

COMPARISON OF SUCCESSION UNDER HINDU AND MUSLIM LAW

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ABSTRACT

Succession signifies the transfer or transference of rights from one party to another. In every legal system, provisions must be established for the distribution of property at the demise of the person who held and enjoyed it. The law of succession has become simpler and gender neutral with the advent of time. This paper does a extensive study on the concept of succession laws and all the rules and regulations to be followed while inheritance under the Muslim and Hindu law. Along with that, succession rights of females are also studied under both the law in order to understand their position in the 21st century. A comparison is done in the end to understand the differences between these laws.

Keywords: Succession, Hindu succession, Muslim Succession, Female succession right, comparison

LIST OF AUTHORITIES

Acts:

- 1) Hindu Succession Act, 1956
- 2) Special Marriage Act, 1954, Sec. 21, Act No. 43, Acts of Parliament, India
- 3) The Muslim Personal Law (Shariah) Application Act, 1937, Act NO. 27, Acts of Parliament, India

Case Laws:

- 1) Ramkali v. Mahila Shyamwati” AIR 2000 MP 288
- 2) Kalyan Kumar Bhattacharjee v. Pratibha Chakraborty AIR 2010 (NOC) 646 (Gau)
- 3) Vineeta Sharma vs. Rakesh Sharma, SC/0582/2020

SCOPE OF STATEMENT

The research paper studies the concept of succession under Hindu law and Muslim law outlining and explaining every concept therein. With the understanding of succession laws, the paper tries to compare the position of females when it comes to succession rights under both the laws.

REVIEW OF LITERATURE

Hindu Succession Law

"Na stri swatantramarhati, swatantram na kachit striyah" 'is an old saying that women are always subject to men's dominance. Unmarried women had no property rights, but after marriage they received Streedhan, moveable or immovable property. She wasn't the sole owner since her husband ruled her and her property.

“Saimy Eliza Abraham”ⁱⁱ in his paper outlined the sources of Hindu law of succession. In Mitakshara Joint Family Property, even an illegitimate son or widowed daughter has a title to the property of their father's Joint Family Property. No Mitakshara female might be a coparcener, but she will always be a member of the Joint Family. In contrast to the Mitakshara, the Dayabhaga has no idea of the Joint Family. The primary distinction between the two institutions is that girls may become coparceners at this institution.

According to ancient Hindu schools, there were two forms of property: Apratibandha Daya (unobstructed inheritance) property inherited from a direct male ancestor, but no more than three degrees above him. Sapratibandha Daya (Obstructed Heritage) property acquired from any other relatives, such as a paternal uncle or brother, a nephew, etc., is transferred through inheritance under this law.

Muslim Succession Law

“Shaik Reyaz”ⁱⁱⁱ talked about the four sources of Islamic law in his paper. These include the Muslim law of succession. Those are: First, the Holy Quran. The Sunna, or the practise of the Prophet Muhammad. 3. The Ijma, or the consensus of the learned men in the community over a specific issue's resolution. 4. The Qiya, which is an analogical derivation of what is just and just in line with God's predetermined moral norms.

In the age of Jhiliyyah (ignorance), newborn daughters were slain out of concern that they might inherit property.

They would also be deemed the source of disgrace for their family's reputation in society. However, after the advent of Islam, it was decreed that no one, male or female, weak or strong, ill or healthy, orphaned or parented, etc., should be precluded from inheriting their parents' estate upon their passing. In Srah al-Nis, verses 7 and 33 of the Qur'an, the ways for distributing inherited money are outlined. (“2020”)^{iv}

RESEARCH QUESTION

- 1) What are the rules and regulation of succession under Hindu Succession act?
- 2) What are the rules and regulation of succession under Muslim Succession act?

3) What are the succession rights of females under both the law?

INTRODUCTION

The term 'succession' refers to the act of succeeding or following, as of events, items, or locations in a sequence. In the perspective of the law, however, it has a distinct meaning. It signifies the transfer or transference of rights from one party to another. In every legal system, provisions must be established for the distribution of property at the demise of the person who held and enjoyed it.

In current legal systems, the laws of succession are subject to several regulations. Such regulations may be based on the dead individual's will. However, there are situations in which a will cannot be stated, such as when the owner of the property dies intestate. In such situations, there must be widely understood norms governing the transfer of his property to his successors. There is little question, however, that these norms are essentially the result of the social environment in which that person existed. They reflect society's perspective of what the regular route of succession should be when redistributing property following the death of a person.

“The law of inheritance comprises of rules which govern devolution of property, on the death of the person, upon other persons solely on account of their relationship with the former.”^v Speaking purely in legal terms, Black’s Law Dictionary defines inheritance as “receipt of a property from an ancestor under the laws of intestacy” i.e. by bequest or device.”^{vi}

In Indian civilization, each religion is ruled by its own Personal law. These personal laws regulate property rights as well. The essential factors of passing property and money from one generation to the next are inheritance and succession. This article seeks to explore and comprehend the principles and procedures of inheritance under Hindu and Muslim law. In addition to studying the different laws of succession, this article examines the succession rights of women under both acts.

HINDU SUCCESSION ACT

Introduction

Succession and inheritance are addressed under the “Hindu Succession Act”^{vii}. This Act establishes a unified and all-encompassing framework. Therefore, this Act encompasses and unifies all facets of Hindu succession.

Any person who identifies as Hindu, whether they practise one of the many sects and schools within the Hindu faith is covered by this law. Buddhism, Jainism, and Sikhism are included in this as well. The scope of the statute includes all of India.

Notwithstanding the above, unless otherwise instructed by the Central Government by a publication in the Official Gazette, this Section shall not apply to any Scheduled Tribes covered within the meaning of “Article 366 of the Constitution.”

Types of property that does not fall under the ambit of the law

This Act does not apply to the following assets, as specified in Section 5:

- Property whose succession is subject to the provisions of the Indian Succession Act, 1925 by virtue of “Section 21 of the Special Marriage Act, 1954”^{ix} is specifically excluded from the scope of this Act as set out in Section 5. Succession to the property of any individual whose marriage is solemnised under this Act, and the property of the offspring of such marriage, shall be controlled by the Special Marriage Act, as provided in Section 21 thereof.
- Any estate or property that would have gone to the only successor according to a pre-existing agreement or covenant between the Ruler of an Indian State and the Government or a pre-existing statute.
- Under the authority granted by the Proclamation (IX of 1124), dated 29th June 1949, issued by the Maharaja of Cochin, the Valliamma Thampuram Kovilagam Estate and the Palace Fund are managed by the Palace Administration Board.

Distribution of Property

The main requirements for male succession are spelled forth in “Section 8”^x. If a succession becomes possible after the Act's inception, as described in Section 8, then the Act will apply. If a male Hindu's estate is to be distributed by inheritance, it is not essential for his death to occur after the law's implementation. The succession shall open and the property shall devolve according to Section 8.

According to Section 8, a person's assets are distributed as follows if he leaves no will. If there are no heirs listed in Class I, then Class II may be eligible to inherit. Thirdly, if the dead had no direct descendants from Class1 or Class2, then his or her agnates would inherit. To the decedent's cognates if there are no agnates.

By this we understand that there are 4 classification of heirs-

Class 1, class2, agnates, cognates.

Classification of Heirs

1) Class 1 heir

Following list of people are considered to be Class 1 heir.

- Sons
- Daughters
- Widows
- Mothers
- Sons of a predeceased son
- Widows of a predeceased son
- Son of a predeceased son of a predeceased son
- Widows of a predeceased son of a predeceased son
- Daughter of a predeceased son
- Daughter of a predeceased daughter
- Daughter of a predeceased son of a predeceased son
- Son of a predeceased daughter
- Daughter of a predeceased daughter of a predeceased daughter

- Son of a predeceased daughter
- Son of a predeceased daughter of a predeceased daughter
- Daughter of a predeceased daughter of a predeceased son
- Daughter of a predeceased son of a predeceased daughter

Class II heirs will not get any of the inheritance until all of the Class I heirs are present. All Class I heirs have equal rights to the property, but each Class I heir's portion is their own and no one else has any legal claim to the inheritance. Class I heirs are not subject to disinheritance under any circumstances.

Previously, there were only eight female heirs and four male heirs in Class I; however, after the passage of the Hindu Succession (Amendment) Act, 2005, there have been eleven female heirs and five male heirs added to the mix.

Mother

If M were to pass away while his mother was still alive, M's mother would inherit his estate. The mother, however, must be either biological or adoptive and not stepmother.

Widow

A widow will get an inheritance equivalent to that of her son. In the event that there is more than one widow, they will pool their resources to get a single portion equal to the son's part, and then split it among themselves. The marriage must have been legally recognised. It was decided in the case of “Ramkali v. Mahila Shyamwati”^{xi} that a woman whose marriage was declared null and invalid upon the death of her husband would neither be considered his widow nor would she be entitled to inherit any of his property.

In cases of divorce or remarriage, the widow (wife of the deceased) would not be entitled to claim any property. Moreover, in cases of judicial separation, the widow would be entitled to the share in property as judicial separation is not equivalent to end of the marriage and even in judicial separation marriage subsists.

Daughter

A stepdaughter or an illegitimate daughter would not be included in the definition of "daughter," but a biological or adoptive daughter would. A daughter born in a marriage declared null and void by a court would be a legitimate daughter and entitled to her father's estate. There is no regard for the daughter's marital status, her financial stability, or anything else of the kind. The daughter's portion is equivalent to the son's.

Son

A son may be either biological or adoptive; a stepson or an illegitimate child are not included in the definition of son.

2) Class 2 heirs

Following is the list of people included in class 2 heirs

- Father
- Son's Daughter's son
- Son's daughter's daughter
- Brother
- Sister
- Daughter's son's son, daughter's son's daughter, daughter's daughter's** son, daughter's daughter's daughter
- Brother's son, sister's son, brother's daughter, sister's daughter
- Father's father, father's mother
- Father's widow, brother's widow
- Father's brother, father's sister
- Mother's father, mother's mother
- Mother's brother, mother's sister

If none of the Class I heirs claim the inheritance, it will pass to the Class II heirs. The defendant's brother, Ranjit, who was unmarried at the time, inherited his sibling's part of the property in "Kalyan Kumar Bhattacharjee v. Pratibha Chakraborty" ^{xii}. However, he vanished without a trace, and his two living brothers split the estate evenly between them. The plaintiff's

brother, whose name was Jagadish, wrote a will leaving everything to the plaintiff and then died. The defendants, however, eventually urged them to leave, citing, among other things, the fact that the property was originally owned by three brothers named Kalyan, Defendant No. 1, Jagadish, and Ranjit. In the event of the death of a single Hindu male, the property would be distributed to his Class II heirs.

In a similar vein, if there are no Class II heirs present but Class III or IV heirs are present, then the property will pass to the Class III or IV heirs.

SUCCESSION RIGHTS OF FEMALES UNDER HINDU LAW

Women's inheritance rights have historically been severely limited. All of them have been fighting and lobbying for a long time so that they might share in their father's inheritance.

It was a major development brought about by the 2005 Amendment Act that daughters may now become coparceners in their father's Joint Hindu Family. In addition, the fact that she is or is not married wouldn't make a difference.

So, girls have the same rights as boys to inherit coparcenary property. Thus, the following events are now feasible thanks to the 2005 Amendment:

- The Act no longer prohibits a female from contributing self-acquired property to the family trust.
- If a parent passes away, his daughter, whether she is married or not, is entitled to an equal share of his estate.
- Daughters now have a right to claim split of the coparcenary property.
- These days, ladies may launch not just a coparcenary but also a new family of their very own meaning their joint family.
- As a result, women in Hindu families are now afforded the same privileges as their sons under the coparcenary, bringing them closer to equality with their male counterparts.

Recall that the original “Section 6”^{xiii} was replaced by the 2005 Amendment. Hindu women's property rights are addressed in Section 6(1), while the property's distribution is addressed in Sections 6(2) and 6(3).

The former confers to a female coparcener the legal capacity to dispose of her coparcenary assets in accordance with her wishes. Consequently, they have the legal right to own coparcenary property and to seek partition in that property.

Given that women were not originally considered members of the coparcenary, “Section 30”^{xiv} traditionally only permitted the testamentary transfer of coparcenary property for male Hindus. However, with the 2005 Amendment, women and men enjoy the same legal rights (Section 6).

A new decision titled “Vineeta Sharma vs. Rakesh Sharma”^{xv} announced in 2020 reversed the traditional viewpoint of women's coparcenary right. It was decided that the women in question, whether they were born before or after the amendment, would be entitled to coparcenary status and the same rights as sons. The court applied retrospective effect to the act. Moreover, the living status of father is also not important after this judgement.

MUSLIM SUCCESSION ACT

Introduction

Inheritance in Islam is governed by the following broad laws that apply across all schools of thought.

- There is no difference between the decedent's movable and immovable estate as per sec 51 of the Mulla law.
- Neither inherited wealth nor wealth obtained by one's known as self acquired property are recognised.
- Only when a person dies does the issue of who gets what property arise.
- A Muslim child does not automatically inherit his family's wealth.

- Birthright is not recognised under Sec. 52. An heir-apparent or heir presumptive entitlement to the property to which he would inherit as an heir if the ancestor had lived only becomes effective upon the ancestor's death.

According to Islamic law, a person is required to provide for his family financially after his death. Only one-third of his estate may be given to non-blood relatives under these circumstances leaving two third for family members. A Bequest/Will in favour of certain of his heirs without the knowledge and permission of other lawful heirs is illegal under Muslim law.

As of the date of the testator's death, the executor becomes the sole owner of the estate. Whereas, once an administrator is appointed, he becomes the legal owner of the estate; until then, the probate judge has title.

An executor or administrator has the same ability to collect a debt and file a lawsuit in the dead person's name that the deceased person would have. Except for libel, he has the right to pursue or defend any legal action in favour of or against his death. The executor must handle all aspects of the funeral, the estate's inventory and accounting, the settlement of any outstanding obligations, etc.

Types of Succession

When someone dies, their possessions might be distributed in one of two ways: either according to the terms of their Will (called testamentary distribution) or under the rules of succession (intestate). Broadly it can be classified into two types, Non testamentary and Testamentary succession of property.

“The Muslim Personal Law (Shariah) Application Act of 1937”^{xvi} governs non-testamental succession. In contrast, the inheritance of a testate (a person who has made a will prior to his death) is regulated by the applicable Shariah Law of the Shias and the Sunnis.

The Muslims must follow the Indian Succession Act of 1925 if the property at issue is an immovable one and located in West Bengal, Chennai, or Bombay. Inheritance via wills is the sole circumstance where this exemption applies.

If there are no impediments to inheritance, a dead Muslim's heirs are his or her lawful successors who stand to inherit the deceased's property under Shari'ah law. The heirs will own the estate as tenants in common, each receiving a certain percentage. Inheritors are just tenants-in-common in Muslim law, as joint ownership is not recognised.

Classification of Heirs

The heirs may be broken down into two major groups: the Sharers and the Residuaries.

Family members that are considered to be sharers are the spouse, wife, father, mother, daughter, full sister, consanguine sister, and uterine brother. There are four of these Sharers who get an inheritance both as Sharers and Residuaries. The father, the daughter, the full sister, and the consanguine sister are all members of the same family.

In the event of the death of the immediate Sharer, and if any assets remain after being distributed among the Sharees, such assets will pass to the Residuaries.

There is a third kind of kin group made up of people who are neither Sharers or Residuaries but who have a common ancestor. However, step-parents and step-children cannot inherit from one another. If there are no living Natural Heirs, the deceased's inheritance will "escheat" to the government. If there are no living heirs to a person's estate, it will be given to the state.

Distribution of Property

Under Muslim law, the estate may be divided in two ways: per capita and per strip.

The Hanafi legislation primarily employs the per capita distribution. This system mandates a fair distribution of the inheritance among the heirs. It follows that the number of heirs determines the proportion of the estate that each individual receives.

Distribution by strip is employed in Shia law. In this case, the inheritance will be divided among the heirs according on their social status, or "strip." Therefore, the amount of the inheritance is contingent on the branch and the number of people in that branch. In the absence of a legitimate successor in the first line of succession, the estate would pass to the next generation, and so on.

According to Muslim law, the more immediate heir has the right to disinherit any distant heirs. To put it another way, if two people claim descent from the same ancestor, the one who is closer to the dead (in terms of degree) would disinherit the other. According to Muslim jurists, a person does not even have an inchoate claim to the property of his ancestor until the death of that ancestor, which is why they reject the right of representation.

Hanafi Law of Inheritance

Only male descendants of the dead are considered heirs under Hanafi law. A specific portion of the inheritance is held in individual names by each of the heirs.

Sunni law divides inheritors into three distinct categories:

Those who are designated as "Quota Heirs" are given priority in succession and given an allotted portion of the state's resources. Family members may include anybody from a daughter's perspective, including parents, grandparents, husbands, siblings, etc.

Once the Quota-heirs have received their inheritance, the remaining heirs (or "residuaries") will get the remaining property. Male and female relatives from what would be considered a second branch of the family tree are included.

If an individual has no living relatives, their estate will be given to the government.

Shia Law of Inheritance

Consanguinity (a relationship of blood between two people) and marriage are the two main ways in which Shia law classifies heirs (affinity). Consanguineous heirs are also known as Nasab heirs, whereas affinity heirs are known as Sabab heirs.

An further categorization into three groups is made on the basis of blood ties. Here, the first person shall disinherit the second, and the second person shall bar the third from inheriting. People in the first class are those who are directly related to you via your parents, children, or other relatives. Grandparents, siblings, and their offspring make up the second set. Uncles, aunts, and their offspring from both parents make up the third group.

SUCCESSION RIGHTS OF FEMALES UNDER MUSLIM LAW

Inheritance rights are equally shared between a male and a female in Islamic law. All male and female heirs get their share of the estate at the same time upon the death of a Muslim, provided that the deceased has both male and female heirs. Inheritance is not gender-based, although traditionally a man's part is twice as large as a woman's.

The justification for such share distribution is given that according to Islamic law, a male heir receives neither Mehr nor maintenance from his father, but a female heir receives (or expects to receive in the future) extra money or property as her Mehr and maintenance from her spouse. Moreover, the male heir is largely responsible for the support of his children, whereas the female heir may be responsible for the support of her children only in exceptional circumstances.

Widow's right to succession

No widow is disqualified from inheriting under Muslim law. After the dead husband's burial and legal bills and obligations are paid, a Muslim widow who does not have any children is entitled to one-fourth of his property. A widow who has children or grandchildren, however, is entitled to one-eighth of her late husband's estate. A Muslim man's wife loses her right to inherit from him if he marries while unwell and dies of the same ailment without recovering quickly or having children. However, the widow's entitlement to her portion of the inheritance remains in effect until she remarries, even if the husband divorces her while he is sick.

COMPARISON AND DIFFERENCES

Following are the differences between the two laws:

- 1) The difference arises in case of distribution of property

There are many classifications of individuals who are qualified to claim the property as an inheritance. Under Hindu law, classification consists of the following elements: a) Heirs of Class I b) Heirs of Class II c) Agnates d) Cognates

According to Muslim law, the classification is as follows: i. Sharers ii. Residuary iii. Distant kindred Out of the two main schools, the Shia school does not recognise the category of distant relatives, however under Sunni law it is allowed, since the majority of people are Sunni Muslims.

2) Classification of property

According to Hindu law, the inherited property includes ancestral property. It is sometimes referred to as coparcenary property. Section 6 of the Hindu succession statute describes the distribution of property among co-heirs who are all male. Under Hindu law, another type of property consists of self-acquired property by family members. Self-acquired property is not required to comply with this Hindu succession statute.

In Muslim law, there is no regard for ancestral property. They will own property individually or jointly. This legislation governs the right of inheritance over certain possessions. The property will be distributed on a per-person and per-stripe basis.

3) Another significant distinction is inheritance rules for females.

Prior to the modification, under the Hindu succession legislation, the inheritance of property was limited to males. After the 2005 amendment, women were granted the same succession rights as men. Mothers, widows, and unmarried or married daughters are considered in the definition of females.

In accordance with Muslim law, the female were granted property rights at the adoption of their own law. Under Shia law, women typically get half of the male share amount. This is due to the fact that Muslim women get maintenance and dowry upon marriage, whilst Muslim males are solely entitled to ancestral property.

4) The unborn kid is the subsequent distinction.

According to Hindu law, if a kid is in the womb of the mother, it is regarded to be living, and a portion of the coparcenary property will be allocated to it.

According to Muslim law, a foetus cannot inherit property till it is born alive. This implies that even in its embryonic state, a child is deemed to be a living person and is immediately entitled to the inheritance of property, provided that the kid is born alive. If the kid is not born alive, its stake in the property is instantly voided, and property shares are divided as if the child/embryo never existed.

5) The following distinction concerns government succession.

“Section 29 of the Hindu Succession Act”^{xvii} stipulates that if there are no legal heirs or common heirs of the dead, the property shall be automatically administered and enjoyed by the government.

Escheat in Muslim Law: Escheat is the procedure through which the government may assume ownership and control of a dead person's property. The state may only acquire a decedent's property if there are no surviving legal heirs. This is due to the state's position as the ultimate successor of every dead individual.

CONCLUSION

Succession rights in Hindu law have evolved through time. Things have altered slowly but steadily. The trend has been slow, but women now have the same inheritance rights as their male counterparts. The laws prohibiting gender equality are now relics of the past. Beginning with the Mitakshara legislation, which prohibited women from sharing property and so discriminated against them The Hindu Succession Act of 1956 was not gender-neutral and did not meet the standards of social law.

As society progresses, concerns about gender parity increase, and laws are changed to address the issue. One of the best examples of this is the Hindu Succession Act. Since the law was changed in 2005, Hindu women can inherit property just as Hindu men can.

The research did find that Muslim women were better off than Hindu women before the modification was made, but only when compared to Islamic inheritance law. Islam guarantees a woman's financial security from the time of her birth until the day she dies, and it is the responsibility of the capable males in her family and society to see to her needs. In other words, women in Muslim laws have had equal inheritance rights ever since the legislation was formed, but in Hindu laws women didn't have such rights until an amendment was passed.

Hindu women are in a better situation than Muslim women when it comes to the proportion of property they get. Hindu women get an equal portion, but Muslim women receive half of the amount acquired by Muslim men. Although there is a rationale for the distinction, similar clauses continue to exist today.

Things have altered slowly but steadily. The trend has been slow, but women now have the same inheritance rights as their male counterparts. The laws prohibiting gender equality are now relics of the past. Beginning with the Mitakshara legislation, which prohibited women from sharing property and so discriminated against them The Hindu Succession Act of 1956 was not gender-neutral and did not meet the standards of social law.

With this, the article has covered the topic of succession laws and compared the same under Hindu and Muslim law. There are multiple differences between the law in their understanding of different topic as per their religion, and the same has been respected throughout the paper. The succession laws are said to be simpler and fair now.

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ENDNOTES

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