

CRITICAL ANALYSIS OF DISPARITY IN PROPERTY RIGHTS OF WOMEN IN INDIA

A GLIMPSE

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Introduction:

Ancient Indian Patriarchal Society intentionally disregards the women's right to property, pushing her to a position of inferiority in social and economic aspects of human relationship. Ancient Hindu law was particularly denied sexual and economic freedom to the women. In support of this premise, it is emphasized that Manu, the first law giver stipulated; "*A women must be dependent upon her father in childhood, upon her husband in youth and upon her sons in old age. She should never be free*". She has always been treated as an inferior creature as compared to their male counterparts. This inferior status of the woman exists not merely in their households and in the society but also in the matter of privileges and right. Our Constitution envisages women as a citizen of India will be treated as equal to man in all walks of life. To obtain the object of Constitution, several amendments introduced in Succession laws, however, it has caused disparity between females. This paper analyses the position of different category of woman that is mother, widow and daughter in old succession law and after new amended Act.

Succession under Hindu Law

Ancient period:-

One of the most important Smirithi in Vedic period is Manusmirithi. Manu speaks about the law which prevails during such period. Manu IX 106 stated that on birth of first son, he freed from debt to manes and therefore, he is worthy to receive whole estate¹. This has provided relationship between the ancestral worship and the law of inheritance. The son born to a person was considered to be competent to offer oblation to the manes of the deceased ancestors and procure salvation to them. Therefore, he was given right of inheritance to the estate of the deceased ancestors. The son, grandson and great grandson were considered competent to worship the manes of the deceased ancestors². The brother's son was also to be treated as the son for the purposes of offering funeral

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1 Manu Chapter IX verse 106: 'Immediately on the birth of his first son, a man is freed from the debt to the manes. That son therefore is worthy to receive the whole estate'.

2 Manu Chapter IX, verse 137

oblation in the absence of one's own son³. The property rights had not provided to the daughters and female descendants as they have no duty to offer funereal oblation to the deceased⁴. Generally, she had only one right i.e. right to maintenance in the family and not inheritance or ownership rights. Like Manu, Narada, most of the smritis were restrictive in the areas of rights of females. Most of the Hindu religious text treated woman as dependent, requiring protection and considering them incapable of exercising independent authority.

Hindu Women's Right to Property Act, 1937:

The object of this Act is to give better right to women in property. It conferred new rights on the widow. She is entitled right over her husband property for her maintenance. It is limited right of life estate alone and she has no right to alienate such property except for accredited and sanctioned purposes⁵. This Act does not provide any right to daughters.

Hindu Succession Act, 1956:

This Act repealed the Hindu Women's Right to Property Act, 1937 and it was the first law which sanctioned absolute property right to women. It has granted equal right to the daughter, widow, mother and son. They are become Class I legal heirs of deceased male Hindu and they are become eligible to obtain property right from their ancestor. However, it had restricted right in respect of ancestral holding. It has provided right by birth to male alone. But the said Act has modified the coparcenary nature of property. As per old shastric law, the coparceners hold the property as joint tenants and there is no automatic division will acquire in such coparcenary. By introduction of this Act, the co-parceners hold the property as tenants-in-common and not as joint tenants⁶.

Section 6 of Hindu Succession Act, 1956:

Section 6 of the Act dealt with the birth right of male Hindu in coparcenary property. This speaks about two modes of devolution of undivided coparcenary interest that is by survivorship⁷ and by intestate succession⁸. The first mode, as given above, is strictly according to Mitakshara law, whereas, the second mode is creation of this Act, which includes the female heirs of Class I also, entitled to claim equal shares in coparcenary interest of Mitakshara coparcenary. When a male Hindu dies after the commencement of Hindu Succession Act, 1956, having an interest in

3 VISHNU P.65- 'Amongst brothers begotten from one father, son of one brother is the son of all and must present funeral oblations'.

4 Mandagadde Rama Jois, Legal and Constitutional History of India: Ancient legal, judicial Book, Chapter 14.

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

6 Section 19(b) of Hindu Succession Act, 1956

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

8 Prviso to Section 6 - Provided that, if the deceased had left him surviving a female relative specified in class I of the schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Mitakshara Coparcenary property, his interest in property shall devolve by survivorship upon surviving members of the coparcenary in the absence of any testamentary disposition as per explanation of Section 30⁹ of the said Act. But under the Proviso to Section 6, if a male Hindu died leaving behind a 'female relative specified in Class I of the Schedule'¹⁰ or a 'male relative specified in that class who claims, through such female relative'¹¹, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as laid down in Section 8 of the Act and not by survivorship. After joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants¹². But the property which devolves on him as a coparcener would continue to retain character of coparcenary property in his hands¹³.

Act 1 of 1990 and Act 39 of 2005:

Article 14 and 15 of the Constitution of India states that all people should be treated equally and no discrimination can be made relying upon the sex. But, the Hindu Succession Act, 1956 denied equal property right to the female like male in coparcenary property. In respect of eradicate such inequality, the scope of Section 6 of such Act amended by way of TN Act 1 of 1990 and inserted the provisions of Section 29A, 29B and 29 C in Hindu Succession Act. By such enactment, a daughter was conferred the status of coparcener along with her father. But a daughter married prior to 25.03.1989 was prohibited from claiming such benefit. This equal right of daughter in coparcenary property was inserted in Central Act by way of Act 39 of 2005. As per the amended Act, the daughter also included as coparcener equal to the son by abolishing the pious obligation which provided to the son. By way of such amendment, the son has no pious obligation¹⁴ as specified in Manu and Mitakshara law, therefore, the daughter and son has become coparcener and both of them has right in ancestral property by birth. This Act removed the devolution by survivorship as specified in first part of old Section 6 of the Act and it included proviso to Section 6 in old Act as Section 6(3)¹⁵ of the Act. One exception that was made by the TN Act 1 of 1990 to the married

9 Section 30: The interest of a male Hindu in a Mitakshara Coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or Kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

10 Daughter, widow, mother, daughter of predeceased son, daughter of predeceased daughter, widow of predeceased son.

11 Son of a pre-deceased daughter.

12 Uttam v. Saubhag Sing, 2016 (2) CTC 306.

¹³ M.Krishnamoorthy vs K.Pondeepankar, (2017) 3 CTC 170

14 Section 6 (4) of Hindu Succession Act, 1956 - After commencement of the Hindu Succession (Amendment) Act 2005, no Court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt.

15 Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of the Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as it is a partition.

daughters is not in the Central enactment, thereby enabling the daughter who was married even prior to 9.9.2005 can claim as coparcener. The rights under the Act 39 of 2005 would be available to a living daughter of a living coparcener on 09.09.2005 irrespective of date of birth of the daughter¹⁶.

Reduction of share of Widow and Mother:-

TN Act 1 of 1990 and Act 39 of 2005 reduced the right of widow and mother in property, which has provided as per Hindu Succession Act, 1956 and before such Act by way of 1937 Act.

Before the enactment:

Before came into force of this amendment Act, as per Section 8 of Hindu Succession Act, 1956, the mother, widow and daughter has provided equal right to the property and both of them has no right in ancestral property. On reading of Hindu Adoption and Maintenance Act and Section 125 of Criminal Procedure Code, the wife and mother has to be maintained by a person. Manusmriti also provided maintenance right to the mother and widow but it has not provided any right to the daughter. On recognizing such aspect, the Hindu Women Property Rights Act, 1937 also provided limited right to the widow although it does not provide any right to daughter. All the earlier text clearly shows that the mother and widow has provided preference rather than married daughter.

After the enactment:

By way of Amended Act 39 of 2005, the property right which provided right to widow, mother and daughter under Section 8 of Hindu Succession Act has not changed in respect of the right of daughter in property but additional right has provided to the daughter in coparcenary property along with son under Section 6 of the Act. In pursuance of the introduction of such amendment, the extent of share which originally belonged to father and son before such amendment has been decreased. For example if a family having a son, a daughter, mother and widow, as per old law, the son will obtain half share, deceased father will obtain half share, such half share will be divided between son, daughter, mother and widow each 1/8 but due to introduction of Amendment Act, 2005, father, son and daughter each will have 1/3 share and on his demise, such 1/3 share will be divided between them as 1/12, hence, the mother and widow will acquire each 1/12, the daughter and son will acquire 5/12. As per Section 6 (2) of the Act, the daughter has absolute right over such property to deal with the property by testamentary succession but no such absolute right provided to son. The mother has no inheritance right in property left by daughter like son. Although such amendment introduced for the purpose of providing equal right to female like male, it has caused injustice to the mother and widow. In result, the amended Act has created disparity among the females. The widow and mother alone depends male Hindu rather than daughter but the amended Act, reduced their share.

¹⁶ Prakash v. Phulavati (2016) 2 SCC 36

Devolution of female's coparcenary property:-

The concept of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line three degrees next of such common male ancestor. No coparcenary can commence without a common male ancestor. The property inherited by a Hindu from his father's father and father's is ancestral property. Property inherited by other relations is his separate property. The essential feature of ancestral property is that if that person inheriting it has sons, grandsons or great grandsons, they become joint owners with him. They become entitled to it by reason of their birth. Father, son, son's and son's son together constitute coparcenary, because they have common ownership in the ancestral property. Ancient Manusmirti concept also stated that the ancestral property is reserved for the purpose of fulfilling the obligations attached to the family. The object of Hindu Succession Act is to codify law relating to intestate succession among Hindus. In this Act, the interest in coparcenary property of a male Hindu alone included in Section 6 of the Act, therefore, ancient nature of ancestral property or coparcenary property is unchanged. In this aspect, old customary Hindu Law is very well applicable. On applying such concept, one co-parcener will be a member of a Joint family comes under the common male ancestor. One co-parcenary could not be a member of more than one Joint Family.

On applying such concept of Joint Family, the daughter who acquired property under Section 6 (1) of the Act has provided absolute right to deal with her coparcenary property in view of Section 6 (2) of the Act. This provision has not restricted her right in respect of 'interest in such coparcenary property' which is used in Section 6 (3) of the Act in respect of male Hindu. As per Section 29B in TN Act 1 of 1990, the interest of female Hindu in coparcenary property will devolve by survivorship on her death but no such restriction is available in Central Amendment Act 39 of 2005. This clearly affirms that the Act 39 of 2005 adopted the old Joint Family because one member cannot be a member of two joint family and claim coparcership in two family. But, in view of principle laid down by the Hon'ble High Court, the property which devolves on him as a coparcener would continue to retain character of coparcenary property in his hands vis a vis his son/daughter¹⁷. This has created disparity in respect of devolution of property of female which she acquired as co-parcener.

Succession of female's property under Hindu law:

When a female Hindu dies intestate, any property inherited by her will devolve on her own heirs as specified in Section 15 of the Act. Any kind of property, the children and husband alone legal heirs of such property but in the absence of child, it will devolve on the source from where the female acquired such property. The word 'Child' would not be interpreted depending upon source

¹⁷ M.Krishnamoorthy vs K.Pondeepankar, (2017) 3 CTC 170

of such property. It includes all child of female¹⁸. As per Section 15(1) of the Act, if the person in the first order that is husband and children are not available, then the property of a Hindu woman, who dies without making a will, devolves to the heirs of her husband, thus giving them preference over the female Hindu's father and mother who are placed below them. Moreover, the law is silent on the hard earned self-acquired property of a female Hindu. The effect of this anomaly results in gross injustice in cases, where even though female Hindu is driven out of her matrimonial home, after her husband's death and she goes back to her parents, on her death, her self-acquired property does not devolves upon her father or mother but upon the heirs of her husband¹⁹. Unfortunately, the deceased husband's family which had subjected the female Hindu to indignity and failed to take care of her has been privileged to enjoy the fruits of her hard labour instead of old mother who was with her daughter till the end.

Under Section 15(2) (a) of the Act, any property inherited by a female Hindu from her father or mother devolves, in the absence of any son or daughter, upon the heirs of father²⁰. The source from which the female inherits the property is always important and that would govern the situation. As per old Shastric Hindu Law also, if a female Hindu acquired any property from her parents, then it will go to her mother and father, if she dies without issues²¹. By way of Section 15 (2) of Hindu Succession Act, 1956, it has provided right to the heirs of father even if it received from her mother. On applying the principles evolved in Section 15 (2) of the Act, father and his legal heirs alone will be benefited as heir of deceased female Hindu although they have not taken any part in development of such female. The mother will lost her inheritance right as legal heir of female Hindu as well as heir of her father if her marriage was dissolved in earlier point time. In pursuance of non- providing of equal right to mother like father as specified in Section 15 (2) of the Act, it has caused injustice to the Mother.

Succession under Christian Law

Originally, the women have not provided any property right in Christianity also. On reading of the Old Testament of the Holy Bible, it clearly shows that the son alone provided property rights and the women were provided with gift during their marriage, example, Abraham gave all he had to Isaac²². As per the old custom, if there is no son, then the property has gone to the brothers. By changing such concept, the daughter became eligible for obtaining property from her father if there is no son. The contents in Holy Bible stated as word of Lord to Moses as '*If a man dies and has no*

18 Chintaram v. Rushibai, 2000 AIHC 1308 (MP) relying on K.P.Lodhi v. Har Prasad AIR 1971 MP 129, Roshan Lal v. Dalipa, AIR 1985 HP 8, R.A.Patil v. A.B.Redekar, AIR 1969 Bom 205.

19 Omprakash and others v. Radhacharan & others, (2009) 15 SCC 66

20 Bhagat Ram v. Teja Singh, AIR 2002 SC 1

21 Manu Chapter IX Verse 197

22 Genesis 25:5 (Bible Old Testament)

son, then you shall transfer his inheritance to his daughter'²³. In pursuance of the aforesaid principle, in the absence of son, the property devolved on daughter. In her absence only, it devolved on his brothers. Although such right provided, subsequently, some restrictions were provided in respect of acquiring aforesaid property also. In respect of claiming share of her father's property, the daughter shall be wife to one of the clan of the tribe of her father²⁴.

On reading of the said provision, it clearly shows that the daughter can obtain right only if she has married in same tribe of father. If she married out of her father's clan, she has no right in her father's property. The main purpose of the aforesaid restriction is that each tribe has provided equal value of property by the God through Moses and if it transferred to another tribe by way of inheritance, then, it will increase the value of property of another tribe and it will decrease the value of property of tribe which the daughter originally belonged. Hence, ancient Christians followed that no inheritance will be transferred from one tribe to another. The limited right of maintenance were provided to mother and women. As per the Christian law, the man and women become one flesh; therefore, whatever holdings of wife become the holdings of husband.

After arrival of Lord Jesus Christ, several kinds of changes were caused in aforesaid right of inheritance in property. However, different practices followed in peoples lived in different parts of country. Canons law guided the Inheritance rights of Christian heirs, belonging to various sections of the community. *Hedaya Canon* became the highest authority of Jacobites and flourished between 1226 and 1286 A.D. The main provisions of it were that the female heirs of any degree (the daughter, sister or aunt etc) shall get share of the male heirs of the corresponding degree (such as son, brother or the uncle). On following such Canon law, during British Period, the Indian Succession Act, 1865 has enacted to the area which were in control of them. Subsequently, by amending such Act in respect of some aspect, the present Act of Indian Succession Act, 1925 was enacted. During such period, the area which is not included under the aforesaid jurisdiction has followed different customary laws. One of such area is State of Travancore.

State of Travancore:

Prior to July 1949, the State of Travancore²⁵ was a princely State and the law in force in the territories of that State in regard to intestate succession to the property of the members of the Indian

23 Holy Bible - And the Lord said to Moses, 'The daughters of Zelophehad are right. You shall give them possession of an inheritance among their father's brothers and transfer the inheritance of their father to them. And you shall speak to the people of Israel, saying, 'If a man dies and has no son, then you shall transfer his inheritance to his daughter. And if he has no daughter, then you shall give his inheritance to his brothers. And if he has no brothers, then you shall give his inheritance to his father's brothers. ... (Numbers 27:6-11)

24 Holy Bible "This is what the Lord commands concerning the daughters of Zelophehad, 'Let them marry whom they think best, only they shall marry within the clan of the tribe of their father. The inheritance of the people of Israel shall not be transferred from one tribe to another, for every one of the people of Israel shall hold on to the inheritance of the tribe of his fathers. And every daughter who possesses an inheritance in any tribe of the people of Israel shall be wife to one of the clan of the tribe of her father, so that every one of the people of Israel may possess the inheritance of his fathers. So no inheritance shall be transferred from one tribe to another, for each of the tribes of the people of Israel shall hold on to its own inheritance'. Numbers 36:6-9"

25 Present Kerala State and Kanyakumari District in Tamil Nadu called as State of Travancore.

Christian Community was the Travancore Christian Succession Act, 1092. As per the Act, the widow or mother shall have life interest²⁶ only, which is terminable at the death or on remarriage. The daughter shall not be entitled to succeed to the property of the intestate but she will be entitled to one-fourth value of the share of the son or Rs.5000/- whichever is less as Sreedhanam. This reflects the Patriarchal tradition where only male members are entitled to inherit the father's property. The Kerala High Court in Mathoo Philip v. Mathoo Ouseph²⁷ held that under the Travancore Christian Succession Act, admittedly if a daughter is given Sreedhanam she is not entitled to any further right in the property left by her father or mother. They relied on a full bench decision in Iyer Hariharasubramania v. Mathu Thresia²⁸. As the daughters are provided with Sreedhanam, she was not entitled to any share in the properties of the father or mother if a son was alive. Although, State of Travancore merges with India, they had not provided succession right to the female as per Indian Succession Act. The Madras High Court in Solomon v. Muthiah²⁹ held that the Travancore Christian Succession Regulation II of 1092 is a law corresponding to Part V of the Indian Succession Act, 1925; therefore, it was repealed by virtue of Section 6 of Part States (Laws) Act, 1951. But, the said judgment was overruled by Division Bench of Madras High Court in D.Chelliah v. G.Lalita Bai³⁰ and the validity of Travancore Christian Succession was affirmed. Finally, in Mary Roy v. State of Kerala³¹, the Supreme Court of India declared that the Christians in former State of Travancore (Kanyakumari District in Tamil Nadu and Kerala) are governed by the provisions in Chapter 11 of Part V of the Indian Succession Act 1925 since the extension of Part B States (Laws) Act 1951. This judgment repealed the said Act retrospectively. Consequently, the Christians all over India are brought under the provisions of Section 37 of the 1925 Act which provides that the property of the intestate will be distributed equally among the children after deducting the 1/3 share of the widow. Obviously the Mary Roy verdict ensures equal inheritance rights to Christian women all over India. Although, the daughters provided equal right, the earlier concept of Sreedhanam till date continued in the shape of dowry and in result, the properties are mostly disposed by way of testamentary succession. In pursuance of Mary Roy case, the daughter's provided equal right with son and widow provided fixed right of 1/3rd share in property of intestate.

Mother's right under Christian Law:

At the earlier point of time, the mother also has life estate in property of intestate. As per Christian religion, mother has to be maintained by children during her old age. She is the dependent of son. The children have duty to maintain their parents during their old age as per Senior Citizen

²⁶ Sections 16, 17, 21 & 22 of Travancore Christian Succession Act, 1092

²⁷ AIR 1965 Ker 220.

²⁸ 13 Travancore LJ 354(FB)

²⁹ (1974) 1 MLJ 53.

³⁰ AIR 1978 Mad 66.

³¹ AIR 1986 SC 1011 : 1986 SCR (1) 371

Maintenance Act. But, in Indian Succession Act, 1925, there is no share provided to Mother in the property of deceased intestate. Mother can entitle share in intestate property only if he/she died without any lineal descendants and father. In presence of father and children, she has no right in such property. Father will succeed to the property in the absence of children³² excluding mother, brothers and sisters. Mother will entitle share in the absence of father only and she has to share with brothers and sisters of intestate³³ and in their absence, she has to share with their children³⁴. Only in the absence of brothers, sisters and their children, it will belong to her after deducting the share of widow³⁵. In addition, she has given equal right with brothers and sisters but on comparing with brothers and sisters, she will be a most dependent of intestate, therefore, the Indian Succession Act has failed to provide appropriate share to the mother of intestate.

Succession under the religion of Islam:

Inheritance is an integral part of Islamic Shariah Law and its application in Islamic society is a mandatory aspect of divine teaching of Islam. The Quran's guidance on inheritance of wealth left by a deceased person begins with a general direction that all surviving male and female relatives have definite shares in inheritance, whether large or small³⁶. This is followed by a definite prescription that the deceased should leave a living will or bequest before death for his or her near relatives³⁷. The Quran specifies exact shares for a number of male and female heirs. The shares of other eligible heirs are determined either residuary or by applying the rule that the male heir gets twice as much as the corresponding female heir. The verses of Quran in 4:11³⁸, 4:12³⁹ and 4:176⁴⁰

32 Where intestate's father living.-If the intestate's father is living, he shall succeed to the property.

33 Where intestate's father dead, but his mother, brothers and sisters living.-If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

34 Where intestate's father dead and his mother and children of any deceased brother or sister living. -If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

35 Where intestate's father dead, but his mother living and no brother, sister, nephew or niece. -If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

36 Quran 4 : 7- For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.

37 Quran : "It is prescribed for you that, should death approach any of you, if he leaves any assets, it is best that he leave a bequest for his parents and near relatives according to normal usage a truthful obligation (haq) on the part of the righteous". (Quran 2:181-182, 5:106-108)

38 Quran 4:11- God commands you, with respect to your children, that the male shall inherit the equivalent of the share of two females. If there are only females – two or more, then they should receive two-thirds of what he leaves; but if there is only one female, she is entitled to one-half. To each of his parents, one-sixth of what he leaves, if he has any children; but if he has no children, then his parents will inherit him, the mother receiving one-third. But if he has any brothers (or sisters), then his mother receives one-sixth. (The distribution in all cases) after any will he had made or any debt he had incurred [is taken care of]. Your parents and your children—you know not who of them is nearest to you in terms of benefit. A directive from God; God surely is All-Aware, Wise.

39 Quran 4:12- In what your wives leave, your share is a half, if they leave no child; but if they leave a child, you get a fourth; all after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get an eighth; all after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother and or a sister, each one of the two gets a sixth; but if more than two, they share in a third; all after payment of legacies and debts; so that no loss is caused (to any

are set out the inheritance rules of Muslims. This provided right to the female in each category that is widow, mother, sister and daughter provided right of inheritance in deceased property. There is no distinction regarding succession in male and female property. The law of inheritance prescribed by the Quran also provides for making a special accommodation for the needs of the poor, including poor relatives at the time of inheritance distribution⁴¹. The newly introduced Quranic rules of inheritance giving shares to wives, daughters, mothers, and, in some cases, sisters constituted definite reforms of the existing patriarchal system. Yet, from a modern point of view, the reforms did not go far enough. The traditional Muslim rules of inheritance are derived from the basic structure set out in the Quran, which was then elaborated and systematized by the various schools of law, through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shia schools of law.

As per Muslim law, the men and women have right in property which left by their parents as per their Holy book of Quran. Although, there is no equality in shares of son and daughter, it has provided share to daughter, sister, wife and mother, therefore, the said law is in existence till date without any modification. But, it has provided constant shares to the mother and wife.

Conclusion:

India being secular State, each person has right to follow their own religion in their own way as per the Article 25 of Indian Constitution. As the property right has specified in their religion, each people permitted to follow their personal law and the same has included in Concurrent List (Entry 5). The Indian Succession Act, 1925 and Muslim Law provided right to female also but Hindu Law had not provided property right to female Hindu before 1956. Therefore, on applying principle which enshrined in Article 14 and Article 15 of Constitution of India, the Hindu Succession Act, 1956, has provided property right to the female Hindu also. However, son alone becomes eligible to acquire property right by birth in respect of coparcenary property. This disparity also removed by way of Hindu Succession Act (amendment) Act, 2005 by giving birth right to the daughter and abolition of pious obligation which was available to the son alone. Although, the Manu speaks about right after death of father, the Mitakshara School evolved birth right relying upon the religious obligation which provided to son by birth. On removal of such pious obligation and automatic notional partition as per statute, the joint title and ownership over such property has

one). Thus is it ordained by God; and God is All-Aware, Most Forbearing.

40 Quran 4:176- They ask you for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance (between them); if there are brothers and sisters, (they share), the male having twice the share of the female. Thus does God make clear to you (His law), lest you err. And God has knowledge of all things.

41 Quran 4:7-8- Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether it be little or much - a share ordained [by God]. And when at the time of distribution (of inheritance), relatives, orphans, and the needy are present, give them (out of the property) and speak to them kindly.

lost. Section 19 (b) of the Act also clearly stated that the persons having the property as tenants-in-common and not as joint tenancy. Consequently, the nature of coparcenary and purpose of coparcenary as per manu and mitakshara law had already modified. The Supreme Court of India also clearly observed in Uttam Case, on distribution of property as per the Proviso of Section 6, it ceases to be the nature of coparcenary property. The property acquired by male Hindu under Section 6 of the Act alone retained as coparcenary property along with other properties by way of applying the principles of blending. Once the property put into common hotchpots of ancestral property, then it will lost the nature of separate property and it also has to be construed as ancestral property.

Though, Act 39 of 2005 is a significant advancement towards gender equality and economic security of daughters in Hindu Law, yet other females such as mother and widow have not been given recognition as coparceners. In the absence of such recognition, the property acquired by a female hindu cannot be construed as co-parcenary property in respect of her child because in such circumstances, her status became a Mother. Section 15 (2) (a) of the Act also causes disparity relying upon sex by providing right to father and denying right to the mother even in respect of property acquired from mother. Section 15 (1) denied any inheritance right to mother in the presence of heirs of husband. Consequently, by uplifting the share of daughter injustice caused to mother and widow. Justice and equality cannot be secured for one category of women at the expense of another. Therefore, law must be changed to confer equal property right to all Hindu women's in ancestral as well as separate property.

As already discussed, the Christian Succession also does not provide any right to the mother although she has to be maintained as per religion and Senior Citizen Act. On reading of Christian Succession law which was in existence in Travancore area (Kanyakumari District and Kerala) before 1956, the mother has provided life estate although no right provided to daughter. But, the present Succession Act has caused injustice to the mother. On contrary, Muslim law provided constant right to mother, wife, sister and daughter but it had provided fewer shares to daughter than son. As per Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, each children has duty to maintain his/her parents but there is no succession/inheritance provided to mother in Christian law. Similarly Mother has no constant right in female property in Hindu law. The succession right and maintenance right which provided to widow and mother in Hindu law in respect of property of male before Act 39 of 2005 even in ancient period is reduced. In the absence of any right in property, it is critical to enforce such duty against their property. In old age, the mother being exclusive dependence of children, she has to be provided with equal and adequate right by making appropriate amendment in personal law of Hindu and Christian Succession.

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