

INHERITANCE LAWS ANALYZED THROUGH THE LENS OF GENDER JUSTICE

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ABSTRACT

A woman's legal right to inherit property in India has been restricted since the ancient times. Although Indian culture encompasses a multitude of religions which govern inheritance laws, a common theme amongst these personal laws is the discrimination against women. Patriarchal values which vouched for a son-centered economy ensured that the female's share in ancestral property would always be less than their male counterpart. Property, being a key resource in obtaining independence, power and wealth, was constantly denied to women. This perpetuated their inferiority and a crippling dependency on their natal and matrimonial family. Through time however, these restrictions have undergone changes, as legislations have been implemented and amended to ensure a less gender-biased allocation of property. This paper aims to critically examine the evolution of succession rights for women through the lens of gender justice. The trajectory of Hindu women's right to property will be analyzed from the conception of the ancient Mitakshara school of law to the most recent 2005 amendment to the Hindu Succession Act which aimed to provide equal inheritance rights for daughters in a coparcenary. In order to emphasize the gendered nature of the law, a criticism of the Hindu Succession Act, 1956 will follow from a feminist legal perspective. Subsequently, an appraisal of Christian customary laws using the landmark case *Mary Roy v State of Kerala* will exemplify how the judiciary has played a pivotal role in eradicating sexist practices that oppress women. Furthermore, a study of Muslim women's right to property will also be assessed in order to determine the extent of gender disparity that pervades personal laws in India.

Keywords: *Property inheritance, women's rights, personal laws, Hindu Succession Act, Christian women's right to property, Muslim women's right to property, gender discrimination, family law*

INTRODUCTION

Due to the plethora of religions followed in India there exists no uniformity amongst inheritance laws. However, what is uniform across these personal laws is the patriarchal values imbibed that lead to the discrimination of women. Since time immemorial, scriptures and laws have been tools employed to the prerogative of men in order to maintain a power structure over the control of assets. The oppression, subservience and inferiority that women suffer boils down to their denial of ancestral property. Formerly in her natal home, a woman was perceived as a burden to be passed on and given up to her matrimonial family. Hence to avoid losing property from the ancestral lineage, she was not allowed to inherit any property of her own. Given the traditional socio-economic context which propagates a “son-centered economy,” the exclusion of women from inheritance perpetuates a culture of dependency and reinforces her subordination.

In contemporary society, there have been contentions raised and amendments brought forth to tackle age-old stereotyping and sexist laws in order to bring about more parity between men and women. The Constitution of India enshrines the doctrine of gender equality under Article 14 thus countless practices and rules have to be questioned through the lens of discrimination on grounds of sex and religion in order to be constitutionally valid. Yet, the State's interference into the realm of religion has always been an extremely controversial debate which has allowed for discriminatory practices to perpetuate under the guise of preserving the private domain's peace and harmony. This research paper will aim explore the trajectories of Hindu, Christian and Muslim laws through the lens of gender justice. By tracing each community's evolution of succession laws, the various patterns of discrimination against women will be unearthed in order to assess whether gender equality has truly been attained.

HINDU WOMEN'S RIGHT TO PROPERTY

Since the Vedic period, the position of women in Hinduism was considered inferior to men and they were cast off from having any political and inheritance rights. Ancient scriptures and texts such as the Dharmashastras, Manusmriti and various other sastras blatantly propagated for a patriarchal setup that regarded females as non-autonomous beings, given that “a woman is not entitled to independence; her father protects her in her childhood, her husband in her youth, and her son her old age.”ⁱ The concept of a Hindu Joint Family, in the Mitakshara school was a major factor that contributing towards distorting gender equality. The position for head of the family was reserved for the eldest male called the Karta and there existed a narrower body called the coparcenary comprising only of male members, up to four generations.ⁱⁱ Legal ownership lay with the coparceners implying that females were reduced to possessing merely rights to maintenance and marriage expenses. The doctrine of survivorship meant that upon the death of a coparcener, his share was inherited by the rest of the male coparceners even in the presence of the deceased's female descendants or widow. Furthermore, the denial of ancestral property is also believed to have led to the socially immoral concept of the dowry system which although illegal, still pervades in practice.ⁱⁱⁱ However, the notion of stridhana was an atypical medium for women to enjoy exclusive ownership of property. Usually, this was in the form of the father allocating property akin to a “gift” at the time of the daughter's marriage.

The Hindu Women's Right to Property Act, 1937 can be considered as the first gateway to more gender-equal practices. By diluting the doctrine of survivorship, the widow of a deceased coparcener was allowed to step into his shoes to claim rights to the property he possessed.^{iv} Yet, these rights were not absolute in nature and were heavily curtailed. She was allowed to possess, use and enjoy the property but could not alienate it and the right itself extinguished upon her remarriage or death. This Act was replaced by the Hindu Succession Act in 1956 and Section 14 abolished the concept of women's limited estate and granted them full ownership. *Tulsamma v Sessa Reddy* exemplifies the judiciary's attempt to ameliorate women's status. The respondent's contention was that the female appellant only had a limited interest out of the property. However, the Supreme Court ruled in the woman's favour, deeming that “she had become the full owner of the property by virtue of Section 14 of the 1956 Act.”^v A noteworthy mention is that in *Pratap Singh v Union of India*, the petitioner challenged the verdict of the *Tulsamma* case, claiming that it violated Article 14 by favoring Hindu women, hence it should

be unconstitutional.^{vi} The Court rejected this contention and upheld women's rights by claiming that Article 15 (3) allows the State to make special provisions protecting women and children via positive discrimination. This highlights the judiciary's attempt to ensure gender equality is maintained and disallow regressive notions from seeping back in.

Another reform which attempted to remedy women's inferior status was the concept of notional partition. This legal fiction meant that the undivided share of a deceased coparcener would be deemed as his separate property and would be distributed as per general laws of succession and not following the classical doctrine of survivorship. However, the female class I heir was nevertheless given only a small fraction of this portion compared to the son, thus it still yielded a highly inequitable distribution.^{vii} Furthermore, by virtue of Section 30 of the Act, the father could convert his joint property interest to separate property via a Will, thereby disinheriting the daughter. As Lucy Carol states, "rather than attempting a wholesale reform of the Mitakshara system, the Hindu Succession Act merely tinkered with it,"^{viii} proving to be an illusion of progress.

The second school of thought in Hindu tradition i.e. Dayabhaga Law is perceived to place women on a better standing. Since this doctrine does not recognize any right by birth through survivorship and instead follows the concept of succession which depends on the closest legal heir, this implies that there is no preference of cognates over agnates. The absence of any male birthright denotes that a daughter under the Dayabhaga school can possibly succeed as an heir to her father's ancestral property, which would never have been an outcome under the Mitakshara system, unless her father were a sole surviving coparcener with no male relatives. Hence, post implementation of The Hindu Succession Act 1956, the legal position of a Dayabhaga daughter had a much more ameliorating and liberal effect as compared to a Mitakshara daughter, considering that intestate provisions in the absence of a will render daughters and sons as simultaneous and equal heirs.

To further achieve equality, an amendment of The Hindu Succession Act was made in 2005 which introduced daughters as coparceners and bringing them on par with sons in the family. Under classical law, after the daughter's marriage, she ceased to be a member of her natal family however the amendment results in her remaining a coparcener of the joint family regardless of her marital status. The case of *Pravat Chandra Patnaik* exemplifies the object of

the amendment, which was to “eradicate the discrimination contained in Section 6 by giving equal right in the Hindu Mitakshara coparcenary property to sons and daughters.”^x The ruling in *Sekar v Geetha & Ors* also observes that “the Parliament intended to achieve the goal of removal of discrimination not only as contained in Section 6 of the Act but also by conferring an absolute right to a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act.”^x

One should note the confusion created after the amendment to Section 6. The Supreme Court judgment in *Prakash v Phulavati* affirmed that the amendment would only be prospective holding that “rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born.”^{xi} This meant that if the coparcener had passed away prior to 09.09.2005, the daughter would have no right to coparcenary property. However, in 2018 the Supreme Court in *Danamma v Amar* agreed with the findings in *Phulavati* yet held that since the suit for partition was pending while the Amendment Act was implemented, the daughter’s rights got crystallized. Hence despite the fact that the father who was the coparcener, passed away in 2001, the daughters were still entitled to the benefit conferred via the amended Section 6.^{xii} This would imply that the Act had a retrospective effect. Thus, this contradiction in interpreting the law is what has led to a floodgate of litigation due to lack of clarity regarding whether a daughter can be entitled to equal share as her brothers if the coparcener died before 2005. Subsequently, *Mangammal v. T.B. Raju*, a Supreme Court judgment sought to reconcile the seeming dichotomy between *Phulavati* and *Danamma* by upholding the former as the authoritative precedent and overruling the latter.^{xiii} Although the position of a female coparcener is now less ambiguous, the multifarious problems and confusion that ensued due to an amendment aimed at uplifting women should be noted.

FEMINIST LEGAL RESPONSES TO THE ISSUE OF GENDER EQUALITY

In this light, it cannot be denied that the 2005 historical amendment does indeed ameliorate women’s status however females still have lesser inheritance rights than males. It is observed how “this retention of the Hindu Joint Family system with a superimposition by way of

introduction of daughters as coparceners, without fundamentally altering the basic structure, is perplexing.”^{xiv} 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 on 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.^{xv} Not only would this be a small step towards assimilating a Uniform Civil Code but it would also put an end to the discrimination on the basis of sex which treats male and female intestates differently.^{xvi}

An extremely contentious aspect is the unfairness embodied in section 15 and 16 of the Hindu Succession Act which stipulates rules of succession for a Hindu female dying intestate. A landmark case which exposed the irrational logic was *Omprakash v. Radhacharan*,^{xvii} where the widow was driven out of her matrimonial home by her in-laws and thus went back to her matrimonial home where she later amassed self-acquired property and wealth. Yet, after her death, her in-laws demanded to inherit her property as according to section 15 (1) (b), they were legally entitled to it as the husband’s heirs. This highlights the unfairness of the section as the husband’s heirs, who in this case disowned and condemned their daughter-in-law later claimed the deceased’s property. Yet, morally it should have reverted to her own parents.^{xviii} The court neglected an opportunity to decide the matter regarding female intestate succession in a gender-just way and rather, it comes across as a subtle tactic to curb the complete interest of a female coparcener.^{xix} However, in 2012 the Bombay High Court held that Section 15 (1) was unconstitutional as “discrimination is based on gender and not family-ties,” while deciding the case *Mamta Dinesh Vakil v Bansi Wadhwa*.^{xx} Given today’s time where women are becoming independent and acquiring property through their own skill, it would be unfair if years of her labor would be watered down by going to her remote husband’s heirs and not her own blood-relations. The 207th Law Commission Report suggested eradicating the gender-bias by making Section 8 unisex and removing Section 15.^{xxi} A bill in parliament was also put together in 2013 to insert a new clause under Section 3 to define self-acquired in a gender-neutral way and create a new system of devolution under Section 15 which would yield more

equitable results. However, the bill lapsed and the legislative framework has still failed to amend such discrepancies and bring about gender parity.^{xxii}

Regarding the question of retaining the joint family system, the issue was deliberated upon during the formation of the Hindu Succession Bill, 1944-55 however majority of the parliamentarians were in favour of upholding the structure.^{xxiii} Unfortunately, since traditional society is so deeply entrenched with patriarchal values of a son-driven economy and women being subordinate, there is an unwarranted fear that doing away with this backward concept will uproot the family structure. The Kerala legislature however abolished the Hindu Joint Family in 1976, rendering an end to the injustice caused to widows and allowing their laws and customs to become more in sync with constitutional values of gender equality.^{xxiv}

CHRISTIAN WOMAN'S RIGHT TO PROPERTY

Prior to the implementation of the Indian Succession Act, the majority of Christians were governed by customary laws that were highly discriminatory in nature.^{xxv} The prevalent acts in Cochin and Travancore were The Travancore Succession Act, 1916 and The Cochin Christian Succession Law, 1921 both of which had disproportionate effects on women. For instance, when dealing with succession of immoveable property, a widow could only have a life-time interest.^{xxvi} Furthermore, the share given to daughters was only one-third of the son's or they were offered Rs. 5000, depending on whichever was lesser in value.^{xxvii} Typically, sons inherited the bulk of the property and in the absence of sons, it would devolve to the nearest male kin and so it was impossible for single women to possess or acquire property of their own. Hence, the archaic laws were sexist in nature, suffered from narrow interpretations and due to there being "no solid or uniform laws, many of the decisions were taken on the case to case basis."^{xxviii} In 1924, the Indian Succession Act was introduced which provided better protection for women's inheritance rights. Widows were entitled to get one third of the ancestral property and sons and daughters could get equal portions of the remaining shares. Ideally, this Act should have replaced the harsher customary laws in Travancore and Cochin. Yet, Christian men, backed by the church were vehemently against this, since their interests would be sacrificed. Although Justice Krishna Iyer sought for a bill to render "The Travancore Christian Succession Act and Cochin Christian Succession^[1] Act stand null and void,"^{xxix} its opposition,

given the patriarchal and conservative values, coupled by the Church's disfavour led to the bill to cease taking effect. Hence discrimination on the basis of sex was allowed to pervade in the context of property rights.

Notably, one of the landmark cases which radically uplifted the position of Syrian Christian Women in Kerala and explicitly addressed discrimination was *Mary Roy v State of Kerala* in 1986.^{xxx} Roy had been pressurized to move out of her residence and was excluded from inheriting a share of the ancestral property. Her brothers claimed that according to the Travancore Act of 1916, their parental property solely belonged to them and thus she was illegally residing in their home. She challenged two provisions of the Act by filing a petition under Article 32 in the Supreme Court on the ground that these laws were constitutionally invalid. The court ruled that provisions under the Travancore Succession Act did indeed violate the principles of gender equality enshrined under Article 14 of the Constitution. Hence the Act was rendered void and was to be replaced by Chapter 2, part V of The Indian Succession Act, 1925 which would become the prevailing law to govern intestate succession. This would end the discrimination between sons and daughters and the judgement was to have a retrospective effect. However, the backlash was overwhelming with the Syrian Christian lobby seeking to strike down the verdict. The argument centered around the fact that the Court's interference amounted to a violation of their personal laws and its aftermath would lead to the disintegration of the Syrian Christian society. What is ironic to note is that "the church which claimed to be preaching love, justice and peace did not feel that the state was interfering in the privacy of the family when through the 1916 Act it was said that the daughter be given only one fourth of the property."^{xxxix} These contentions "only expose the gendered structure of justice of the community, when the secular court has ruled that equality of sons and daughters regarding rights should be upheld, the Syrian Christian community was pressing for legislation to thwart the retrospective application of the Supreme Court verdict and uphold the construct of patriarchy."^{xxxix} Thus, the evolution of the personal laws governing Kerala emphasize the importance of legislative reform and further, that despite hurting religious sentiments, changes in the legal system are imperative in order to achieve gender justice and progress.

MUSLIM WOMEN'S RIGHT TO PROPERTY

Muslim succession laws are based on uncodified quranic principles, holy injunctions, legislative acts and case laws. It is believed that in pre-Islamic Arabia, the law of inheritance was highly sexist and preference for males was explicit with women possessing no right to inheritance whatsoever.^{xxxiii} Although it is said that the prophet reformed these principles to bring about gender-parity, nevertheless, the position between men and women is still inequitable.^{xxxiv} As a general practice, “females get a share equal to half of the share of the male counterpart standing in the same degree of propinquity.”^{xxxv} 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.”^{xxxvi} Under Sunni Law for intestate succession, a daughter being a sharer is entitled to succeed property belonging to both parents as a quranic heir. However, if there exists a custom or state amendment she can be excluded. For instance, under the Watan Act, 1886 a daughter is debarred from inheriting if her paternal uncle is alive and some communities in Jammu and Kashmir permit the daughter to inherit only if there are no male agnates of the deceased. A school of Islamic practice i.e. Hanafi Law, followed by Sunni Muslims discriminate against women by causing not only females but their descendants as well to be cast to an inferior position compared to the males in the family.^{xxxvii} Shia Muslims who follow the Ithna-Ashari law also imbibe gender-bias practices which have harsher repercussions on women. For instance, on the death of her husband, a woman with no children is not entitled to inherit her husband's immovable property, yet vice-versa, a husband is not barred from this irrational rule. It is only in exceptional circumstances, as pointed out in *Hammed Khan v Peare Mirza* where there exists no other heirs does the childless widow become entitled to inherit the property by the application of the doctrine of *radd*.^{xxxviii} Nevertheless, while Muslim Law has been condemned for discriminating against the female since she inherits only half the share of her brother, it should be noted that in some aspects, it provides better for daughters in comparison to Hindu Law.^{xxxix} A Muslim daughter cannot be completely disinherited by her father as a rule stipulates that a Muslim is only allowed to distribute a maximum of one-third of his property via a will. On the other hand, a Hindu daughter is more vulnerable in light of Section 30 of The Hindu Succession Act^{x1} or, if under the Mitakshara system, a father simply dispenses his joint property share to other coparceners.

Another area where gender discrimination prevails is with respect to agricultural land. The implementation of the Muslim Personal Law (Shariat) Act, 1937, was to replace customs and usages that governed property, barring agricultural land.^{xli} One of the objects behind the act was to repeal sexist customs and practices that oppressed women yet “by excluding agricultural land from its purview, however, the '37 Act left a major gender inequality intact.”^{xlii} This is unfortunate considering that a significant amount of property seen in the Muslim community falls under the domain of agricultural land and hence the intention to uplift women becomes futile. Although some states like Kerala, Tamil Nadu and Andhra Pradesh have amended this loophole by including agricultural land, the Act continues to act as a disability towards women in States like Himachal Pradesh, Uttar Pradesh and Punjab. Under the guise of preventing fragmentation of land, the prevailing customs and tenure laws favour males as first-order heirs to inherit property. When initiative was taken to remedy this issue by deleting the discriminatory clause, the Law Ministry was against the reform, deeming that “it is the consistent policy of the central government not to interfere with the personal law of the country until the proposal comes from a sizeable portion of society.”^{xliii} Thus, gender discrimination continues to flourish in this aspect.

CONCLUSION

While it should be acknowledged that personal succession laws have evolved to provide for women and recognize their rights to inheritance, the current scenario is far from yielding a truly equitable position. Women are still considered as inferior and are coerced into remaining dependent by only claiming limited interest in property. In many cases, given the traditional socio-economic context, illiteracy coupled by a lack of awareness of their rights translate into women being deprived of property without even contesting this discrimination in court. Furthermore, the deeply-embedded patriarchal values result in women fearing to fight for their rightful property or being pressurized into voluntarily renouncing their right such as the Hindu practice of “*haq tyag*.”^{xliiv} Due to India being characterized as a pluralistic society that hones a myriad of communities, sects and traditions, the question of implementing a Uniform Civil Code that will abrogate all personal laws is extremely controversial and sensitive. Yet, many proponents for the scheme argue that in doing so, the gender discrimination which has been allowed to perpetuate for centuries will be put to an end. The legislature and judiciary are

instrumental in weighing all stakeholders' interests in order to achieve an outcome that is favourable and truly in sync with our constitutional values. Nevertheless, society should also reform and re-evaluate its customs, principles and practices in order to reinstate women from their derogatory position and strive for gender justice.

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ⁱⁱ Coparcenary consists of the senior-most male member and his lineal male descendants up to three generations i.e. father, his son, grandson and great grandson. (This is prior to the 2005 amendment of the Hindu Succession Act).

ⁱⁱⁱ Since women were excluded from inheriting ancestral property from the father, the dowry represented the Hindu woman’s share to her father’s property once she was to be married. However, this evolved into the socially pernicious and greedy practice of a husband expecting a dowry from his bride since her wealth would be taken over by him. Thus this social practice turned into another medium of oppressing and victimizing women, as females were seen as a financial burden on the natal families, leading to further problems like female feticides.

^{iv} The Hindu Women’s Right to Property Act, 1937.

^v In fact, the Supreme Court deemed that Section 14 was “wide in its scope and ambit.” The object of Section 14 (1) and (2) is two-fold: it removes the disability associated with women’s right to property and it makes her the full and absolute owner of the property. Since it stipulated that “any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as full owner” the court ruled that the words ‘any property’ are large enough to include her stridhanam obtained immediately before the commencement of the Act. Emphasizing that the right to maintenance was “not a mere formality but a customary Hindu Law,” the court also ruled that “apart from right to maintenance a Hindu woman is also entitled to right in the family property. A widow is also entitled to maintenance out of the deceased husband’s estate which is in the hands of male issue or other coparceners.” See *Tulsamma v. Sesha Reddy* AIR (1977) SC 1944.

^{vi} *Pratap Singh v. Union of India* (1985) 4 SCC 197.

^{vii} For instance, if the joint family consists of the father and one son and one daughter, then on the death of the father, notional partition will take place implying that the son gets half the property and the other half lies with the father. Out of the halved share belonging to the deceased father, the son and daughter take equal shares. Thus, the son gets a total of $\frac{3}{4}$ of the property while the daughter will merely get $\frac{1}{4}$. See Poonam Pradhan Saxena, “Succession Laws & Gender Justice” in Archana Parashar and Amita Dhanda (eds.), *Redefining Family Law in India*, Routledge, New Delhi 289 (2008).

^{viii} Lucy Carrol, *Daughter’s Right to Inheritance in India: A Perspective on the Problem of Dowry*, Cambridge University Press 791 (1991).

^{ix} Post amendment, Section 6 now reads “the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son.” See *Pravat Chandra Patnaik and Ors v. Sarat Chandra Patnaik & Ano* (2008) AIR Orissa 133.

^x Sekar v. Geetha & Ors (2009) AIR SC 2649.

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^{xv} Possible solution propagated by Lucy Carrol. See Lucy Carrol, *Daughter's Right to Inheritance in India: A Perspective on the Problem of Dowry*, Cambridge University Press 791 (1991).

^{xvi} As seen in Sections 8 to 13 and Sections 15 to 16 of the Hindu Succession Act, 1956.

^{xvii} Omprakash v. Radhacharan (2009) 7 SCALE 51.

^{xviii} The court held that "it is now a well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties which are otherwise clear and unambiguous." It held that "since 15(1) read with Section 16 makes it abundantly clear that the self-acquired property of a Hindu female dying intestate shall devolve according to Section 15(1) and 16 and hence it would go to the heirs of the pre-deceased husband." However, even logically and ethically, the deceased herself would have preferred her own parents to inherit her property as averse to the in-laws, who disowned her. See Omprakash v. Radhacharan (2009) 7 SCALE 51.

^{xix} Mulla also observed that "in Hindu intestate succession, laws are about not only who should be entitled to the property, but also who should be disentitled. Section 15(2) of the HSA is based on the grounds that property should not pass to the individual whom justice would require it should not pass." Mulla, Dinshaw Fardunji (2013): *Principles of Hindu Law*, 21st edition, Satyajeet A Desai (ed), New Delhi: LexisNexis.

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^{xxvii} Bina Agarwal, *A Field of Ones Own: Gender and Land Rights in South Asia*, vol 58, Cambridge University Press India (2008).

^{xxviii} Asmita Sahay, "Mrs. Mary Roy vs State of Kerala" (*Law Times Journal* September 17, 2019) <<http://lawtimesjournal.in/mrs-mary-roy-vs-state-of-kerala/>> accessed May 3, 2020.

^{xxix} M Joseph, 'Gendered Justice' Vol. 28, No. 50 Economic and Political Weekly, 2711 (1993).

^{xxx} Mary Roy v State of Kerala (1986) AIR 1011.

^{xxxi} M Joseph, 'Gendered Justice' Vol. 28, No. 50 Economic and Political Weekly, 2711 (1993).

^{xxxii} M Joseph, 'Gendered Justice' Vol. 28, No. 50 Economic and Political Weekly, 2711 (1993).

^{xxxiii} Afsar Banu, *Status of women in Islamic society*. Vol-I, Anmol Publications Pvt. Ltd New Delhi, (2003).

^{xxxiv} Narendra Subramanian, "Legal Change and Gender Inequality: Changes in Muslim Family Law in India" (2008) 33 *Law & Social Inquiry* 631 <<http://www.jstor.org/stable/20108777>>.

^{xxxv} In Muslim personal law, men get double the share of women hence they always inherit in a 2:1 ratio. The rationale was that since men had financial obligations towards women i.e. providing maintenance, *mehr* and other expenses, they would require more property to fulfil these duties. See Mahesh Tandon, "Textbook of Mohammedan Law" Allahabd Law Agency (1984).

^{xxxvi} Prachi Ojha, “An Overview on Women's Right in India for Property” (*Advaya Legal Blog* November 4, 2019) <<https://www.advayalegal.com/blog/womens-right-to-intestate-succession-thoughts-on-gender-disparity-in-india/>> accessed May 3, 2020.

^{xxxvii} “Take the example of a Muslim intestate being survived by the predeceased daughter’s children, and son of a predeceased son of the deceased father’s brother’s son’s son. In this case, the daughter’s children being female descendants will be completely excluded by this male agnate who will inherit the total property, even though he is more distantly related.” See Poonam Pradhan Saxena, “Succession Laws & Gender Justice” in Archana Parashar and Amita Dhanda (eds.), *Redefining Family Law in India*, Routledge, New Delhi, 289 (2008).

^{xxxviii} *Hammed Khan v Peare Mirza* (1935) AIR Oudh 78.

^{xxxix} Lucy Carrol, *Daughter's Right to Inheritance in India: A Perspective on the Problem of Dowry*, Cambridge University Press 791 (1991).

^{xl} By virtue of Section 30 of the Hindu Succession Act, the father could convert his joint property interest to separate property via a Will, thereby completely disinheriting the daughter.

^{xli} Section 2 of The Muslim Personal Law (Shariat) Application Act, 1937 provides that: “Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law ... the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”

^{xlii} Bina Agarwal, “Can We Unify Inheritance Law?: India News - Times of India” (*The Times of India* September 19, 2017) <<https://timesofindia.indiatimes.com/india/can-we-unify-inheritance-law/articleshow/60740547.cms>> accessed May 3, 2020.

^{xliii} Bina Agarwal, “Can We Unify Inheritance Law?: India News - Times of India” (*The Times of India* September 19, 2017) <<https://timesofindia.indiatimes.com/india/can-we-unify-inheritance-law/articleshow/60740547.cms>> accessed May 3, 2020.

^{xliv} Haq Tyag translates to "sacrificing one's right". Daughters are made to sign away their inheritance rights by the male family members in an attempt to keep their shares larger. See Poorvi Gupta, ‘Haq Tyag’ Tradition Still Prevails in India” (*SheThePeople TV* December 10, 2016) <<https://www.shethepeople.tv/news/haq-tyag-tradition-still-prevails-in-india>> accessed May 3, 2020.