

Paper-7 Module-3

Women's Right to Succession and Inheritance under Muslim, Christian, Jews and Parsi Law

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(B) Description of Module

Items	Description of Module
Subject Name	Women's Studies
Paper Name	Women and Law
Module Name/ Title, description	Women's Right to Succession and Inheritance under Muslim, Christian, Jews and Parsi Law.
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Pre-requisites	The student is required to be aware of the different religions practised in the country and that they are governed by their own personal laws
Objectives	To make readers aware about the rights of Muslim, Christian, Jew and Parsi women regarding inheriting property from their

	<p>relatives.</p> <p>To make readers aware about the right of relatives of the Muslim, Christian, Jew and Parsi women to inherit their property.</p>
Keywords	<p>Testamentary, will, succession, death, law, property , intestate</p>

Women’s Right to Succession and Inheritance under Muslim, Christian, Jews and Parsi Law

Learning Outcome:

- Introduction to the law providing right to women to inherit property.
- Comparative study of laws related to Succession and Inheritance rights of women.

Introduction

The law of succession is an offshoot of the concept of private property. In societies adhering to the concept of private properties, the property must be owned by someone. Property cannot remain ownerless even for a moment and, therefore, on the death of its owner it must immediately vest in someone. In this module we are going to discuss the law of succession which answers the question as to who would be the owner of the property after the death of its owner. In the earlier module you have already discussed Women’s Right to

Succession and Inheritance in Hindu Law. Here we will discuss the rights of the Muslim, Christian, Jew and Parsi women to Succession and Inheritance.

The law grants freedom to an individual to bequeath his/her property (though under Muslim law only one-third of the total property) to any person, a relation or non-relation, or to an institution, charitable or non-charitable. An individual can make a Will and there under lay down a scheme of distribution of property taking effect after his/her death. This branch of law is called testamentary succession.

If an individual dies without making a Will/bequeath of his/her property, expressing his/her desire as to how the property is going to be devolved and in whom, the law regarding intestate succession will determine the persons and scheme of devolution of that property. This is called Intestate Succession. By intestate succession only the relatives of the intestate are entitled to succeed to his/her property.

The laws dealing with succession and inheritance in India are not uniform. A variety of different laws are in vogue and their applications depend on multiple factors like the religion or tribe of the parties, domicile, community, sect, in the community, marital status of the parties, religion of the spouse, and the type of marriage the parties might have undergone. Before the advent of British rule, the major laws of Inheritance in India had either their roots in religion or were deeply influenced by personal laws which owned their allegiance to religion and custom. The multiplicity of succession laws in India, diverse in their nature, owing to their varied origin made the property laws even more complex. But one thing was common in all these laws- all these property laws had been exclusively for the benefit of men and women had been treated as subservient and dependent on male support.

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. 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 in succession doesn't apply 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 successions 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.

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:

1. Sharers
2. Residuaries, and
3. 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:

1. Surviving Spouse
2. Son
3. Daughter
4. 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.

Inheritance rights of women under Christians and Jews laws

In the matters of succession, the Christians and Jews initially being the subjects of British India were governed either by the provisions of the Indian Succession Act of 1865 or their own customary laws. The Indian Succession Act was re-enacted in 1925. It applies to all communities except Hindu, Budhists, Jains, Sikhs and Muslims. However, for Parsis, a separate scheme of succession is given under the Act. Persons who marry or whose marriage is registered under the provision of Special Marriage Act, 1954 are governed by the provisions of this Act in succession matters unless both of them are Hindus.

Under this Act, the widow/widower has equal right to inherit, which is one-third if the intestate has left any lineal descendants. In the absence of linear descendants but presence of kindred of the intestate, the share of the widow or

widower is half and the other half goes to those who are kindred to intestate. In the absence of kindred the widow or widower inherits whole of the property.

The Mother is not entitled to inherit along with the father of the intestate. She can inherit along with brothers and sisters. This provision seems to be highly discriminatory against the mother. This was a progressive piece of legislation. It grants equal rights to daughters and sons in parental property. In the absence of sons and daughters, their descendants are entitled to inherit. The spouse of the descendants (i.e. sons and daughters) is/are not an heir. The concept of ancestral property or coparcenary is also not recognised, therefore providing greater safeguards for women as compared with Hindu (Hindu Succession Act, 1956) as well as Muslim and Parsi (until it was amended in 1991) legal systems.

Many communities continued to follow the pre-conversion laws regarding succession even after conversion. Most Christian communities followed the rule of coparcenary or joint Hindu family property and continued to practice the discriminatory laws which prohibited daughters from inheriting the property. A leading case in this regard, *Abraham v. Abraham*, (1863) 9 MIA 195, decided by the Privy Council in 1863, was concerned with the issue of succession to the property of a Roman Catholic who had subsequently converted to the Protestant sect. The dispute was between the widow and her husband's brother. The brother pleaded that although they had converted to Christianity, they continued to follow the Hindu law of coparcenary. The Privy Council laid down a rule regarding conversion and held such a property as joint family property. The matter again came up before the court, subsequent to the coming of the Indian Succession Act, 1865, in *Tellis v. Saldanha*, (1886) ILR 10 Mad 69, which held that after the enactment of the Indian Succession Act, the Christian converts are governed by its provisions. Again this view was overruled by the decision of the Bombay High Court in *Francis Ghosal v. Gabri Ghosal*, (1907) 31 Bom. 25, which held that Christians are governed by the Hindu law of coparcenary.

The law of Cochin and Travancore was particularly discriminatory against the daughters. Under the Travancore Christian Succession Act, 1910, the right of daughters was limited to one-fourth of the share of the son or Rs. 5000/-, whichever was less. Similarly, under the Cochin Christian Succession Act, 1922, the share of daughters was one third of the son or Rs. 5000/-, whichever was less. Property in excess to this would be inherited by sons and if there were no sons, then the nearest male relatives. In 1957, the Cochin and Travancore High Court affirmed that Christians in the region were not governed by the India Succession Act and the discriminatory statutes enacted by the princely states applied to them. In 1974, a single judge of the Madras High court in *Solomon v. Muttiah*, (1974) 1 MLJ 53, adopted a progressive stand and ruled that the Travancore Succession Act stood repealed after the Independence and Christians in the region were not governed by this discriminatory statute, but by the Indian Succession Act, 1925, which was later overruled by Madras High Court in *D. Chelliah Nadar v. Lalitha Bai*, AIR 1978 Mad 66, which reaffirmed that Christians in Tamil Nadu were governed neither by the Progressive provisions of Indian Succession Act nor by the Hindu Succession Act, but by the un-codified Hindu customary law and under this law, the son was the sole heir to the father's property to the exclusion of the daughter.

The controversy was finally resolved and rested in a ruling given by the Supreme Court in the *Mary Roy v. State of Kerala*, AIR 1986 SC 1011, where the court struck down the discriminatory provisions on a technical ground that after Independence, the laws enacted by the erstwhile princely states which were not expressly saved had been repealed. The court declared unconstitutional those provisions of the Travancore Syrian Christian Act, 1916 and the Cochin Succession Act, 1921, which limited the right of a Syrian Christian woman to her paternal property. In *John Vallamattom v. Union of India*, AIR 2003 SC 2902, the Supreme Court declared unconstitutional, the provisions of Section

118 of the Indian Succession Act, 1925 which required that no Indian Christian who had living relatives, could leave his property for religious and charitable purposes unless provided for or by a Will, a year before his death.

Inheritance rights of women under Parsis laws

The Parsi immigrants came to India to escape religious persecution by the Arab conquerors of Persia. They adopted the customs of the place where they had first taken shelter. A *Panchayat*, i.e. an assembly of elders, administered decisions in civil and criminal matters while personal matters were governed by decisions of the priests. Due to the existence of a parallel system of administration in the Mofussil and the Presidency areas, Parsis in the former areas were governed by their customary laws while those in the latter areas were governed by English Laws. In a complete contrast to the law of Mofussil Parsis under which women were excluded from inheritance initially and had only a right of maintenance, under the English law, the widow of an intestate had an absolute share to the extent of one-third of his property and the daughter was treated on par with the son. This diverse situation was brought to an end by the Parsi Intestate Succession Act, 1865, that framed a uniform scheme for all Indian Parsis and increased the share of a widow and a daughter to a specific absolute ownership rather than a bare claim of maintenance, which was further amended in 1925, 1937 and then post independence on 1991, effecting major changes in the inheritance laws of Parsis making them more equitable and gender just.

Prior to 1991, the Shares of female heirs were half of the share of their male counterpart, i.e. daughter was entitled to half of the son's share and the mother was entitled to half of the father's share, though all of them were entitled to inherit simultaneously as co-heirs. The 1991 amendment has removed this discrimination against women and made the share of daughter equal to that of a

son and that of the mother to the father. Now, surviving spouse and children (both son and daughter) receive equal shares and, mother and father receive equal shares which is equal to half the share of each child. As per this law not only the surviving spouse of the intestate is an heir but also the spouse of predeceased and predeceased daughter and other lineal descendants are also entitled to inherit.

Suggestions and Conclusion

Laws alone cannot make justice available to citizens in society. Seeking equality in an unequal society is a task demanding concerted action on the part of the individuals, the community, government and the judiciary on a continuing basis. This is what women as a class must realise in their struggle for equal justice in the democratic republic of India. Personal laws discriminating between men and women, violate the fundamental rights and negate *equality of status*, as spelled out in the Preamble of the Constitution.

Suggestion:

- I. The constitutional directive of Article 44 of the Constitution should be expeditiously implemented by adoption of the Uniform Civil Code.
- II. Keeping in mind the conditions of the widow, The Indian Succession Act should incorporate restrictions on the right of testation, similar to that prevailing under Muslim Law.
- III. Legislative measures to bring Christian women of Kerala under the Indian Succession Act.
- IV. Indian Succession Act should be extended to Goa and Pondicherry respectively, in order to undo the relegation of women in the matters of

succession and to undo the inferior position to which Christian women are relegated by not being considered as full owners of property.

- V. There is need for legislation in Muslim law to give equal share of property to the widow and daughter along with sons.
- VI. Legal recognition to be given to the economic value of the contribution made by the wife through household work for purposes for demanding ownership of matrimonial property, instead of continuing the archaic test of actual financial contribution.
- VII. On divorce or separation, the wife should be entitled to at least one-third of the assets acquired at the time of and during the marriage.
- VIII. Under Christian law, the mother should be treated as a co-heir along with the father.