



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **FACETS OF PROPERTY UNDER PERSONAL LAWS: A SOCIO LEGAL ANALYSIS WITH SPECIAL FOCUS ON WOMEN'S RIGHT TO PROPERTY**

AUTHORED BY - ANSHIKA SRIVASTAVA

## **ABSTRACT:**

Personal law is the area of law which deals with issues affecting an individual and his or her family. In other words, personal law is the body of law that governs an individual with regard to a variety of issues, such as the laws governing marriage, divorce, child support, adoption, inheritance, guardianship, succession, etc. However, owing to India being home to different religious affinities, there exists a plethora of personal laws each governing different religions. The legal system has witnessed stupendous advancements in the contemporary era, however personal laws still lag behind in granting equal status to all genders in personal matters. However, significant efforts by legal luminaries to counteract this lacunae is impressive. This paper attempts to analyse the devolution and inheritance of property as mandated under the personal laws for specifically Hindu, Muslim and Parsis with an emphasis on women's rights to property. It also focusses on the specific demerits of property devolution to women under personal laws and suggests reforms to redress the same.

## **INTRODUCTION**

Individual Personal Laws, such as the Hindu Law, Muslim Law, Christian Law, Parsi Law, and Jewish Law, respectively, govern Hindus, Muslims, Christians, Parsis, and Jews. The Personal Law is described as "that body of legislation which apply to a person or to a subject purely on the ground of his/her belonging to or its being linked with a particular religion" from the perspective of religion.<sup>1</sup>

The word "property" comes from the Latin word "proprietary" and its French equivalent, "proprius," both of which denote an owned object. The ideas of ownership and property are strongly related to one another. Frequently, there is neither possession nor property without the

---

<sup>1</sup> Shilpa Parulkar; *A LEGAL ANALYSIS OF PERSONAL LAWS IN INDIA*; HEIN ONLINE, [heinonline.org](http://heinonline.org), visited: 23/02/2025.

other. Since it is hard to gauge the level of ownership without property, the concept of property holds a significant place in human life.<sup>2</sup>

In its true understanding, the property has an extraordinarily wider connotation. It also contains intangible rights that are regarded as a source of income or wealth, in addition to money and merely the other tangible goods. It is appropriate for a person to enjoy and lose some things most supremely as he pleases, provided that he does not use them in a manner that is prohibited by law. This interest a person has in lands and chattels to the exclusion of others.<sup>3</sup>

As a result, topics relating to property are governed by the personal laws of many religions. These personal laws deal with different aspects of property in various ways. While there has been significant progress in these laws to recognise the rights of women too who were previously prohibited from inheriting property, there remains significant reforms which need to be done to be introduced to further inclusion and liberal ideas in its approach.

### **1. PROPERTY UNDER HINDU LAW:**

There were two main schools, Mitakshara and Dayabhaga, before Hindu law was implemented. Unobstructed property and obstructed property are the two categories into which Mitakshara School divides real estate. Additionally, under Hindu law, the property is separated into two categories: Joint Family Property and Separate Property after the adoption of Hindu law and the closure of both principal schools. Hindus, Buddhists, Jains, Sikhs, and anyone who converts to Hinduism are all subject to the provisions of the Hindu Succession Act of 1956. Both men and women must follow the Act's requirements. It is significant to highlight that testamentary succession that is, when a decedent leaves a will is not covered by the Act's provisions. The Act solely applies to intestate succession, or situations when there is no valid will specifying how property should be devolved.<sup>4</sup> The Different categories of Property are accordingly explained below:

---

<sup>2</sup> Nisha Bhardwaj; THE CONCEPT OF PROPERTY UNDER PERSONAL LAWS OF INDIA; LEGAL SERVICES INDIA; <https://www.legalserviceindia.com/>, visited: 24/02/2026.

<sup>3</sup> *Id.*

<sup>4</sup> Poonam Pradhan Saxena; *JUDICIAL RE-SCRIPTING OF LEGISLATION GOVERNING DEVOLUTION OF COPARCENARY PROPERTY AND SUCCESSION UNDER HINDU LAW*; JOURNAL OF THE INDIAN LAW INSTITUTE; Vol. 58, No. 3, Sept. 2016, pp. 337-342.

## 1.1 DIFFERENT CATEGORIES OF PROPERTY UNDER HINDU LAW:

### A. OBSTRUCTED PROPERTY:

Obstructed property grants rights not via birth but rather through the death of the last owner. It is called obstructed because the final owner's existence prevents the right to it from accruing. The property that passes to parents, siblings, nephews, uncles, etc. after the death of the previous owner is hence hindered property. These kinship relationships are not influenced by birth. Only upon the death of the previous owner does their claim to it become valid. A male Hindu would be considered to have impeded heritage if he acquired any property from relatives other than his father, father's father, and father's father. The owner of this property holds the property as Separate and absolute one and there is no chance of combining property.<sup>5</sup>

### B. UNOBSTRUCTED PROPERTY:

Unobstructed property is secured by a person at birth. As the owner's presence does not prevent the acquisition of the right to it, it is called unobstructed. So, a Hindu's inheritance from his father, grandfather, and great-grandfather is unhindered ancestry in terms of his claim to male issues, specifically his sons and their offspring. These rights are due to their familial birth, and the male descendants who inherit the property are known as coparceners. The hereditary property is thus unhindered in the hands of the last male owner.<sup>6</sup>

### C. ANCESTRAL PROPERTY:

After the partition in a joint Hindu family, ancestral property is also referred to as self-acquired property. Ancestral property, as the name suggests, is what the following generation will naturally inherit. This ancestral property was passed down through three generations, or it may be regarded as coparcenary property since it also includes items derived from the father and great-grandfather. As was already said, separate property includes both self-acquired property and inherited property. According to Hindu law, the second category of property is known as "Separate Property," and it is this category that non-blood relatives can inherit property from.<sup>7</sup> In *Arshnoor Singh v. Harpal Kaur*<sup>8</sup>, it was held by the Hon'ble Supreme Court that "Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below

---

<sup>5</sup> *Id.* at 343-344.

<sup>6</sup> *Id.* at 346-349.

<sup>7</sup> *Id.* at 353.

<sup>8</sup> *Arshnoor Singh v. Harpal Kaur*, CIVIL APPEAL NO.5124 OF 2019.

him, would get an equal right as coparceners in that property”.

#### **D. JOINT FAMILY PROPERTY:**

Property that each coparcener has a common interest or right in as well as joint possession over is known as joint family or coparcenary property. The property that members of the family jointly obtain with the help of ancestor property is also referred to as joint family property.<sup>9</sup>

Joint family Property defines as if any member of joint family property acquired in his own name in the presence of an ancestral nucleus. In *V.D. Dhanwatey v. CIT*<sup>10</sup>, 1968, it was held that *“The general doctrine of Hindu law is that property acquired by a Karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property.”* To put it differently, it is an essential feature of a self-acquired property that it should have been acquired without assistance or aid of the joint family property. It is therefore clear that before an acquisition can be claimed to be separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property.

#### **1.2 PROPERTY RIGHTS TO WOMEN UNDER HINDU LAW:**

##### **A. HINDU DAUGHTERS:**

Daughters were given equal rights as co-heirs to inherit property under the 2005 revisions to the Hindu Succession Act. The modification was implemented starting on the day it was announced, but cases dating before 2005 were not taken into account, therefore there was some ambiguity in the situation. To put this to rest, on August 11, 2020, the Supreme Court (SC), in a related landmark decision, determined that daughters have the same rights as co-heirs under the Hindu Succession Act, regardless of when the modification took effect. According to the Supreme Court, a daughter acquires her coparcenary rights at birth. As a result, even though the father was not alive when the modifications were made in 2005, the Act's regulations still hold true. Additionally, the daughter's rights to coparcenary property are unaffected by her marriage.<sup>11</sup>

The Hindu Succession Act, 1956 was amended in 2005, and Section 6 (1) of the Act accords daughters the status as "coparceners" in Hindu Undivided Families (HUF). Coparcener is defined by the Black Law Dictionary as a person who jointly descends an estate and possesses

---

<sup>9</sup> *Supra* note 4, at 356.

<sup>10</sup> *V.D. Dhanwatey v. CIT*, 1968 AIR 682.

<sup>11</sup> Shivani Shinghal; *WOMEN AS COPARCENARS : RAMIFICATIONS OF THE AMENDED SECTION 6 OF THE HINDU SUCCESSION ACT, 1956*; STUDENT BAR REVIEW; Vol. 19, No. 1, Sept. 2007, pp. 50-67.

it as a complete estate, or a person who has acquired concurrent ownership as a result of descent. As a result, a daughter who is a coparcener from birth has equal property rights in a HUF property. Regardless of her marital status, the daughter is still a co-owner and has the right to request a division of the HUF property. In addition, regardless of her marital status, the daughter will have the same obligations as a son. The portion that the daughter would have gotten if she had been alive on the day of the partition would go to her children in the case of the deceased daughter. Her grandchildren will be eligible to receive her portion if none of her children are still alive on the day of the division.<sup>12</sup>

The effects of the provisions of section 6 are neither prospective in nature nor retrospective; but it is retroactive in nature which means status will commence from past but rights will be from future.

The case of *Vineeta Sharma v. Rakesh Sharma* establishes that irrespective of whether the father is alive or not on the date of amendment, the daughter would be entitled to coparcenary property in the same manner as that of a son.<sup>13</sup>

#### **B. HINDU WIVES:**

According to Section 8 of the Hindu Succession Act, the deceased's widow is included in the distribution of property among all live heirs. She has a right to receive all of her deceased husband's property if there are no other sharers, and she is entitled to an equal share of the estate as other heirs do.<sup>14</sup>

A married woman also enjoys complete control over all of her property, whether it was acquired legally, was a gift, or was her own. She is the sole owner, manager, and holder of the exclusive rights to her property. She is also entitled to support, maintenance, and housing from her husband or, if she was living with a joint family, from that family.<sup>15</sup>

In divorce proceedings, questions pertaining to maintenance and alimony are only resolved as the case moves forward. Divorce is confirmation that both parties are free from the bond and that all issues have been resolved once and for all. So, if her divorced ex-husband passed away intestate, the wife would not be entitled to any of the property.<sup>16</sup>

The second marriage, however, shall be held to be void, and the wife from the second marriage

---

<sup>12</sup> *Id.*, at 69.

<sup>13</sup> *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

<sup>14</sup> Debavrati Khurana; *PROPERTY RIGHTS OF HINDU WOMEN: A FEMINIST REVIEW OF SUCCESSION LAWS OF ANCIENT, MEDIEVAL, AND MODERN INDIA*; JOURNAL OF LAW AND RELIGION; Vol. 24, No. 2, Jan. 2009, pp. 663-665.

<sup>15</sup> *Id.* at 667.

<sup>16</sup> *Janki v. Narayaswami*, (1916) 43 I.A.207.

shall not be entitled to any property, if no divorce has been granted and the husband married a second time without divorcing his first wife. The wife's rights from the first marriage must be upheld.<sup>17</sup>

A wife is entitled to reside in her matrimonial home under personal laws. She is entitled to be maintained by her husband and to remain under his roof. She is also entitled to shift residence and live separately on the account of his misconduct, or his refusal to maintain her, or for any other reasonable cause.<sup>18</sup>

### **1.3 LIMITATIONS OF WOMEN'S RIGHT TO PROPERTY UNDER HINDU LAW:**

The society has evolved a lot since the Hindu Succession Act, 1956 came into being, and now women have progressed a lot in various aspects. Despite the countless amendments made in the Hindu law from time to time which have surely paved the way for daughters and wives in getting their rightful share under law, a lot of work still needs to be done in order to achieve true equality in comparison to their male counterparts. While the amendments have successfully recognized women as coparceners, there are certain grey areas where capabilities of women are still undermined as compared to men and so they have been granted less rights in regard to this. Also, certain other classes have been excluded from the purview of property rights.<sup>19</sup>

#### **A. WOMEN'S PROPERTY:**

According to Sections 15 and 16 of the Hindu Succession Act, 1956, a woman's self-acquired property passes to her husband's heirs, not her parents, if she passes away intestate. But, if the husband passes away intestate, his relatives—not those of his wife—are entitled to the property. Her husband's heirs are entitled to her property, but it is not the other way around, demonstrating an intentional bias. The passages clearly indicate how the rules were created with the patriarchal attitude that still pervades modern society and still views husbands as superior to their wives.<sup>20</sup>

---

<sup>17</sup> *Id.* at 669-671.

<sup>18</sup> BP Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313.

<sup>19</sup> Prakash Chandra Jain; *WOMEN'S PROPERTY RIGHTS UNDER HINDU LAW AND THE HINDU SUCCESSION ACT, 1956: SOME OBSERVATIONS; JOURNAL OF THE INDIAN LAW INSTITUTE*; Vol. 45, No. 3, Dec. 2013, pp. 509-515.

<sup>20</sup> Shriyali Verma; *ANALYSIS OF SECTIONS 15 AND 16 OF THE HINDU SUCCESSION ACT, 1956; JOURNAL OF THE INDIAN LAW INSTITUTE*; Vol. 36, No. 7, Oct. 2019, pp. 354-358.

## **B. WOMEN CANNOT BE KARTA:**

Despite granting women equal shares as coparceners in the Hindu Joint Property, there have been many judgements which held that women cannot be a Karta. In *Shreya Vidyarthi v. Ashok Vidyarthi*<sup>21</sup>, it was held that a widow cannot be a Karta of a family. She can only manage the affairs of the property as a manager until the eldest male member attains majority. Same was held in the case of *CIT v. Seth Govindram Sugar Mills*<sup>22</sup>, which refused to acknowledge women as Karta of a Hindu Joint Family. Thus, this remains a major drawback of the Hindu law which needs to be reevaluated in context of the present time where women are shouldering equally exhaustive responsibilities like men.

## **C. RIGHTS OF TRIBAL WOMEN:**

Customary laws of tribals are patriarchal and grossly discriminate against women. Despite there being various legislations to avoid the same, many tribal women continue to suffer. The Hindu Succession Act, by virtue of Section 2(2) excludes members of Scheduled Tribes from their purview unless the Central Government by notification so directs. Hence, the Hindu Law does not apply to women of Tribal communities. These tribes follow their own customs which are discriminatory to the rights of women.<sup>23</sup>

Female members of the Scheduled Tribe are not entitled to any right of survivorship under the provisions of Hindu Succession Act.<sup>24</sup>

## **D. NO MENTION OF TRANSGENDERS:**

In the case of *National Legal Services Authority v. Union of India*<sup>25</sup>, the Honorable Supreme Court of India addressed a number of concerns relating to the transgender population. The experienced judges rejected the idea that transgender people should be included in the traditional gender categories as a third gender. Although discrimination based on sex or gender is prohibited by the Indian Constitution, inheritance laws do not take transgender people or a change in gender identification into account. They have a binary conception of gender at its core. There has been no discussion on why transgenders are not included under the Hindu Succession Act. Therefore, concrete steps should be taken to include transgenders within the

---

<sup>21</sup> Shreya Vidyarthi v. Ashok Vidyarthi, AIR 2016 SC 139.

<sup>22</sup> CIT v. Seth Govindram Sugar Mills, 1965 SCR (3) 488.

<sup>23</sup> Punjil Mehrotra; *PROPERTY RIGHTS FOR TRIBAL WOMEN*; SOUTH ASIAN LAW JOURNAL; Vol. 27, No. 17, Feb. 2015, pp. 271-274.

<sup>24</sup> Kamla Neti v. Special Land Acquisition Officer, 2022 LiveLaw (SC) 1014.

<sup>25</sup> National Legal Services Authority v. Union of India, WRIT PETITION (CIVIL) NO. 604 of 2013.

purview of this Act in order to uphold their basic rights.<sup>26</sup>

## **2. PROPERTY UNDER MUSLIM LAW:**

In the case of Muslims, inheritance rules are governed by personal laws, and there are four sources of Islamic law that do so: the Quran, the Sunna, the Ijma, and the Qiya. Despite the fact that both men and women are entitled to a piece of the property, a woman's stake is normally half that of a man. A Muslim man must distribute two-thirds of his property to his legal successors, but he is free to do with the other one-third as he pleases. Sharers and residuaries are two categories of heirs recognised by Islamic law. Sharers have a right to a specific portion of the deceased's property, and residuaries would take possession of the portion of the estate that remains after the sharers have claimed their share.<sup>27</sup>

### **2.1 NON-TESTAMENTARY AND TESTAMENTARY SUCCESSION UNDER MUSLIM LAW:**

The Muslim Personal Law (Shariat) Application Act, 1937 is used in non-testamentary succession. On the other hand, if a person passes away testate, that is, if he or she made a will before passing away, then the inheritance is governed by the relevant Muslim Shariat Law, which is applicable to both Shias and Sunnis. The Indian Succession Act, 1925 is applicable in circumstances where the subject of the property is an immovable property located in the states of West Bengal, Chennai, or Bombay. Only testamentary succession is affected by this exemption.<sup>28</sup>

#### **A. DISTRIBUTION OF PROPERTY:**

In accordance with Islamic law, property can be distributed either per capita or per strip. In Sunni law, the per capita distribution approach is primarily employed. This method divides the heirs' share of the estate left behind by the forebears evenly. The number of heirs determines how much of the estate each person receives. In Shia law, the per-strip distribution technique is recognised. This technique of passing down property divides the assets among the heirs in accordance with the strip to which they belong. As a result, the size of their inheritance also

---

<sup>26</sup> Mishika Jaiswal; *HEALTHY DEBATE ON TRANSGENDER AND THEIR PROPERTY RIGHTS: A NEGLECTED CONCEPT*; *SOUTH ASIAN LAW JOURNAL*; Vol. 21, No. 12, Dec. 2020, pp. 72-75.

<sup>27</sup> Naeem Al Siddiqui; *MUSLIMS AND THEIR PROPERTY AND SUCCESSION RULES*; *SOUTH ASIAN LAW JOURNAL*, Vol. 62, No. 3 Mar.2014, pp. 450-453.

<sup>28</sup> Saba Habachy; *PROPERTY RIGHTS AND CONTRACT IN MUSLIM LAW*; *COLUMBIA LAW REVIEW*; Vol. 54, No. 18, Nov. 2017 pp. 76-80.

depends on the branch and the number of branch members.<sup>29</sup>

## **B. PROPERTY RIGHTS TO WOMEN UNDER MUSLIM LAW:**

### **I. RIGHTS OF FEMALES:**

No distinction is made in Islam between the rights of men and women. Nothing can stop a girl or a boy child from becoming the legitimate heirs of inheritable property upon the death of their ancestor. The quantity of a female heir's share is, however, typically determined to be half that of the male heirs. The reason for this is that males are only entitled to inherit the property of their ancestors under Islamic law, whereas women are entitled to mehr and maintenance from their husbands upon marriage.<sup>30</sup> Men are also responsible for supporting their wives and kids.<sup>31</sup>

### **II. WIDOW'S RIGHTS TO SUCCESSION:**

No widow is disqualified from the succession under Islamic law. Muslim widows without children are entitled to one-fourth of their deceased husband's property after paying for his funeral, his attorney, and his debts. The widow of a deceased husband, however, is entitled to one-eighth of his property if she had children or grandchildren. If a Muslim man marries while ill and passes away from that illness without making a full recovery or legally consummating the marriage, his widow will not be entitled to an inheritance. But, if her sick husband divorces her and later passes away from that condition, the widow will continue to be entitled to a share of the property until she marries again.<sup>32</sup>

## **2.2 DEVOLUTION OF INHERITANCE FOR WOMEN UNDER MUSLIM LAW:**

As a Muslim woman receives Mehr and maintenance from her husband in addition to inheritance upon marriage, it is argued that the inheritance distribution should be different for men and women. NGO Sahara Kalyan Samiti filed a Petition seeking a revision to Muslim personal law on the grounds that it discriminates against women in matters relating to property division when compared to their male counterparts. According to the petition, if an intestate spouse leaves behind a Muslim widow, she will be entitled to 1/8th of his estate if they had children, or 1/4th if they didn't. On the other hand, if an intestate wife passes away, her Muslim

---

<sup>29</sup> *Id.* at 84-86.

<sup>30</sup> Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.

<sup>31</sup> Naval Pandey; *PROPERTY RIGHTS TO WOMEN UNDER MUSLIM LAW- A SOCIAL ANALYSIS*; SOUTH ASIAN LAW JOURNAL, Vol. 37, No. 16, Feb. 2006, pp. 356-361.

<sup>32</sup> *Id.* at 362-364.

husband is entitled to half of her estate if they had children together and a quarter of her assets if they did not. Also, it was said that the daughter received the same portion as her brother.<sup>33</sup> The argument made in the plea was that this prejudice violated their constitutionally guaranteed right to equality, which is embodied in Articles 14, 19, and 21.<sup>34</sup> The Delhi High Court is still deliberating the matter after requesting the Centre's response. As a result, attempts have been undertaken to bring about equality in Muslim law in line with the social advancements which have occurred in their community as a result of the empowerment of females via education.<sup>35</sup>

### **3. SUCCESSION OF PROPERTY FOR PARSIS :**

Most inheritance rules in India prior to the arrival of the British either had religious roots or were heavily impacted by Personal Laws, which emerged from customs and religion. Several communities in India, including Christians, Jews, and Parsis, did not begin to be regulated by written rules until the Indian Succession Act of 1865 was passed, and it was later replaced by the Indian Succession Act of 1925. The provisions of Sections 50 to 56 of the Indian Succession Act, 1925 are applicable in the case of Parsis for intestate succession. The Indian Succession Act, 1925's Part VI provisions apply to testamentary disposition.<sup>36</sup>

#### **3.1 INTESTATE SUCCESSION LAWS IN PARSIS:**

The guidelines for the distribution of intestate property among widows, widowers, children, and parents are codified in Section 51 of the Indian Succession Act, 1925. Section 52 of the Act has been repealed. The guidelines for the partition of the share of the intestate predeceased child who leaves lineal descendants are outlined in Section 53. The rules in cases when an intestate leaves no lineal descendants but does leave a widow, a widower, or a widow or widower of any lineal descendant are outlined in Section 54. If a Parsi dies intestate and is not survived by a widow, widower, lineal descendant, or widow of any lineal descendant, the regulations for dividing property are outlined in Section 55. When there is no relative eligible to succeed under the various requirements of Chapter 3 of Part V, and the Person has died intestate, Section 56 specifies the rules for the division of property.<sup>37</sup>

---

<sup>33</sup> Sharay Taneja; THE REQUIRED AMENDMENTS IN MUSLIM LAW; Manupatra; [www.manupatra.com](http://www.manupatra.com), Visited: 03/05/2026.

<sup>34</sup> Bushara Ali v. Irfan Ahammed, Civil Writ Jurisdiction Case No. 16495 of 2018.

<sup>35</sup> *Id.*

<sup>36</sup> Tarun Betharia; *PARSIS- A RELIGIOUS MINORITY: THEIR PROPERTY, SUCCESSION AND INHERITANCE LAWS*; SOUTH ASIAN LAW JOURNAL, Vol. 45, No. 21, Jul. 2016, pp. 245-249.

<sup>37</sup> *Id.* at 252-254.

### **3.2 IMPORTANT PRINCIPLES REGARDING INTESTATE SUCCESSION AMONG PARSIS:**

There are certain important principles for intestate succession among parsis such as:

1. As long as he is born alive and was in the mother's womb when the intestate passed away, a posthumous child is considered as a legal successor in the same manner as those who were born during the intestate's lifetime.<sup>38</sup>
2. When the distribution of the intestate's property is made after his death, a lineal descendant who passes away during the intestate's lifetime without leaving a widow or children shall be completely disregarded.<sup>39</sup>
3. The widow of any lineal descendant of the intestate will not be entitled to any share of the intestate's property after his death and will be regarded as non-existing if she marries while the intestate is still alive.<sup>40</sup>

### **3.3 ANALYSIS OF PROPERTY RIGHTS TO PARSİ WOMEN:**

#### **A. PROPERTY RIGHTS TO MOTHER OF PARSİ INTESTATE:**

In analyzing property rights to parsi women, it is important to analyze Section 53 of the Indian Succession Act. According to the provisions of Section 53 of the Indian Succession Act, which governs succession rules for Parsi, the surviving parent or both the parents of the intestate receive a share equal to half the share of each child. Thus, this provision seems to do justice to the mother of the Parsi intestate. This is in great contrast to the law for Christian women which provides a superior status to men in inheriting property of the deceased. Therefore, this has been considered a progressive and liberal step by many legal practitioners.<sup>41</sup>

#### **B. PROPERTY RIGHTS TO DAUGHTERS OF DECEASED PARSİS:**

If the deceased child of the Parsi intestate is a son, his widow and children would inherit according to Section 53 of the Indian Succession Act, 1925, which governs succession laws for Parsis. But, if the deceased child was a daughter, her portion would go to her kids instead of her husband. This was done to make sure that daughters receive all of their property rights free and clear. Daughter is therefore the legitimate successor of her deceased parent, and her husband has no claim to her property. The Parsi daughters are said to be immensely empowered

---

<sup>38</sup> *Id.* at 256.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, at. 261-263.

by this provision.<sup>42</sup>

## **SUGGESTIONS TO IMPROVE PROPERTY DEVOLUTION UNDER DIFFERENT PERSONAL LAWS:**

- Like every citizen of India, irrespective of religion, caste, and culture are given equal recognition in the fundamental rights, a uniform code of succession law across all religions would facilitate the understanding and enforcement of laws for the common man as well as law enforcers throughout India.
- Rules have been laid down differently for men and women under these personal laws which become a point of contention for women creating hurdles in their rights. Hence, it becomes imperative to introduce gender- neutral laws which equally recognizes and supports rights of women.
- Gender bias under the Hindu Succession Act must be removed with immediate effect which grants priority to a married women's husband heirs in inheriting her property as opposed to her biological kin if she dies intestate. Such a bias under section 15 of Hindu Succession Act is an outcome of depraved thinking that a women loses her rights and relations with her parental home as soon as she gets married.
- Steps should be taken to put adoptive children in alignment with natural born heirs with respect to their rights to bring complete parity in inheritance of property under Hindu laws. Also, adopted daughters must be granted equal rights in devolution of property which are strictly limited now.
- The Muslim personal laws also need immediate reforms with the standardization of unequal shares for daughters as they currently receive half of the share of sons. Gender parity can be achieved if daughters are granted legally enforceable equal shares as their brothers.
- Further, there is a limit to which a Muslim can bequeath his property via a will. Steps must be taken to eradicate this limit to broaden the scope of autonomy for Muslim individuals in distributing their assets.
- Traditional parsi laws mandate that a parsi women loses her inheritance rights if she marries a non-Parsi man. Reforms must be implemented to address such outdated

---

<sup>42</sup> *Id.*, at. 264.

customs which penalize a women for exercising her autonomy and laws must be modified to grant equal status to Parsi women irrespective of their marital status.

- All the personal laws conveniently miss out on rights of transgenders in inheriting property just as they are largely excluded from the social strata. Specific amendments must be introduced in these laws to include the transgender communities in order to keep them at par with other genders in inheriting property upholding the true ethos of gender equality.

### **CONCLUSION:**

India is a country with diverse religions and our constitution has given equal rights to all religions. But to keep pace with the multiplicity of succession laws can be quite confusing and tedious for the common man as well as law enforcers. Property related matters are dealt differently under different religions. Despite countless pieces of legislation to aid the cause of equality of partition, contrary practices still exist in the country.

Hence, it is important to bring out necessary amendments in these personal laws in order to recognize the property rights of women and also the transgender communities. Though there have been many pathbreaking rulings, a lot of work still needs to be done in this arena.

WHITE BLACK  
LEGAL