (2018)¹⁰

The facts of Danamma were that a man died in 2001 leaving behind a wife, two sons, and two daughters. After the death, the grandson of the deceased grandfather sought partition.

However, they denied any share to the two daughters claiming that they were born before the

⁹ *Prakash & Ors. v. Phulavati & Ors.*, (2016) 2 SCC 36.

¹⁰ *Danamma @ Suman Surpur & Anr. v. Amar Singh & Ors.* (2018) 3 SCC 343

enactment of the Hindu Succession Act, 1956. The contention was upheld by both the trial court and High Court, though, by then, the 2005 Amendment had already come into being. On appeal to the Supreme Court, the Supreme Court held that daughters could be treated as coparceners and be given a share in coparcenary property if the case had been pending before the 2005 Amendment Act. Moreover, the date of birth of the daughter was irrelevant, the only condition being, she should be alive on the date of partition.

The above two cases added to further conflicts as both the cases were contradictory. The dispute was finally settled in 2020.

Vineeta Sharma v. Rakesh Sharma & Ors. (2020)¹¹

Overruling Phulavati and partly overruling Danamma, the Supreme Court, in this case, stated that the right in coparcenary is accorded by birth. Thus, the birthdate of a daughter is immaterial in this regard. Moreover, it stated that the father need not be alive as on commencement of the 2005 Amendment Act. It held that the Act will be effective retroactively. That is, daughters will be given a share in the coparcenary property even if the father died before 2005. The Supreme Court pointed to the object of the Act which was to remove gender discrimination regarding rules of the coparcenary. Thus, the object could be fulfilled only if the Act was applied retroactively.¹¹

INHERITANCE RIGHTS OF WOMEN UNDER MUSLIM LAW

Laws of inheritance under Muslim law are derived from the customs and usages prevalent among the tribes of Arabia before the revelations of the Quran, as supplemented and modified further by the Quranic principles and the Hadis of the Prophet. Contrary to popular belief, Quranic revelations were not the starting point of Muslim law. It was in existence even prior to that, but it was systematized, concretized and modified by the revelations and the traditions of the Prophet. Indian Muslims are governed by the un-codified Muslim Law of Inheritance. **The Muslim Personal Law (Shariat) Application Act, 1937** expressly directs the courts in India to apply the Muslim law of inheritance to all Muslims.¹² This Statute had the effect of abrogating all customs relating to personal law and inheritance, which were at variance with the Quranic law. This was required since, most of the converts to Islam in India, continued to follow their customary law of inheritance even after conversion. However, the Muslim law of inheritance

¹¹ Vineeta Sharma v. Rakesh Sharma & Ors., (2020) 9 SCC

¹² The Muslim Personal Law (Shariat) Application Act, 1937

in succession doesn't applied to the property of a Muslim, if he gets married to a Muslim or a non-Muslim under the Special Marriage Act, 1954. In such cases, succession to the property of the parties to the marriage and also to the issue of such marriage would be governed by the general provisions of inheritance available under the Indian Succession Act, 1925 and not in accordance with the provisions of the Muslim law.

Under the customary laws of Arabia male agnates were given paramount importance and the nearest male agnate's successes to the entire estate. With respect to other agnates, descendants were preferred to ascendants, which in turn were preferred to collaterals. Females and cognates were excluded from inheritance. With the revelation of the Holy Quran, the basic principle of comradeship in arms was substituted for blood ties. The Prophet says 'there was no bond stronger than the blood tie' and it became the guiding principle, and, succession rights were extended to all the blood relations of the intestate, irrespective of their sex or the sex of the line of the relatives through whom they were related to the deceased. Consequently blood relatives (primarily females and cognates) who were earlier excluded were called Quranic sharers.

ISLAMIC PRINCIPLES OF SUCCESSION ACCORDING TO PROPHET

The Principles are:

- Husband and wife being equal are entitled to inherit to each other.
- Some near females and cognates are also recognized and enumerated as heirs.
- Parents and certain other ascendants are made heirs even when there are descendants.
- The newly created heirs are given specified shares along with customary heirs, who are reliquaries.

DISTINCT RULE'S OF INHERITANCE UNDER SHIA AND SUNNI LAWS

Laws relating to Shias and Sunnis with respect to inheritance are different. The difference arises as to the interpretation and implication of Quranic provision and their incorporation in the already existing system. The Quranic revelations did not abrogate the then existing customs and usages, which provided the basic framework for laws of inheritance. The Quran provided their modifications by adding to and amending the then existing rules.

The Sunnis kept the old framework intact, such as preference to agnates over cognates, and

superimposed the Quranic principles on this old set-up. The Shias on the other hand, blended the old rules and the newly laid down rules. They revised the law prevalent under the Arabian customs and usages, in the light of the newly laid down principles and came out with a scheme widely different from the one propounded by the Sunnis.

No Concept of Joint Family and Joint Family Property

Muslim law does not recognize the concept of a Joint family as a separate entity or the distinction between the separate or the joint family property, irrespective of whether the property was inherited from the father or any other paternal ancestral. The son does not have right by birth in the father's property. Exclusive ownership with full powers of alienation is an essential feature of property ownership under Muslim law.

Single Scheme of Succession

Muslim law provides a single scheme of succession irrespective of the sex of the intestate. A woman acquires an absolute right in the property that she inherits, whether as a daughter, sister or mother, with full powers of alienation. She is permitted to keep her identity and individuality even after her marriage, and her relations are defined and ascertained in terms of her own self and not with her respect to her husband or parents unlike under Hindu law. The woman's blood relatives are her heirs and the heirs of her husband are not given any preference.

Heritable Property

A Muslim is not permitted to bequeath more than one-third of his estate without the consent of his heirs. So generally, even if he makes a Will, two-third of the property would go by intestate succession. Where he does not make a Will the entire property would go by intestate succession.

Sunni Law of Inheritance

In Sunni law the heirs are divided into three groups:

- Sharers
- Residuaries, and
- Distant Kindred

These groups comprise only of blood relatives with the exception of the surviving spouse of the intestate. The property in the first instance is to be distributed among those sharers who are

entitled to get the property (as explained earlier). Sharers are the heirs who were earlier excluded but were introduced as heirs by the Quranic revelations. Their shares are fixed. Once the property is distributed among the sharers, and if anything is left, this surplus called the residue goes to the next category called residuaries. When there is no residuary present, the property passes to the third category which comprises of cognates. So long as any heir in the former two categories is present, the property does not pass to the third category of distant kindred.

There are five primary heirs, who if present would not be excluded and would invariably inherit the property.

They are:

- Surviving Spouse
- Son
- Daughter
- Mother/Father

The son is residuary but the rules of inheritance are so designed that he would always inherit property. Parents also are the primary heirs and inherit along with the children and spouse of the deceased taking their fixed shares.

Where the **surviving spouse** is the widower or the husband of the deceased woman, he takes one-fourth of her property in presence of a child or the child of a son, and in their absence it is half of the total property. In case a man dies, his widow takes one-fourth of his property in absence of a child or child of a son, and in their absence it is one-eighth, share. Where more than one widow is present all of them collectively will take one-fourth or one-eighth as the case may be and will divide it equally among them.

A daughter inherits as a sharer only in the absence of a son. An only daughter takes one-half share in the property, and if there are two or more daughters they would together take two-third of the property. In the absence of the son she does not inherit as a sharer but becomes a residuary along with him and takes a share equal to half of his share.

The Father is a primary heir and has a fixed one-sixth share as a sharer which he inherits along with a child or the child of the son. In their absence he inherits as a residuary and takes to the extent of the total property in absence of any other sharer.

The **Mother's share** is fixed as one-sixth in presence of a child or child of a son or when there are two or more brothers and sisters or even one brother and one sister, irrespective of whether they were related to the deceased by full blood, consanguine or uterine relationship and her share is enhanced to one-third in the absence of child or child of a son or where only one brother or sister may or may not be present.

Shia Law of Inheritance

Shias divide the entire group of heirs into sharers and residuaries. There is no corresponding category to distant kindred under Shia law. There are nine sharers three of them are males and six are females and include the parents, surviving spouse (husband or wife as the case may be), daughter, full and consanguine sister and uterine brothers and sisters.

On the death of a Shia female, her husband has a fixed one-fourth share in presence of the lineal descendants and half share in their absence. Under Sunni law, the variation depends upon the presence or absence of children or any child of a son, but under Shia law, a child or lineal descendant (Including that of the daughter) would affect the share of the surviving spouse.

Where **the deceased is a male**, the widow takes one-eighth as a sharer in presence of lineal descendants and one-fourth in their absence

Both the **father and the mother** inherit along with the spouse and descendants. The Father inherits as sharer, taking a fixed one-sixth share in presence of lineal descendants and in their absence inherits as a residuary. Mother's share is one-sixth, in presence of lineal descendants.

Under Shia law, a **daughter** in the absence of a son inherits as a sharer. If there is only one daughter or only one descendant of such daughter, she will take half of the property and if there are more than two daughters or their descendants they take two-third of the property. With the son, a daughter inherits as a residuary and takes a share that is equal to half of his share. The son inherits as residuary.

Though women are awarded a share, their entitlement is half that of the male heirs in the same category. For example, the daughter's share is half that of son's share. Since, the right of inheritance was introduced at the time when women were not independent and were not capable of looking after their own financial needs, this prescription is the basis of equity rather than

equality. A Muslim man therefore, cannot deprive his wife or daughter of their rightful share either by forming a Hindu undivided family (HUF) or through a Will which will deprive women of their share in property. This is viewed as a positive feature unique to Muslim law.

CONCLUSION

The property rights of Hindu women have evolved significantly, particularly with the passage of the Hindu Succession (Amendment) Act, 2005, which granted daughters equal rights in the Mitakshara coparcenary. While this marked an important step forward, the exclusion of other Hindu women from coparcenary rights remains unjust and contradicts the principles of equality and social justice enshrined in the Indian Constitution. Despite legal reforms, many women are still denied their rightful inheritance due to societal norms and patriarchal structures. To address this, women must be empowered through legal literacy and social awareness programs to assert their rights. Achieving gender equality requires ongoing efforts from the government, civil society, and individuals to challenge deep-seated biases and promote fairness in both law and practice. True justice will be realized only when society's attitudes shift towards recognizing equal rights for all.

