



Women's Intestate Property Succession Rights Across Religious Personal Laws In India: Historical Evolution, Legal Framework, And The Quest For Gender Equality

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Abstract: In This paper I have examined women's intestate property succession rights across the major religious and customary legal systems of India and traces their historical evolution from ancient and classical traditions to the contemporary constitutional era. Intestate succession, which governs the devolution of property where a person dies without leaving valid will, remains a crucial site for understanding women's economic status, family position, and legal recognition. In India, succession has historically been regulated through diverse personal laws and customs, resulting in uneven and often unequal treatment of women as daughters, widows, mothers, and other heirs. This study, therefore, undertakes a comparative analysis of Hindu, Muslim, Christian, Parsi, and related customary and tribal frameworks in order to evaluate how women's inheritance rights have been shaped, restricted, and gradually expanded over time. The paper shows that women's exclusion from inheritance was deeply connected with patriarchy, patrilineal family structures, agnatic preference, and the desire to retain property within the male line.

In India, which is multireligious and diverse in nature, we have seen from the beginning the Hindu women's claim on the property was neglected and restricted, often just providing them a minimum amount as maintenance under the patriarchal structure of traditional Hindu system. Whereas the traditional Muslim law considers women as heirs but with a limited fixed shares, as they also do not placed women as equal heirs. After implementation of the Indian Succession Act, 1925, we have seen that the Christian, Parsi & the Jewish succession rules where women was considered more distinctly as heirs and treated with manifold equality than that of traditional Hindu & Muslim personal laws. Still the existence of statutory laws was not always able to provide women equality, dignity & non-discrimination in large patriarchal societies like India. We will also analyse how women's succession rights evolve over time through the British colonial period. Also we have seen comparative study of these traditional personal law which are gender biased with the constitutional equality and non-discrimination. These constitutional values challenged the existing customary practices and implemented various reforms, new statutes to include women under succession laws & to provide them with equal share of succession property. Also a stage wise analysis of Hindu, Muslim, Christian, Parsi & Jewish succession laws specially intestate succession of women & how the amendments did transform the traditional succession system (exclusion of women) to the modern succession system (inclusion of women with equal share) is portrayed in detail. But written law doesn't always able to provide women equality in case of succession. In contemporary times also we have seen women are kept behind the door by family pressure, procedural hurdles, not knowing the legal rights or age old customs.

Keywords: Intestate Succession, Women's Property Rights, Personal Laws in India, Gender Equality, Inheritance Reform.

Chapter 1: Introduction

1.1 Background of the Study

Property has always occupied a central place in the legal, social, and economic structure of human society. In general we think property as land, gold, jewellery, i.e., what we can own or some valuable object which we can use as per our wish or sale or mortgage or give away, means we have the complete right of it. But in reality the value of property is more deep. Property gives us peace, social security, status in society, independence, a sense of dignity, bargaining power, economic freedom, social respect etc.. Now if a women have access to own property, get succession on it then her position will be stronger, she will be financially independent and all the other things which will affect their lives in good ways. From historical times we have seen that denying women from property right acts as a tool to subordinate women and by doing so women became financially dependant, socially vulnerable and they can not raise voice on any decision, impacting their dignity, affecting their lives.¹

In India, after death of a person who will get the property is decided by the succession. And if there is no valid will, then the property is distributed under the rules of intestate succession. In contemporary times also most of the properties is succeeded intestate. Over 65 percent people die every year without making a will.² Hence automatically the question arises that whether a women can inherit as daughter, widow, mother, sister of the intestate property? In India, as so much diverse religiously, one single uniform rule for all citizen is not followed, rather each religion has their own succession law governed by their personal laws. And they are way different than each other.

Even where statutory reforms have enlarged women's rights, social practice, procedural barriers, and patriarchal resistance often continue to hinder their effective enjoyment of inherited property.³ The historical evolution of women's intestate succession rights in India reflects a long struggle between patriarchy and reform, between custom and equality, and between personal law autonomy and constitutional justice. In the ancient and medieval periods, women's rights in property were generally limited and mediated through male control. Under classical Hindu law, for example, women's ownership was often restricted to narrow categories such as stridhan, while inheritance in joint family property remained male-dominated. On the other hand, Muslim law recognised women as heirs, but their shares were structured & restricted within a gender-differentiated framework. In other customs, women were mostly excluded from succession of property. Under British rule, their administration began codifying personal laws but though selectively. They choose to preserve community-specific structures and quietly introducing certain reforms which are in favour of them. After independence, the Constitution of India introduced a different moral and legal foundation. Equality, dignity and non-discrimination were no longer some reformist ideas but they became constitutional commitments. Over time, new laws and court rulings have tried to strengthen women's position but when it comes to inheritance and succession, this change hasn't moved at the same speed across all communities.

For that reason, women's intestate succession rights cannot be treated as a technical issue of family law. The topic deals in larger issues, i.e., social justice, gender equality, economic independence, legal pluralism, and constitutional morality. It asks how the law has looked at women over time? As family members, as individuals capable of owning and controlling property, or as equal citizens under the Constitution? To answer that properly, comparison becomes unavoidable. Now, different personal laws are there in India, one of them must examine all of the laws side by side to understand both sides of the coin, i.e., the progress that has been made through these laws, and the inequalities that still remains.⁴

1.2 Review of Literature

The question of women's property rights has attracted significant scholarly attention in Indian legal literature, particularly in relation to gender justice, family law reform, and constitutional equality. Existing scholarship shows that women's subordination in inheritance matters is not merely a product of individual discrimination

¹ K.C. Roy and C.A. Tisdell, "Property rights in women's empowerment in rural India: a review," 29 *International Journal of Social Economics* 315–34 (2002).

² Klaus Deininger, Aparajita Goyal and Hari Nagarajan, "Women's inheritance rights and intergenerational transmission of resources in India," 48 *Journal of Human Resources* 114–41 (2013).

³ Debarati Halder and K. Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India," 24 *Journal of Law and Religion* 663–87 (2008).

⁴ Bina Agarwal and Shruthi Naik, "Do courts grant women their inheritance shares? An analysis of case law in India," 182 *World Development* 106688 (2024).

but is embedded in the structures of kinship, property, and social norms. A broad range of scholars argue that property ownership is one of the most important foundations of women's real empowerment.

Literature on Hindu law has extensively examined the transformation brought about by the Hindu Succession Act, 1956⁵ and the subsequent Hindu Succession (Amendment) Act, 2005⁶. Scholars have analysed the shift from limited estate to absolute ownership, the recognition of women as Class I heirs, and the eventual extension of coparcenary rights to daughters. At the same time, academic writings have highlighted the persistence of social and procedural barriers that often reduce the practical impact of these reforms.

Research on Muslim inheritance law presents a more complex debate. Some scholars argue that Muslim law, by expressly recognising women as heirs, represented a historically significant advance over systems that excluded women altogether. Others point out that the structure of shares remains gender-differentiated and that women's proprietary position continues to be shaped by assumptions of male responsibility and family hierarchy.

Some scholar also discusses the role of the Muslim Personal Law (Shariat) Application Act⁷ and the interaction between scriptural principles, customary practices, and judicial interpretation.

Christian and Parsi succession is mainly based on the statutory framework of the Indian Succession Act.⁸ and if we compare it with the other customs, we will notice that it is having a more clearly structured. Yet many scholars have pointed out that even a good legal scheme can not always guarantee succession for women in India because the social conditions forces women still to be in a weaker position basis a formally clear law may operate unevenly in real practice.

We have seen many scholar has written about the tribal succession practices, and for them succession follows a different path. Some tribes follow patriarchal system deeply and some of them also follow matrilineal system of succession. But according to the sixth schedule of the constitution tribal communities can practice their own procedure.⁹ This sidelines Women in cases of property succession in tribal settings. And again as per article 14, 15 & 21 of the constitution all the citizen of India was guaranteed to live their life with dignity, equality & non-discriminatory way.¹⁰¹¹¹²

1.3 Meaning of Property, Succession, and Intestate Succession

Legally property can not be seen as one single right rather as a bundle of rights connected with it. It may be movable or immovable; it may be tangible or intangible in nature. So, property right is not limited to only possession but it also includes the right to own, right to use, right to enjoy, right to control, right to transfer, and right to inherit.¹³ Property law does not deal only with the use or management of assets but also governs the legal relationship between people with those assets. These relations are who may hold them, who may control them, who may transfer them, and who may claim them after death. Succession means passing of property rights, and related obligations, from a deceased person to living persons. It is the procedure through which the estate of a person goes to his/her heirs or beneficiaries after his/her death.

Succession may take two forms. One is testamentary succession, where the deceased has left a valid will stating how the property should be distributed. The other is intestate succession, where there is no valid will, or where the will does not cover the whole estate. In such a situation, the distribution is not left to family choice or informal arrangement; the law steps in and decides who the heirs are and what share each one receives.

Intestate succession gives thorough care about the family relationships, bloodlines, who is dependent on whom and who is entitled. This is how law considers to whom the entitlement of a property will go if that person dies intestate. Now, who is recognised as an heir and in what order also to what extent shows us how

⁵ *The Hindu Succession Act, 1956, (Act 30 of 1956).*

⁶ *The Hindu Succession (Amendment) Act, 2005, (Act 39 of 2005).*

⁷ *The Muslim Personal Law (Shariat) Application Act, 1937,.*

⁸ *The Indian Succession Act, 1925, (Act 39 of 1925).*

⁹ Jyoti Singh, "UNIFORM CIVIL CODE, LEGAL PLURALISM AND INHERITANCE RIGHTS OF TRIBAL INDIAN WOMEN" *PRAWO i WIĘŻ* (2024).

¹⁰ *The Constitution of India, Article 14,.*

¹¹ *The Constitution of India, Article 15,.*

¹² *The Constitution of India, Article 21,.*

¹³ Wikipedia contributors, "Bundle of rights — Wikipedia, The Free Encyclopedia," 2024.

law gives importance to different family relationships. In patriarchal societies, intestate succession rules have often favoured male lineage, agnatic relations, and joint family structures but treat women's claims as secondary.

The term "women's intestate property succession rights" denotes to the legal rights of women to inherit property when succession opens upon the death of a person who has died intestate. There are different types of heirs such as daughter, widow, mother, granddaughter, sister, or other female heirs. Hence the rights of them are of many varieties and depend on the social customs, family power structures, and access to legal remedies, etc..

1.4 Concept of Women's Property Rights in India

Women's property rights in India have historically developed within a social order that was predominantly patriarchal and patrilineal. Property was traditionally seen as belonging to the male line, and inheritance rules were structured to preserve lineage, family continuity, and control over land and resources within the male branch of the family. Women's claims were often subordinated to these concerns. As a result, women frequently had only limited interests in property, rights of maintenance instead of ownership, or claims that depended upon their marital or relational status.¹⁴

Owning a property in India does not only mean legal entitlement. It includes all kinds of related rights, e.g., right to own, inherit, process & manage, transfer at will, and enjoying it with its benefits without facing any problem.¹⁵ That means, if women is owning a property then they should be able to exercise all the aforementioned rights without any obstacle from her social or family pressure. This legal acceptance can only happen to a women if there are written and codified rules in such way. That is why written statute has importance in case of women succession.

Roughly in every traditional systems in India, women are always kept outside of property succession and they are also not considered as equal heirs to get property. They are mostly seen as dependants hence giving some maintenance would be enough and a place to stay or very little limited rights is sufficient. But in every cases we have seen that women are not equally treated as legal heirs. After independence, In India, we have seen many reforms and through those succession is moving towards equality rights, so that women should have equal rights on property same as men and absolute ownership.¹⁶

The constitution has empowered every citizen to live their life with dignity. Hence rights on women on property should also been scanned under the constitutional lenses. Because in a society committed to equality, liberty and dignity, women's are excluded from property or mere sidelined by traditional custom or different personal law system, is not justified. Without access to economic resources, formal legal equality often remains hollow. Thus, the study of women's intestate succession rights is also a study of women's citizenship, autonomy, and equal participation in the social order.

1.5 Importance of the Study

Legally, Intestate succession is one of the key areas of personal law in India which decides how intestate property will be inherited. In India approximately 65 percent of person dies every year without a will. Traditionally the succession in India begins at death of an existing owner of a property and the property is devoluted among the available heirs. Now why women are kept sideline for generations? Why they are considered just as dependants and how women could be brought under the light of equality by giving them equal legal status as heirs beside men has to be understood. To understand this, it is essential that we should study the women's succession rights (Intestate) under all different personal law systems comparatively.

Inheritance of property by women is directly connected with the economic position of women in society. When a woman is denied of her rights of property, she became dependent, insecure and marginalised. The absence of inheritance makes her voice weak within both of her natal and marital families. That also reduce

¹⁴ Ritu Gautam, "property right of women in patriarchal indian society: a comprehensive study on legal narrative property right of women in patriarchal indian society: a comprehensive study on legal narrative" 2022 (2022).

¹⁵ Wikipedia contributors, "Bundle of rights — Wikipedia, The Free Encyclopedia," 2024.

¹⁶ S Amritha and MOKSHA SRI KATEPOGU, "An Analysis of Women's Inheritance Rights in Light of the Hindu Succession Act," 8 *INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES* 205–10 (2025).

her chances to resist domestic violence. So, we can say that property rights have direct implications for women's welfare and empowerment.¹⁷

1.6 Research Questions

The study is guided by the following research questions:

First, what is the nature and significance of intestate succession in relation to women's property rights in India?

Second, how have women's intestate succession rights historically evolved from ancient and customary systems to the contemporary statutory and constitutional framework?

Third, how do different religious personal laws in India regulate women's rights as heirs in cases of intestate succession?

Fourth, to what extent do these personal law systems differ in recognising women as daughters, widows, mothers, and other heirs?

Fifth, what role have colonial legislation, social reform movements, post-independence statutory reforms, and judicial decisions played in shaping women's inheritance rights?

Sixth, how far do existing rules and practices conform to constitutional principles of equality, dignity, and non-discrimination?

Seventh, what legal, social, and procedural barriers continue to prevent women from enjoying effective rights in inherited property?

Finally, what reforms or interpretive approaches are necessary to ensure a more gender-just regime of intestate succession in India?

1.7 Hypothesis

The study proceeds on the main hypothesis that although women's intestate succession rights in India have evolved significantly through legislation, constitutional values, and judicial intervention, the existing religion-based framework continues to produce unequal outcomes and does not fully secure substantive gender justice.

This central hypothesis is supported by certain subsidiary propositions. It is assumed, first, that the historical development of succession law in India reflects a gradual movement from patriarchal exclusion towards formal recognition of women's inheritance claims. Second, it is assumed that the degree of protection afforded to women varies significantly across religious personal laws. Third, it is presumed that formal legal reform, though necessary, is not sufficient by itself, because effective enjoyment of inheritance depends upon implementation, awareness, access to remedies, and transformation of social attitudes. Fourth, it is proposed that constitutional principles of equality and dignity increasingly function as a critical standard against which discriminatory succession rules and customs must be evaluated.

1.8 Scope and Limitations of the Study

The scope of the present study is confined to intestate succession, that is, succession in cases where a person dies without leaving a valid will. In this paper I have tried to present how different legal systems which are related to intestate succession operates in India and for that I have made comparative study of the major religion based personal laws which are Hindu, Muslim, Christian, Parsi & Jewish, and Tribal personal laws.

Intestacy does not only consider women but considers all types of women classified by social relationship as Mother, Widow, Daughter, Sister, daughter, grand daughter etc. So, law has to identify all of them for intestacy, a generalised rule for women altogether is not enough. The rights of these female heirs has evolved over time also supported by courts by interpreting and enforcing statutory provision. This is also to be analysed how these valued under constitutional moralities.

¹⁷ Anbreen Bibi et al., "Womens' Inheritance right in Jeopardy: Assessing the socio- economic and cultural factors hindering womens' right to own land" (2021).

There are some areas where this study will not look into and that is testamentary succession. But we will refer it where that will be absolutely necessary. Matrimonial property are also kept outside of the scope of this study. The properties after divorce, maintenance, guardianship, adaptation etc, are excluded from this study.

1.9 Research Methodology

This study adopts a doctrinal, analytical and comparative methodology. A doctrinal method is more suitable as the entire study is based on the interpretation and assessment of the laws concerning intestate succession. Constitutional provisions legal texts, personal laws of India, court cases, judicial decisions has to be studied. The women's right on property did not evolve suddenly but it was a long journey and is result of old traditions, medieval practices, colonial interventions and post-independence reforms of the existing laws. Hence, looking at the historical data is also important. Then only the problems can be understood.

India is a multi-religion country. Here personal laws of each religion controls the succession rights of women. So a side-by-side comparison is necessary. It is also to be analysed how these personal laws differs from the constitutional moralities, values, equality & non-discrimination. Apart from these, there are analytical methods involved in this study. This study includes both primary & secondary materials. The primary materials include the Constitution of India, relevant personal law statutes, succession laws, and decisions of the Supreme Court and the High Courts. The secondary materials include books, journal articles, Law Commission reports, academic dissertations and other scholarly writings on family law, women's rights, inheritance, and legal pluralism.

1.10 In Summary

The issue of women's intestate property succession rights lies at the heart of the struggle for gender justice in family law. It is concerned not only with how property passes after death, but also with how the law recognises women within the family. Are they treated as equal members, or only as dependants? Are they seen as independent rights-bearing persons, or as persons whose claims must remain secondary to the male line? The history of succession law in India shows that women's property claims were, for a long time, restricted by patriarchy, lineage-based ideas of ownership, and unequal social norms.

India is a state of multiple personal laws and that is why it is more complicated than any other country. This is also reflected in the field of succession specially intestate and moreover much complicated where women's intestate succession is at stake. Because there are still inequalities present at both in legal & social areas. SO, this field has been chosen for examining critically.

Chapter 2: Historical Evolution of Women's Property and Intestate Succession Rights in India

2.1 Introduction

The law relating to women's property and intestate succession rights in India has not developed in a uniform or linear manner. It developed over a long, uneven history. Religion had its role. So did custom, kinship, colonial policy, reformist pressure, and later, constitutional change. At different moments in Indian legal history, a woman's access to property was rarely shaped by a clear idea of equality in her own right. It was shaped instead by how society understood the family, the bloodline, and a woman's expected place inside the household. Property was commonly seen as something to be kept within the male line. That idea quietly controlled many rules of succession. Men were treated as the natural heirs, the carriers of lineage, and the persons who would manage and preserve family wealth. Women stood on a different footing. They were often seen not as equal successors, but as dependants — persons to be maintained, protected, or supported in a limited way. This historical background matters. The present law cannot be properly read without looking at where it came from. Even today, personal laws that have been changed by statute or explained through judicial decisions still carry, at least in some places, the shadow of older assumptions about family hierarchy, control over property, and gendered entitlement. The divide between male ownership and female dependency was not a small or accidental feature of the past. It was built into the structure of traditional property relations.¹⁸ For that reason, any serious study of women's intestate succession rights has to go back to this history. It must

¹⁸ Gobinda Mandal, "The Rights and Status of Women in Ancient India: Insights from Hindu Legal Literature: The Rights and Status of Women in Ancient India," 70 *Journal of the Asiatic Society of Bangladesh, Humanities* 1–35 (2025).

trace how women were first kept outside inheritance, then admitted only in limited ways, and only much later recognised more fully as heirs in their own right.

The evolution of women's rights to property in India may broadly be examined through several stages. The first concerns the position of women in ancient India, where legal and religious texts laid down the foundations of family and inheritance. The second relates to the medieval period, during which social conservatism and customary practices often reinforced women's subordinate status. The third involves the colonial era, when British administrators systematised and selectively codified personal laws while also responding, though cautiously, to reformist pressures. The fourth and most transformative stage concerns post-independence India, where constitutional values of equality and dignity provided a new normative framework for succession law.¹⁹ Each of these periods contributed in distinct ways to the legal understanding of women's proprietary claims.

2.2 Women's Property Rights in Ancient India

The position of women in ancient India has been the subject of considerable historical and legal debate. Some writers suggest that women in the early Vedic period occupied a comparatively respected position. They were not always pushed to the margins of social life. In some texts, women appear as participants in religious practices, learning, debate, and intellectual activity. Daughters too were not completely invisible in the older social imagination. This Vedic respect towards women did not make them equal to men in case of property rights. In the Vedic period the property still follows the patriarchal flow and inheritance was mainly made in such a way that property remains within the male heir only. That is why giving birth to a son became very important.

On the other hand a daughter was treated differently. From childhood they were taught that after marriage they had to go to their husband's home & have to do household work there. And the parents also knew that their daughter will someday leave her natal home hence can not take part in family rituals, religious duties etc so they are considered very weaker in the matter of property. The ancient Hindu texts like Dharmashastras or smritis also mentioned the same thing. Hence eventually male heirs gained priority over female and the property passes only through male line.²⁰

There was only one kind of property which was solely of women's, is stridhan. Stridhan is something which women had absolute control except alienation. This stridhan they get during marriage, dote from her father or husband or from anyone throughout her life, bridal possessions during marriage. This kind of property was considered as their own but different school of interpretation explained it in different ways. Hence it was confirmed that even in ancient times, women has at least one kind of property rights which was not controlled by then social patriarchal social settings.

2.3 Position of Women under Smriti and Classical Hindu Traditions

The Smriti literature and later classical Hindu legal traditions played a decisive role in shaping the legal status of women in property and succession. The ancient Hindu texts like Manusmriti, Yajnavalkya Smriti, Narada Smriti etc., are the main source of Hindu law over centuries. The modern Hindu law does not come from these ancient texts but these texts have significantly influenced the understanding of succession and inheritance laws.

From traditional till modernization of Hindu successional laws, women was considered as dependant in a family. Before marriage, a women is under the guardianship of her father & after marriage under her husband, and in widowhood under her son or other relatives. This ideology has severe consequences for property rights. As women are not considered as independent, the then law doesn't consider her as heirs to succeed property but considered her only for limited rights like maintenance, residential home, gifts etc..²¹

The son was considered in the central position in classical Hindu family. He will not only inherit his father's property but he is also expected to be in the position similar to the head of the family. He will continue the

¹⁹ Neha Sharma and Dr. Rinu Saraswat, "Evolution of Women's Property Rights in India: From Ancient Traditions to Modern Legal Reforms," 22 *Journal of Advances and Scholarly Researches in Allied Education* 13–9 (2025).

²⁰ Rakshita Adchitre, "PROPERTY RIGHTS OF WOMEN THROUGHOUT ANCIENT AND MODERN INDIA: A LEGAL PERSPECTIVE," 4 *Journal of Legal Research and Juridical Sciences* 691–7.

²¹ Swarangi Pawar, "From Scriptures to Statutes: Women and Property Across Hindu Religion," 12 *International Journal of Innovative Research in Technology* 5316–27 (2026).

family line, perform family rituals, fulfil obligations etc.. This has created a male centric patriarchal system over time. Women are also not considered as joint owners by birth, i.e., coparcenary on the family property as heirs because women are considered as liability for men.

More complications arise in case of widows, she can be only a guardian of a property in absence of male heirs but she can never be full owner of any property. She can only get some compensation or maintenance and the property will go to the male lineage.

Hence, the classical tradition of property succession has a clear gender bias. They can receive some kind of property but negligible, that is Stridhan etc. The main property succession movement was done through male lines only. Women's inheritance rights were therefore kept within limits shaped by ideas of dependency, marriage into another family, and a restricted capacity to act as independent holders of property.²²

2.4 Women's Rights during the Medieval Period

During the medieval period, the position of women in property and inheritance did not witness any broad-based movement towards equality. On the contrary, in many regions and communities, social conservatism, stricter control over women's mobility, and intensified patriarchal norms further narrowed women's practical access to property. While legal doctrines from earlier periods continued to operate in various forms, social realities often made women's rights even more fragile.²³

The medieval family remained overwhelmingly patriarchal and patrilineal. During medieval period people started to understand the economic value of land and other immovable properties. The more they have, the stronger they are in the society. Because of these at these time then people were not willingly to transfer property rights to women and kept it in the male lineage only. The acting fear behind that is after marriage the part belongs to women will go to another family and they will become stronger by getting the property. Hence it was always better to preserve the properties within through male lineage.

Hence in medieval period Women's connection with property was mainly indirect. It was mainly maintenance, dowry, gifts etc. They do not have direct ownership or possession nor they were recognised as direct heirs to succeed property. Even claim to natal family property was shameful for a married daughter.²⁴

The medieval period also saw the strengthening of customs that often operated harshly against women. It is to be noted that during this period, multiple customary laws existed, each with its own family and succession laws. Under Muslim law women has defined limited shares in the property which is superior than then hindu customary practices.²⁵

2.5 Impact of Customs and Patriarchal Social Structure on Women's Inheritance

No account of women's succession rights in India can be complete without acknowledging the profound role played by custom and patriarchal social structure.

In India almost all communities has traditional customs and that governs the daily life of people rather formal law. Hence it was also observed that even if there are written statutes about some rights for women, local customs restricted this in practice which was a clear gap between recognition and actual enjoyment of property rights.²⁶

The patriarchal system, i.e., a male dominated system doesn't consider women as proprietors but dependants. Sons were valued more than daughters. Lineage, labour, ritual, old-age support all are expected from the son only. The property is also to be succeeded by sons and there should not be any right of women over family property. Now the style, process and nature of the exclusion of women is different in each personal law system

²² Dr. Akhilesh Kumar Khan, "RIGHT OF INHERITANCE OF HINDU WOMEN IN ANCIENT INDIA: ANALYSIS OF 'STRIDHAN' IN ANCIENT HINDU TEXTS," 12 *Turkish Online Journal of Qualitative Inquiry* 2419–27 (2021).

²³ Anasua Bagchi, "RECASTING THE PAST: THE PROPERTY RIGHTS AND STATUS OF WOMEN IN THE EARLY MEDIEVAL INDIA," XXXI *UTKAL HISTORICAL RESEARCH JOURNAL* 139–47 (2018).

²⁴ *Indian Young Lawyers Association vs The State Of Kerala*, AIR ONLINE 2018 SC 243, 2018.

²⁵ Prerika Wadhwa, "A Critical Analysis On Inheritance Of Property Under Hindu Law And Muslim Law In India," 12 *International Journal of Creative Research Thoughts* p633-729 (2024).

²⁶ Urvashi, "SUCCESSION AND INHERITANCE RIGHTS OF WOMEN IN INDIA: A CRITICAL ANALYSIS," II *International journal for legal research and analysis* 25 (2024).

like Hindu, Muslim etc. Some of them, excludes women totally and some gives partial limited fixed shares. Some mention reason like marriage gifts, dowry etc. Ultimately women remains economically dependant.²⁷

In the patriarchal family, it also seen as bad for a woman to claim property from his brother or any of other male family member. It is seen as destruction of family harmony so women are discouraged from claiming properties, emotional pressure is given to them. And this continues throughout the colonial and post-colonial British periods also.

2.6 Women's Succession Rights during the British Period

The British period marks a crucial stage in the evolution of succession law in India. The Britishers, after colonizing India, started codifying the laws but they didn't wanted to make any uniform family law or uniform law of succession across all religious and custom but they did place themselves as interpreter or organizer or sometimes they made some selective reforms. This approach of them at least create legality and visibility of the existing family laws in front of the Court. This half-hearted approach of the Britishers made some mixed results in case of women's coparcenary succession. Now at least women can approach to the court if they are denied succession from property. But the Britishers, at the beginning were heavily dependent on the translated legal texts and for that the judges were heavily dependent on the Pandits & Maulvies. On a later stage they depended on the judicial precedents. This is how the Anglo-Hindu & Anglo-Muhammedan laws took birth. In the process the earlier flexibility in the customary legal system vanishes and became more rigid and law became fixed category based system.²⁸

On the contrary in 19th & early 20th century there were some reform. Questions were raised at the courts. Gradually, the matter was no longer treated only as an internal issue of religious law or traditional doctrine. It came to be seen as a question of social progress, women's status, and justice within the family. This reformist atmosphere slowly created pressure for legal change. One important result of that pressure was legislative intervention, especially the enactment of the Hindu Women's Right to Property Act, 1937.²⁹ The 1937 Act was not a full measure of equality. Its reach was limited, and it did not dismantle the older succession structure in any complete sense. Still, it marked an important movement in the law. By enlarging the rights of widows in certain kinds of property, it showed that traditional inheritance rules could be questioned, revised and brought within the field of legislative reform.

In the case of Muslims too, the colonial period brought a process of systematising the law. Muslim women, at least in theory, had fixed and recognised shares under Islamic inheritance rules. In that respect, their position appeared clearer than that of women under many Hindu customary arrangements. But the practical situation was often different. Local customs, especially in matters relating to agricultural land and customary property systems, frequently weakened or displaced these recognised shares. So, a right that looked definite in legal doctrine could become much less secure in actual practice. Reform efforts aimed at securing the application of Muslim personal law culminated in the Muslim Personal Law (Shariat) Application Act, 1937,³⁰ which sought to replace contrary customs in key areas, including succession, with Muslim personal law. This was significant for women because customary practices in some regions had been even more exclusionary than formal Islamic law.

Thus, the British period must be seen as an era of partial legal transition. It did not produce gender equality in succession, but it created the conditions for later reform by transforming personal laws into more defined legal systems, by stimulating debate on women's rights, and by enacting the first statutory changes that disturbed traditional inheritance hierarchies.

2.7 Colonial Intervention in Personal Laws and Succession Rules

Colonial intervention in personal laws was cautious, selective, and deeply shaped by the British desire to rule without provoking large-scale resistance in religious and social matters. As mentioned above, the Britishers usually didn't interfere in matters of marriage, family, inheritance etc but they slowly started doing controlled

²⁷ *Mookka Kone Alias Vannia Kone And Ors. vs Ammakutti Alias Vannichi Ammal And Anr.*, 108IND. CAS.760, AIR 1928 MADRAS 299, 1927.

²⁸ Ira Pal and Ms. Malobika Bose, "PROPERTY RIGHTS OF HINDU WOMEN IN INDIA," 5 *INDIAN JOURNAL OF LEGAL REVIEW* 352-84 (2025).

²⁹ *The Hindu Women's Right to Property Act, (Act 18 of 1937)*.

³⁰ *The Muslim Personal Law (Shariat) Application Act, 1937.*

intervention.³¹ By doing so they have started giving preferences to some of the specific school of thoughts priority over another, narrowing some of the scopes, making them fixed in eyes of law for e.g., in Hindu law, British courts gave a superior legal standing to Mitakshara and Dayabhaga school of thoughts and similarly in case of Muslim law, it also went through a similar court-led transformation, where doctrinal materials were converted into more definite and rule-bound legal principles. For women of India the result was mixed. Formalisation sometimes helped, sometimes not. But it made women's claims more visible before a court and available for legal argument.

At a glance, the Britishers didn't implemented a common simplified succession law rather they strengthen the community-religion specific legal identities. These action has large impact on women's succession laws. Now it all depended upon how fast or slow or in what direction each of these personal law systems willing to change.³²

2.8 Social Reform Movements and the Demand for Women's Property Rights

In the early 20th century we have seen raise of many social reforms which alters the course of women's rights in India. For example, movement against child marriage, widow re-marriage, women's education, etc were central of it. But then also matter of inheritance did not attract attention as issues. What happens is that with time the society slowly understood that if the position of women has to improve, their rights on the properties has to be accepted.

The demand for women's property rights came from multiple sources. These push not only came from any women's organization nor from any feminist voices. This urge built up in the family first. The urge for education, urge for moral concern, remarriage, rights on property etc.. Among all these, most important was the right on property, right on succession because it decides the security, independence, economic strength followed by social position and respect she could command. In Hindu culture, this pressure of reform slowly built up that women need enforceable legal right. The journey was not smooth because there were always some conservative groups who warned that giving rights to women will disrupt the society. It was, rather, a social wrong maintained in the name of tradition and supported by patriarchal power.³³ The enactment of the Hindu Women's Right to Property Act, 1937,³⁴ reflected the partial success of these reformist arguments.

Within Muslim communities too, reform took a somewhat different but equally important form. The concern was often not that Muslim law failed to recognise women altogether, because Islamic inheritance rules did give women defined shares. The difficulty lay elsewhere. In many places, custom and local practice prevented women from actually receiving what the law had already recognised for them. The Shariat movement, in that sense, sought to replace customs that worked against women with the more formal rules of Muslim personal law. This did not make the shares of men and women equal. That limitation remained. Still, it was significant because it challenged customary systems that had sometimes placed Muslim women in an even more disadvantaged position than the formal law itself. A woman who was entitled to inherit in principle could no longer be so easily ignored in the name of village practice, family arrangement, or inherited custom.

These reform movements mattered because they changed the language of the debate. Inheritance was no longer seen only as something given out of family kindness or moral duty. It began to be spoken of as a matter of right. Women were not merely dependants to be supported; they were persons with proprietary claims of their own. That shift in thinking later became an important foundation for the wider reforms that followed after independence.

2.9 Position after Independence

The achievement of independence in 1947 marked a constitutional and moral turning point in the history of women's rights in India. The newly adopted Constitution rejected formal hierarchies of status and proclaimed equality, liberty, and dignity as foundational values of the Republic. Although personal laws were not

³¹ Lauren Benton, "Colonial Law and Cultural Difference: Jurisdictional Politics and the Formation of the Colonial State," 41 *Comparative Studies in Society and History* 563–88 (1999).

³² Mytheli Sreenivas, "Conjugalities and Capital: Gender, Families, and Property under Colonial Law in India," 63 *The Journal of Asian Studies* 937–60 (2004).

³³ Lola Olufemi, *Feminism, Interrupted: Disrupting Power* (Pluto Books, 2020).

³⁴ *The Hindu Women's Right to Property Act, (Act 18 of 1937)*.

immediately replaced by a uniform framework, the Constitution created a new normative environment in which gender-discriminatory inheritance rules could increasingly be questioned.

The position of women after independence must therefore be assessed in two dimensions. The first is constitutional: women became equal citizens entitled to the protection of fundamental rights. The second is legislative: personal laws gradually came under pressure to reform in accordance with broader ideals of justice and equality. This did not happen uniformly across all communities, but the post-independence legal order was clearly more receptive to the expansion of women's succession rights than earlier regimes had been.³⁵ The most dramatic reforms occurred in Hindu law.

The Hindu Code Bill debates (1940 to 1950) was a series of legal reform initiated by then Prime minister Jawaharlal Nehru & then Law minister Babasaheb Dr. B. R. Ambedkar to codify, unify and modernize the Hindu personal law systems and establish fundamental rights for women regarding marriage, divorce, inheritance and adoption. There was huge backlash, conservative culture etc but eventually a series of Acts passed from 1950 to 1960. Out of those, the Hindu Succession Act, 1956, marked a major step in improving women's inheritance rights.³⁶

But it is worth mentioning that this act was not able to remove inequality completely. The traditional Mitakshara system still remains. After the 2005 amendment which has changed the structure in favour of women. But we can say that after independence, there was some progress towards equality. Women were given rights on property, they are not seen as merely dependant member of the family, they can now own property.³⁷

This change towards equality didn't happened for the other personal law systems. For example in case of Muslim personal law, they kept their old classical structure same. Parsi & Christian law was governed by the statutes hence there was some formal certainty for their women succession cases. Other Customary & tribal succession cases still followed their old traditions.

2.10 Constitutional Vision of Equality and Non-Discrimination

The Constitution of India introduced a radically different normative basis for evaluating women's status in law. The constitutional Articles like, Article 14, 15, and 21,^{38,39,40} has created the foundation for the equality rights for all citizens, prohibition of discrimination and right to live life with dignity. Now it is to be noted that the constitutional values does not directly deal with the Women's succession rights on property because it's a family matter & the family matters are dealt by multiple personal laws existed which sometimes is not at par with the constitutional values as they follow the customary traditions till now. Women still kept inferior than men in almost all society and denied their property rights which indirectly violating the constitutional morality, gender justice and equality.

Article 15(3), which permits special provisions for women and children, also enabled legislative reforms designed to correct historical disadvantage.⁴¹ The Directive Principles, though non-justiciable, further supported a social order based on justice and equal opportunity. Over time, constitutional morality began to influence judicial interpretation of succession statutes, especially in cases where courts had to choose between narrow traditional readings and more equality-oriented approaches.

The constitutional framework did not automatically invalidate all discriminatory features of personal law, and the relationship between personal law and fundamental rights remained complex and contested. Yet the Constitution undeniably changed the terms of legal discourse. It made gender equality a legitimate and

³⁵ Baijyanti Ghosh, "Status of Women in India after Independence," 3 *THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES* 71–3 (2015).

³⁶ *V. Tulasamma & Ors vs V. Sessa Reddi (Dead) By L. Rs*, 1977 AIR 1944, 1977 SCR (3) 261, AIR 1977 SUPREME COURT 1944, 1977 3 SCR 261, 1977 3 SCC 99, 1977 REV LR 563, 1978 (1) SCJ 29, 1977 HINDULR 287, 1977.

³⁷ Sunaina, "Daughters' Property Rights under Hindu Law – Before & After 2005 Amendment" *SCC Online*, 2026 available at: <https://www.sconline.com/blog/post/2026/02/03/daughters-property-rights-before-and-after-2005-amendment/> (last visited April 18, 2026).

³⁸ *The Constitution of India, Article 14*,.

³⁹ *The Constitution of India, Article 15*,.

⁴⁰ *The Constitution of India, Article 21*,.

⁴¹ *The Constitution of India, Article 15(3)*,.

powerful benchmark for evaluating succession law. This would become increasingly important in later decades as courts and legislatures moved, though unevenly, towards more gender-just inheritance rules.

2.11 Gradual Evolution from Limited Estate to Absolute Ownership

The most important development in the women's intestate succession in India was the transition from the total dependability to limited interest to full ownership of property. We have seen that sometimes women receives property but with limited right like widows may enjoy the property for lifetime but they can not sell it, gift it or mortgage it. It is also seen that after the death of the widow, the property has to go back to the heir of his husband. Which indicates that slowly the society has accepted the limited estate status but not absolute ownership.

This change didn't came suddenly. After independence Indian legislation started recognizing the rights of women. Section 14 of the Hindu Succession Act, 1956 said that if a property is acquired by a Hindu female, she will be the full owner of that property and it doesn't matter if the property is acquired before or after the commencement of the act.⁴²

This change from the limited ownership to the full ownership was important for many reasons. This changes the nature of the right itself. But the limited-estate concept didn't faded away. It is still continuing under family/social pressure and the constitutional equality struggles to be implemented.

Chapter 3: Women's Intestate Succession Rights under Hindu Law

3.1 Introduction

Among the various personal law systems in India, Hindu law presents one of the most significant and instructive histories of the evolution of women's intestate succession rights. Hindu law presents a striking contrast. On one side, it carried one of the most deeply rooted patriarchal structures of inheritance. On the other, it has also witnessed some of the most significant legislative reforms recognising women's property rights.⁴³ The transformation of women's rights under Hindu law, especially from the pre-codification period to the enactment of the Hindu Succession Act, 1956⁴⁴ and its later amendment in 2005, reflects the broader struggle between tradition and equality, between the preservation of patriarchal family property and the recognition of women as independent legal persons.

Historically, Hindu inheritance law grew out of scriptural texts, commentaries, regional schools and customary practice. It took shape within a society where the family was understood mainly as patrilineal and patriarchal. Property, especially joint family property, was not seen merely as an individual asset. It was treated as something to be preserved within the male line. The consequence was clear. Women's succession claims were often kept limited, pushed behind male heirs, or denied altogether in several situations. They were not treated as equal participants in the property structure of the Hindu joint family. Their rights usually appeared in narrower forms — maintenance, residence, gifts, or, in some cases, restricted succession to the separate property of a male relative.

Even when women did inherit, the right given to them was often not ownership in the modern sense. It was more likely to be a limited estate, shaped by control, restraint and eventual reversion. Yet Hindu law should not be read as a frozen or unchanging body of rules. It evolved through interpretation, social pressure, and legislative change. The nineteenth and twentieth centuries witnessed growing criticism of the disabilities imposed on women, especially widows and daughters. Reformers challenged the injustice of excluding women from effective ownership and inheritance. This ultimately led to statutory interventions, beginning with the Hindu Women's Right to Property Act, 1937⁴⁵ and culminating in the Hindu Succession Act, 1956.⁴⁶ The latter marked a watershed moment by recognising women more fully as heirs and transforming the legal character of women's property. Yet even the 1956 Act stopped short of complete equality, particularly in

⁴² *The Hindu Succession Act, 1956, Section 14, (Act 30 of 1956).*

⁴³ IRA PAL, PROPERTY RIGHTS OF HINDU WOMEN IN INDIA, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (4) OF 2025, PG. 352-384, APIS – 3920 – 0001 & ISSN - 2583-2344.

⁴⁴ *The Hindu Succession Act, 1956, (Act 30 of 1956).*

⁴⁵ *The Hindu Women's Right to Property Act, (Act 18 of 1937).*

⁴⁶ *The Hindu Succession Act, 1956, (Act 30 of 1956).*

relation to coparcenary rights. That final structural barrier was addressed only later by the Hindu Succession (Amendment) Act, 2005, which granted daughters the status of coparceners by birth.

This chapter seeks to examine women's intestate succession rights under Hindu law in a comprehensive manner. It studies the traditional framework of Hindu inheritance, the position of women under classical law, the importance of stridhan, the role of the 1937 and 1956 Acts, the scheme of succession under the codified law, the significance of section 14, the distinction between succession to a male and succession to a female Hindu, the impact of the 2005 amendment, and the contribution of judicial decisions in advancing women's rights. The chapter also evaluates the extent to which legal reform has succeeded in achieving substantive gender justice.

3.2 Sources of Hindu Law relating to Succession

The law of succession under Hindu law historically drew upon a wide range of sources. In the pre-codification era, it was not governed by a single uniform statute. Instead, it emerged from ancient sacred texts, Smritis, commentaries, digests, schools of interpretation, judicial decisions, and customs. These sources together shaped the legal principles concerning inheritance, devolution of property, and the proprietary status of women.

The earliest sources lay in the Shrutis and Smritis, though the detailed rules of inheritance were developed more concretely in the Smriti literature and the commentarial tradition. Texts such as the Manusmriti and the Yajnavalkya Smriti influenced the understanding of family, ownership, and succession, but these texts were interpreted differently over time. The major schools of Hindu law, particularly Mitakshara and Dayabhaga, had a decisive role in shaping inheritance rules. The schools have not addressed the property related matters in the same way, but they have differences in cases of coparcenary joint family matters where rights on the property came by birth.

As we know that in case of Hindu personal laws, the old traditional customs have an important role. Apart from the then written texts the importance was also given on the family practices, their society culture as well as patriarchal rules. All these have a great impact in cases of inheritance of property. In time of the British colonial period, the Britishers codified the Hindu law and through judicial interpretation they established a court administered legal inheritance system which was once formal and flexible system. Judicial precedents became important over time, which now shaped the modern way of the succession rules.

3.3 Traditional Hindu Law of Inheritance: Mitakshara and Dayabhaga

Traditional Hindu inheritance law was primarily structured through two major schools: Mitakshara and Dayabhaga. These schools did not differ on every aspect of succession, but they diverged on certain foundational principles that had important consequences for women's property rights.

The Mitakshara school, which prevailed in most parts of India, was based on the commentary of Vijnaneshwara on the Yajnavalkya Smriti.⁴⁷ Under Mitakshara law, the concept of coparcenary was central. A Hindu joint family consisted of lineal male descendants descended from a common ancestor, and within this family, a narrower body known as the coparcenary held joint interest in ancestral property.⁴⁸ The essential feature of the Mitakshara coparcenary was that rights in ancestral property arose by birth.

Under Mitakshara school, in case of a son, who will be considered as a coparcenary property since birth. Then the property doesn't remain his father's absolute but the property is now a collective male estate. This sets a different set of explanation for property. For woman it's a different ball game altogether. As traditional coparcenary only recognizes male members as coparcener, women were kept outside of birthright claim on ancestral property. Women are mere family members but do not enjoy proprietary powers.⁴⁹

Under Dayabhaga School of thought, which mainly operated in Bengal region has a different approach. Here Right on property doesn't start at birth but after the death of the father. Means a son doesn't have birthright and the control on the property is kept with father where succession will only open upon death of the father.⁵⁰

⁴⁷ Surendra Nath Ray, "Sources of Hindu Law," 5 *Allahabad LJ* 249 (1908).

⁴⁸ Diwanshi Rohatgi and Keshav Madhav, "A Study on Ancient and Contemporary Views on the Rights of Hindu Daughters in Coparcenary Property," 5 *Issue 2 Indian JL & Legal Rsch.* 1 (2023).

⁴⁹ Vijender Kumar, "DAUGHTER AS A COPARCENER," 64 *Journal of the Indian Law Institute* 127-56 (2022).

⁵⁰ Gobinda Chandra Mandal, "Stridhana and Hindu Women's Property Rights in Bangladesh: A Legal Analysis of the Dayabhaga Tradition," 35 *Dhaka Univ. LJ* 63 (2024).

This is a different approach than Mitakshara school & provides a better chance to the women specially widows. But still it didn't give women equality like men.

3.4 Position of Women under Traditional Hindu Law

The position of Hindu women was a history of dependence, restriction, subordination, dowry, maintenance etc.. Where they were not being considered as equal heir as men in the family property. Their position was economically weak and also they had to face patriarchal dominance day in day out.

Historically women were treated as they need to be maintained, need support, and she do not need to be property owner. The excuse usually given in case of a daughter that they can not claim their family property because during marriage they were given dowry, gift etc.. A widow sometimes may get the property but with limited access, she can not sell it & probably after her death it will go back to her husband's heir.

3.5 Concept of Stridhan and Women's Separate Property

One of the very few areas in early Hindu culture where women enjoy distinct property rights or confirm recognition is the concept of Stridhan. Male lineage can not have access to this type of property. Actually Stridhan is the property given to a women in various occasions like by her father or brother, or by other relative, before marriage, at the time of marriage, at the time of bridal departure, of after marriage by her husband, etc.⁵¹ Also some school of thought suggest stridhan also counts if any property is own by a women by her own effort as a part of separate estate. Some school of thought may differ from this thought but the key idea was a separate property under the ownership exclusively of a women without the control of a male lineage.⁵²

However in old Hindu society in legal practice or actual family practice, this recognition to women was limited. In everyday life the situation was more restrictive. Stridhan was a separate topic and was treated as independent asset. Stridhan didn't disturb the existing structures of the Hindu succession practice. Family property & ancestral property moved through male lineage only. But the only importance of stridhan is that it seeded the plant which later become a tree for women succession rights. Section 14 of The Hindu Succession Act 1956 was basically an extension of this idea.

3.6 The Hindu Women's Right to Property Act, 1937

As we have seen till now that women's succession rights & intestate succession rights in Hindu culture was not smooth at all rather this was narrow & uncertain. The light came when The Hindu Women's Right to Property Act, 1937,⁵³ was implemented in India. This act, known as the Deshmukh act was considered as a landmark legislation in Hindu law. First time it brought major changes for the Hindu widows that they can inherit property of their deceased husband with equal share as a son to claim the property portion.

This is historic as this is the first time women in Hindu culture saw inheritance rights for widows. The change was from just moral support, maintenance and residence to true share on the deceased husband's property. She can now be absolute owner and equal sharer on the property. But this doesn't mean that all women's are given equality or brought her on the same table as men but it is just a small step and limited rights and restricted powers of alienation.⁵⁴

3.7 The Hindu Succession Act, 1956: A Turning Point

In the year 1956 a revolution happened in the segment of Hindu Women's succession act. It was a monumental turning point because it demolished the traditional patriarchal laws of Hindu succession, keeping in mind about the constitutional values. This is the first time judiciary has accepted the Women as heirs legally which improved and broadened their rights improved their position in the society, and it also challenged old patriarchal framework of succession.

Apart from Hindu, This act also applies to Buddhists, Jains, and Sikhs. This act replaced much of the earlier uncodified law relating to intestate succession among which one of its most important change was the

⁵¹ Bilashi Shaha, "Right to Stridhan of Woman: A Comparative Study" 1094–102 (2025).

⁵² R Sathiyabama, "Gender Equality in Property Rights: the Position of Hindu Women–Historical Perspective" *Interdisciplinarity: The Palimpsest of Culture* 45 (2016).

⁵³ *The Hindu Women's Right to Property Act, (Act 18 of 1937)*.

⁵⁴ Debarati Halder and Karuppanan Jaishankar, "Property rights of Hindu women: A feminist review of succession laws of ancient, medieval, and modern India," 24 *Journal of law and religion* 663–87 (2008).

recognition of female heirs. The act included widows, mothers, and daughters as Class I heirs beside male and by doing so It gave them a stronger and more direct position in succession to the property of a male Hindu dying intestate.⁵⁵

Section 14 of the Hindu Succession Act, 1956 gives a strong message & changes the nature of the property owned by Hindu Female which is making them full owner and not limited owner. That is why this section is treated as the most important section. But it is to be noted that the old Mitakshara traditions were not demolished by this act hence coparcenary rights were still reserved by the male lineage by birthright, daughters are still didn't became coparcenary heirs. Hence this act also didn't fully managed to make the gender equality fully.⁵⁶ But a significant change has been successfully introduced.

3.8 Intestate Succession of Female Hindus under the Act

Till now we have talked about succession of property of a Hindu male, but the Hindu Succession Act has laid down separate schemes for succession to the property of a Hindu female dying intestate. After death of a Hindu women, her property is not distributed similar to a when a Hindu men dies.

- ▶ First, her property will go to her sons or daughters and their children surviving if any of sons or daughters died earlier.⁵⁷
- ▶ Second, if these heirs are not available then her property will go to the sons and daughters of Her husband.
- ▶ Third, If they are not available then it goes to Her mother and father and if even they are not available then it will go to the heirs of Her father.
- ▶ Fourth, if all of the above is not available, then it goes to the heirs of her mother.

So, it can be said that the Hindu succession laws has made significant progress by advancing from male lineage path but we have to note that as because her husband's heirs got priority over her father & mother, the patriarchal thought still remains somewhere and property distribution still consider her marital conditions.

Another point to be noted that, In case of a Hindu woman dies intestate, before succession it has been seen what is the source of her property? Whether that has been inherited from her natal source (father, mother etc) or marital source (father-in law, husband). Depending on that different line of devolution is being followed if she dies intestate without children of her own.⁵⁸

3.9 Coparcenary Rights and Gender Inequality before 2005

The Hindu Succession Act 1956 has some critical flaws. The constitutional ethics, morality, equality, dignity & non-discrimination were not followed as it would have been. It was not at par with the constitutional equality, gender neutrality path. Hindu Mitakshara coparcenary rights on ancestral property still remains before 2005 amendment which means sons will have birth right but daughters not. Only after the death of the father, daughter's rights will open up.

Now as wills, intestacy & succession are under entry 5 of the concurrent list (list III) of the seventh schedule of the constitution, some states (Kerala in 1975, Andhra Pradesh in 1985, Tamilnadu in 1989, Maharashtra in 1994, & Karnataka in 1994) has already done state amendment of the succession act and gave daughters also the coparcenary right on the ancestral property.

Now the conflict of interest arose e.g., If a Hindu son migrates to Maharashtra from Utter Pradesh having a share in coparcenary with his father & two brother who still resides in Utter Pradesh now whether the Law of Utter Pradesh (not amended) applies to him or the law of Maharashtra (amended) applies to him? Or, If a daughter & two son have immovable property jointly in Kerala, Uttar Pradesh & Maharashtra, which among

⁵⁵ Ira Pal and Ms. Malobika Bose, "PROPERTY RIGHTS OF HINDU WOMEN IN INDIA," 5 *INDIAN JOURNAL OF LEGAL REVIEW* 352–84 (2025).

⁵⁶ Bina Agarwal, "'Bargaining', Gender Equality and Legal Change: The Case of India's Inheritance Laws" *Routledge Readings on Law and Social Justice* 273–314 (Routledge India, 2022).

⁵⁷ Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (Suny Press, 1999).

⁵⁸ Debarati Halder and K. Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India," 24 *Journal of Law and Religion* 663–87 (2008).

the properties will be considered as coparcenary property?⁵⁹ Hence a need of central act amending the succession act of 1956 was necessary. And it was done through 2005 amendment.

3.10 The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act, 2005 struck down the error discussed earlier done in the Hindu Succession Act, 1956. The amendment brought daughters into the coparcenary by birthright similar to the sons under Mitakshara coparcenary Hindu joint family. A small correction ended history old inequalities within the Hindu joint family.

Specially after 2005 amendment of the Hindu Succession Act, position of women improved a lot. Daughters are now coparcener by birth in a Mitakshara joint family. She do not have to be dependent. She doesn't have to wait for someone's death for claiming property. She now have equal rights and liabilities similar to a son. She can ask for property partition. She can dispose her property as per her choice.

In this way the position of women became stable. The amendment was critical & not only technical removing errors to the earlier law but it goes far beyond as it symbolizes her birthright on her ancestral property.⁶⁰

3.11 Judicial Interpretation and Leading Cases

Judicial interpretation has played an indispensable role in shaping women's intestate succession rights under Hindu law. Courts have not merely applied statutory provisions; they have often had to resolve ambiguities, clarify the scope of reform, and decide whether the law should be interpreted narrowly or in a manner consistent with gender justice. In relation to section 14, the courts have generally recognised its beneficial character and have often construed it liberally in favour of women. The judiciary acknowledged that the purpose of the provision was to abolish the concept of limited estate and confer full ownership on Hindu females in respect of property possessed by them. The question of daughters' coparcenary rights after the 2005 amendment gave rise to particularly significant decisions. Earlier judgments showed some uncertainty on whether the amendment applied only if the father was alive on the date of commencement. This issue was ultimately clarified by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*,⁶¹ where the Court held that the daughter's coparcenary right is by birth and does not depend on whether the father was alive on the date of amendment. This judgment strongly affirmed the purpose of equality of the amendment.⁶²

Other decisions, such as *Ganduri Koteswaramma v. Chakiri Yanadi*,⁶³ recognised that daughters could claim the benefit of the amendment even in pending partition proceedings where a final decree had not yet been passed.⁶⁴ Such judgments prevented procedural technicalities from defeating substantive equality. Judicial developments have therefore been central to ensuring that legislative reform under Hindu law is not undermined by restrictive interpretation. The courts have increasingly viewed women's property rights through the lens of equality and fairness, though some doctrinal issues continue to invite debate.

3.12 Continuing Challenges in Practice

Despite extensive reform, the practical enjoyment of women's intestate succession rights under Hindu law remains uneven. Formal legal equality does not always translate into actual possession, control, or benefit. Many women continue to face social, emotional, and procedural barriers in claiming their inheritance.

One major challenge is the persistence of patriarchal family attitudes. Daughters are often discouraged from asserting claims against brothers on the grounds that doing so would damage family harmony or violate cultural expectations. In many cases, women are pressured into relinquishing shares through oral settlements, family arrangements, or nominal release deeds. Such relinquishment is frequently presented as voluntary, though it may reflect deep social coercion.

⁵⁹ *Kavalappara Kottarathil Kochuni v. States of Madras & Kerala*, AIR 1960 SC 1080

⁶⁰ Nishant Chandravanshi and Deepa Chandravanshi, *Women Without Ambedkar: Property, Divorce, and Inheritance Before Legal Reform* (Chandravanshi, 2026).

⁶¹ *Vineeta Sharma vs Rakesh Sharma*, AIR 2020 SUPREME COURT 3717, AIRONLINE 2020 SC 676, 2020.

⁶² Vijender Kumar, "DAUGHTER AS A COPARCENER," 64 *Journal of the Indian Law Institute* 127–56 (2022).

⁶³ *Ganduri Koteswaramma and Anr. vs. Chakiri Yanadi and Anr.*, Civil Appeal No 8538 of 2011, 2011.

⁶⁴ Vijender Kumar, "DAUGHTER AS A COPARCENER," 64 *Journal of the Indian Law Institute* 127–56 (2022).

Another challenge lies in the lack of awareness. Many women are unaware of their rights under the Hindu Succession Act, especially the changes brought by the 2005 amendment. Illiteracy, limited access to legal advice, and dependence on male relatives further weaken their ability to assert claims.⁶⁵

Procedural difficulties also remain serious. Mutation records, partition suits, proof of title, and possession disputes often require time, money, and sustained legal effort. Women who are economically dependent may be unable to pursue litigation. Rural land records and customary practices sometimes continue to reflect male-centric assumptions, even where the statutory law is clear.

Thus, while Hindu law has undergone major reform in favour of women, social reality still reveals a significant gap between legal entitlement and effective enjoyment. The struggle for equality in succession, therefore, remains both legal and social.

3.13 Conclusion

The history of women's intestate succession rights under Hindu law is one of profound transition. Traditional Hindu law, particularly under the Mitakshara system, placed women in a subordinate position within the property structure of the family. Women were excluded from coparcenary, daughters were postponed or denied inheritance, and widows often received only limited estates.⁶⁶ The concept of stridhan offered some recognition of women's separate property, but it did not alter the fundamentally patriarchal character of succession law.

Legislative reform gradually changed this position. The Hindu Women's Right to Property Act, 1937, enlarged the widow's rights and marked the beginning of statutory intervention. The Hindu Succession Act, 1956, transformed the landscape by recognising women as Class I heirs and converting limited estates into absolute ownership through section 14. Yet the 1956 Act still preserved male privilege in the coparcenary. That final structural barrier was addressed by the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights by birth.

Judicial interpretation further strengthened these reforms by clarifying ambiguities and advancing an equality-oriented reading of the law. Even so, the practical realisation of women's rights continues to be hindered by social pressure, lack of awareness, and procedural barriers.

Hindu law today stands as a striking example of both the possibilities and the limits of legal reform. It demonstrates how a deeply patriarchal inheritance system can be significantly transformed through legislation and adjudication.⁶⁷ At the same time, it shows that formal legal change must be accompanied by social change if women are to enjoy succession rights in a truly substantive sense. The next chapter will examine women's intestate succession rights under Muslim law, where the legal structure, historical logic, and gender implications take a different form.

Chapter 4: Women's Intestate Succession Rights under Muslim Law

4.1 Introduction

The law of intestate succession under Muslim law occupies a distinctive place in the study of women's property rights in India. Unlike traditional Hindu law, where women were for long denied effective participation in the main line of inheritance, Muslim law, from its classical foundations, expressly recognised women as heirs.⁶⁸ A daughter, widow, mother, and other female relatives were not entirely excluded from succession; rather, they were assigned defined shares in the estate of the deceased.

In case of women's intestate succession, Muslim succession tradition has huge significance because Muslims didn't exclude women totally from inheritance and they are recognized as heirs. We know that only recognition is not sufficient as it doesn't mean equality. Muslim inheritance law has some features through

⁶⁵ Anjali Sharma and Sonia Sharma, "Awareness, Challenges and Unveiling Obstacles in Implementing Women's Inheritance Rights" *Tech Fusion in Business and Society: Harnessing Big Data, IoT, and Sustainability in Business: Volume 2* 641–50 (Springer, 2025).

⁶⁶ Shruti Pandey, "Property rights of Indian women" *Law and sharia consultants, promoting the recognition and research of muslim personal law in South Africa* (2005).

⁶⁷ Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge University Press, 2011).

⁶⁸ Md Sirajus Sayafin Saif, "Women's Right to Inheritance under Muslim, Hindu, and Cristian Laws: A Comparative Legal Study" (unpublished PhD Thesis, East West University, 2022).

which succession works, those are fixed shares, residuary heirs, rules of exclusion and priority. In this type of system, Muslim men and women do not receive equal portions.

That is why it is important to study the Muslim inheritance law thoroughly. Muslim law has three important features:

- ▶ First, inheritance in Muslim law traditionally was among the most detailed and systematic process of inheritance. It has provisions on heirs, shares, exclusions and priorities, and they directly determine the position of women within the family property.⁶⁹
- ▶ Second, the property of the deceased does not ordinarily pass through an idea similar to Hindu coparcenary birthright. Here, no heir receives share by birthright. The succession will only open after death of the owner and from the owner's property funeral expenses, debts and valid testamentary bequests are kept aside and then the remaining property is ready to be distributed among the remaining legal heirs.
- ▶ Third, Women has fixed shares. But the share given to a woman is often not the same as the share given to a male relative. This makes Muslim law particularly important for studying the difference between being formally recognised as an heir and actually enjoying equality in substance.

In India, Muslim personal law has not remained untouched by history. It has been shaped by classical juristic principles, colonial administration, selective statutory intervention and judicial interpretation. Its present form, therefore, cannot be understood only by looking at religious doctrine in isolation; it must also be read through these historical and legal developments. The Muslim Personal Law (Shariat) Application Act, 1937, played an important role in affirming the application of Muslim personal law in matters including succession and in displacing certain contrary customs.⁷⁰ This had particular relevance for women because in some regions, customary practices had operated even more harshly against them than the formal rules of Muslim law. The legal history of Muslim women's inheritance rights in India is therefore not merely a story of scriptural doctrine; it is also a story of conflict between doctrine and custom, between theoretical entitlement and practical exclusion.

4.2 Nature and Sources of Muslim Law

Muslim law, or Islamic law, is a personal law system derived primarily from religious sources and juristic interpretation. In matters of succession, it constitutes a comprehensive and highly structured body of rules governing the distribution of the estate of a deceased Muslim who dies intestate. Unlike a purely statutory regime, Muslim inheritance law historically emerged from scriptural foundations and juristic elaboration, although in modern legal systems such as India, its operation is mediated through courts, legislation, and precedent.

The primary sources of Muslim law are the Quran, the Hadith or traditions of the Prophet, Ijma or consensus of jurists, and Qiyas or analogical reasoning.⁷¹ The Quran occupies the highest authority and contains explicit provisions on inheritance, including the shares of daughters, widows, mothers, and sisters. These Quranic directions are important because they gave women a recognised right to inherit within a formal legal arrangement at a very early stage.

Now this is important that Muslim personal laws considers women for the scheme of succession and not keeping them aside. This is further guided by Hadith when question for interpretation or practical application arises and Ijma and Qiyas helps jurists to develop rules where there are no written texts or where further reasoning is required.⁷²

Like Hindu law, Muslim personal law also has different schools of jurisprudence like Hanafi school of the Sunnies or the Ithna Ashari school of the Shias. The Hanafi school is considered to be having strongest influence in south Asia. Different school has different ways to treat matters of inheritance. And it is visible in case of matters relating to residuaries, distant kindred and the rules by which heirs are excluded or preferred.

⁶⁹ David S Powers, "The Islamic inheritance system: a socio-historical approach," 8 *Arab LQ* 13 (1993).

⁷⁰ Alhaji Ajijola, *Introduction to Islamic Law* (Adam Publishers, 2007).

⁷¹ AHMAD HASAN, "THE SOURCES OF ISLAMIC LAW," 7 *Islamic Studies* 165–84 (1968).

⁷² Mohammad Hashim Kamali, "Methodological issues in Islamic jurisprudence," 11 *Arab LQ* 3 (1996).

Apart from these classical laws, Muslim law has also been shaped by the Muslim Personal Law (Shariat) Application Act, 1937,⁷³ in cases of intestate succession also.

4.3 Concept of Succession under Muslim Law

The concept of succession under Muslim law differs in important respects from traditional Hindu law. Muslim law does not recognise coparcenary birth right on ancestral property, whereas Hindu law does. In Muslim law succession process only starts after the death of the previous owner. And until death the existing owner has every right on his/her property.

Muslim law recognizes women succession rights but they do not have same share percentage as male heirs. After the death of the owner, the succession will open and, from the estate funeral expense is kept aside, then if some debts are there that will be taken aside, then after that if any valid testamentary settlement are present that will be taken care. After these prior claims are settled, the remaining estate will be available for the Heirs to be distributed.⁷⁴

This aforementioned order is very important because it shows that the whole property is only to be distributed only after clearing claims. In Muslim law, each heir usually get a fixed pre-decided share on the estate. In Hindu law if owner (of a joint ownership property), remains alive then the survivorship rule follows but in Muslim law there are no rule similar.⁷⁵

4.4 Difference between Sunni and Shia Rules of Inheritance

This is to note that under Muslim succession laws there are multiple un-uniformity. Significant difference between Sunni & Shia rules was seen and those has direct impact on the volume of shares & the positions of women. Among these differences, the classification of heirs, the rules of exclusion, the treatment of residuaries and distant kindred are most important.

As per the Hanafi school of thought from Sunni law, the legal heirs are grouped in three categories, those are Quranic sharers, residuaries & distant Kindred. Quranic sharers get a fixed share recognized by law, the remaining estate is distributed among the residuaries. The Distant Kindred will only be considered as heirs if there are no Quranic sharers or Residuaries present who are entitled as heirs.

Shia law, specially Ithna Ashari school of law, the arrangement is different than the Sunni law. Shia law gives priorities to the closeness of blood relationship and or blood relationship and less importance to the residuaries. Hence, female heirs have stronger position under Sunni law.⁷⁶

There are more differences present in the way, that the doctrines of awl and radd are applied. Awl & Radd are applicable only if fixed shares either exceed or leave a surplus than the value of the estate. If the total prescribed shares are more than the available estate, then it is dealt by Awl. Then the shares has to be reduced in the same ratio. Radd, on the other hand, applies where the fixed shares do not exhaust the estate, and the remaining portion has to be returned to eligible heirs.⁷⁷

4.5 Categories of Heirs: Sharers, Residuaries, and Distant Kindred

The classification of heirs under Muslim law is essential to understanding women's intestate succession rights. As already mentioned that there are three categories of heirs which are sharers, residuaries, and distant kindred.⁷⁸ It is important to know who falls under which. For the sharers the shares are fixed by law. The main heirs, i.e., Wife, daughter, mother, grandmother and sisters full or consanguine in certain cases etc. important

⁷³ *The Muslim Personal Law (Shariat) Application Act, 1937.*

⁷⁴ Naziree Md Yusof and Nor Aida Ab Kadir, "Liability management in muslim estate administration" (2018).

⁷⁵ District – Balodabazar- Bhatapara (CG), "Analysis of law relating to succession and inheritance in Hindus. Functioning of customary law in the tribal societies and its applicability for access to justice," 2025.

⁷⁶ Shahbaz Ahmad Cheema, "Shia and Sunni laws of inheritance: a comparative analysis," 10 *Pakistan Journal of Islamic Research* (2012).

⁷⁷ Muhamad Mu'izz Abdullah, Mohd Zamro Muda and MY Ahmad, "Evaluating the fatwa on surplus estate management in the State of Perlis: Insights into the al-Radd (Reinstatement) method," 14 *International Journal of Academic Research in Business and Social Sciences* 108–19 (2024).

⁷⁸ Abid Hussain, *The Islāmic Law of Succession* (Darussalam, 2005).

female members falls under this category beside other male members. Hence this fixed share concept has significance because historically it has given women succession rights.

After the fixed share distribution to the fixed sharers, the remaining shares will go to the Residuaries. In Muslim succession law they stand in a different position. Most of the male agnatic relatives will fall under this category, i.e., sons, brothers, paternal uncles etc. Here the catch is beside male, here female heir can be a residuaries too, if they are in the same group, e.g., a daughter with a son, in this case the rule is that the son will inherits twice than that of the daughter. This is the main reason why females do not get equal inheritance similar to men.

Now if both sharers and residuaries are absent, in that case the Distant kindred are considered as heirs. They are mostly remote blood relations. They can also be females.

4.6 Position of Women as Daughter, Widow, Mother, and Sister

The position and the distribution of estate, under Muslim law depends on the relationship with the dead owner and presence of other heirs.

Daughter – 1. If the deceased has one daughter & no son, the daughter will get $\frac{1}{2}$ of the estate. **2.** If two or more daughters are present & no son, then together the daughters will receive $\frac{2}{3}$ share. **3.** Now the problem arises if there is a son beside daughters as heir, then they all will inherits not as sharers but as residuaries. And the son will receive 2x than that of daughter. A daughter can not be excluded.

Widow – 1. If the dead owner doesn't have no child or no lineal descendant, then the widow will get $\frac{1}{4}$ of the share. **2.** If there is a child, then the widow will get $\frac{1}{8}$ of the share. **3.** If there are more than one widow, then the portion will be equally distributed among them. A widow can not be excluded.

Below table is self-explanatory for all the women shares in the succession –

Sl. No.	Heir	Share / Position	Exclusion
1	Wife / Widow	$\frac{1}{8}$ if deceased has children; $\frac{1}{4}$ if childless	Never excluded
2	Daughter	Single daughter gets $\frac{1}{2}$; two or more get $\frac{2}{3}$ jointly; becomes residuary with son	Never excluded
3	Son's daughter	$\frac{1}{2}$ if single; $\frac{2}{3}$ jointly if two or more; reduced in certain cases; becomes residuary with son's son	Can be excluded
4	Full sister	$\frac{1}{2}$ if single; $\frac{2}{3}$ jointly if two or more; becomes residuary with full brother	Can be excluded
5	Consanguine sister	$\frac{1}{2}$ if single; $\frac{2}{3}$ jointly if two or more; reduced to $\frac{1}{6}$ in presence of full sister; becomes residuary with consanguine brother	Can be excluded
6	Uterine sister	$\frac{1}{6}$ if single; $\frac{1}{3}$ jointly if two or more	Can be excluded
7	Mother	$\frac{1}{6}$ generally; $\frac{1}{3}$ in absence of child or son's child and certain siblings; $\frac{1}{3}$ of residue after spouse's share in some cases	Never excluded
8	True grandmother	$\frac{1}{6}$	Can be excluded under exceptions

These rules show that Muslim law gives women a place in several relational capacities. They inherit as daughters, wives, mothers and sisters. They are not pushed into one vague dependent category. At the same time, their shares are often shaped, reduced or displaced by the presence of male heirs, which makes the distinction between legal recognition and equal entitlement especially important.⁷⁹ Yet the quantum of their

⁷⁹ John L Esposito, *Women in Muslim Family Law* (Syracuse University Press, 2001).

inheritance is frequently conditioned by the presence of male heirs, and in many cases their shares are smaller than those of corresponding male relatives.

4.7 Doctrines affecting Women's Shares: Exclusion, Preference, and Representation

Several doctrines within Muslim succession law directly affect the actual shares available to women. These include rules of exclusion, priority, and, in some schools, the limited or differing role of representation.

The doctrine of exclusion works in a simple but powerful way: some heirs are kept out when nearer heirs are present. For women, this can make inheritance narrower in practice. A sister, for example, may lose her claim if there is a brother or a nearer male descendant. More remote female relatives may also be pushed out when closer heirs exist. Exclusion applies to men as well, but because the structure often gives stronger space to male agnates, its effect can fall more heavily on women.

Preference operates in a similar manner. The law decides which relationship is closer, stronger, or more entitled to inherit first. In that ordering, male heirs often occupy a more advantageous position because of the importance given to residuary and agnatic connections.

Representation is another area where the schools differ. Under classical Sunni law, the principle is relatively narrow. A more remote descendant does not always step into the place of a predeceased heir in the same way one may see in some modern statutory systems. Shia law, particularly through its class-based approach, gives somewhat greater weight to bloodline descent. These differences are not merely theoretical. They may decide whether a granddaughter, niece, or another female descendant receives anything at all. Taken together, these doctrines show that women's inheritance under Muslim law cannot be understood only by looking at fixed shares. Their actual position is also shaped by the larger structure of heirship — who is nearer, who excludes whom, who takes as residuary, and how the particular school of law arranges the order of succession.⁸⁰ This is why the formal recognition of women as heirs, though important, does not exhaust the inquiry into their actual legal position.

4.8 Role of the Muslim Personal Law (Shariat) Application Act, 1937

The Muslim Personal Law (Shariat) Application Act, 1937,⁸¹ occupies an important position in the Indian law of Muslim succession. The Act was enacted to ensure that, in matters including intestate succession, marriage, dissolution of marriage, maintenance, dower, guardianship, gifts, trusts, and waqf, the rule of decision would be Muslim personal law rather than contrary custom, subject to the terms of the Act.

This move was necessary to improve women's position. In many cases we have seen that even if women are considered as heirs, but local customs or too formal inheritance laws reduce or exclude women from inheritance. For example Agricultural land, customary practice can exclude women from agricultural land or reduce their claim. Now the Muslim Personal Law (Shariat) Application Act, 1937 recognizes women as heirs it strengthen the position of women. May be it did not creates complete equality but at least it restores a recognised legal share.⁸²

4.9 Judicial Approach towards Muslim Women's Succession Rights

Indian courts have generally approached Muslim succession law by applying the relevant principles of personal law as recognised by authoritative texts, precedents, and statutory context. The judiciary has often been called upon to determine questions of heirship, legitimacy, exclusion, proof of relationship, and the effect of custom or settlement.

In matters concerning women's inheritance, courts have recognised that Muslim women are not merely dependants or moral claimants. They are legal heirs, and their shares can be enforced through law. Judicial decisions have also affirmed that, where the Shariat Act applies, Muslim personal law governs succession. This has reduced the scope for contrary customs to override women's recognised inheritance rights. The point

⁸⁰ Abdulmajeed Hassan Bello, "Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women," 29 *Arab Law Quarterly* 261–73 (2015).

⁸¹ *The Muslim Personal Law (Shariat) Application Act, 1937*.

⁸² Hilal Ahmed, *Siyasi Muslims: A Story of Political Islams in India* (Penguin Random House India Private Limited, 2019).

is especially important in situations where women's shares were not denied openly in law, but were informally pushed aside through family practice, local custom, or pressure from male relatives.⁸³

4.10 Critical Evaluation of Gender Justice under Muslim Intestate Law

A critical evaluation of Muslim intestate succession law requires balancing two realities. On the one hand, Muslim law historically recognised women as heirs in a structured and enforceable manner. This was a notable departure from systems in which women were largely excluded from inheritance or reduced to mere maintenance. The daughter, widow, mother, and sister were all given legal status. This formal recognition should not be underestimated.

On the other hand, the law remains gender-differentiated in important ways. In many situations, women receive smaller shares than men of the same degree.⁸⁴ The principle that a male heir may receive twice the share of a female heir embodies a model of family responsibility and gender roles that may have reflected earlier social assumptions but sit uneasily with contemporary constitutional understandings of equality. When viewed from the perspective of substantive gender justice, the mere inclusion of women as heirs does not fully answer the problem. The size of the share also matters. A woman may be recognised in law, yet still receive less than a male heir placed in a comparable position. That unequal quantum remains a serious concern. There is also the practical side. Even the formal benefit of being a recognised heir may be weakened by social reality. Women may be persuaded to give up their shares. They may not get possession. They may lack money, support, documents, or family backing to enforce what the law gives them. So the real question is not only whether inheritance is granted. It is whether it is granted on equal terms, and whether the right can actually be enjoyed.

The reform debate is therefore not simple. Some defend the fixed-share system as a coherent religious framework, pointing also to protections such as dower and maintenance. Others argue that constitutional values of equality and dignity require a fresh reconsideration of gender-based differences in inheritance shares. The tension between personal law autonomy and equality-oriented reform remains at the heart of this debate..

4.11 Conclusion

Women's intestate succession rights under Muslim law present a distinctive legal model in Indian personal law. Unlike systems that historically excluded women from the mainstream of inheritance, Muslim law expressly recognises women as heirs and assigns them defined shares. A daughter, widow, mother, and sister each occupies a recognised place within the succession structure. This formal inclusion is historically important and legally significant.

At the same time, Muslim inheritance law does not provide complete gender equality. The shares of women are often smaller than those of corresponding male heirs, and the wider doctrines of residuary succession, exclusion, and agnatic preference can further reduce the effective reach of women's claims.⁸⁵ The Shariat Act of 1937 strengthened women's legal position by displacing certain exclusionary customs, yet it did not alter the substantive framework of differentiated shares.

The practical realisation of Muslim women's inheritance rights is also affected by social barriers, informal pressures, and limited access to enforcement. As a result, the law reflects both progress and limitations. It recognises women not as outsiders to succession but as legal heirs, yet it does so within a framework that continues to raise difficult questions of substantive equality and gender justice.

Chapter 5: Women's Intestate Succession Rights under Christian, Parsi, and Jewish Laws in India

5.1 Introduction

The study of women's intestate succession rights in India would remain incomplete without examining the position under Christian, Parsi, and Jewish legal frameworks. In India the majority population is either Hindu or Muslim, but there are a significant amount of persons who are Christian, Parsi, or Jewish. They also have

⁸³ *C.Mohammed Yunus vs Syed Unissa And Others*, 1961 AIR 808, 1962 SCR (1) 67, AIR 1961 SUPREME COURT 808, 1962 (1) SCR 67 1962 (1) SCJ 449, 1962 (1) SCJ 449, 1961.

⁸⁴ Adis Duderija, "Islam and gender in the thought of a critical-progressive Muslim scholar-activist: Ziba Mir-Hosseini," 25 *Islam and Christian-Muslim Relations* 433-49 (2014).

⁸⁵ Zulfikar Zulfikar and Sri Windani, "Gender equality in inheritance distribution reviewed from the perspective of islamic inheritance law," 5 *Journal of Gender and Social Inclusion in Muslim Societies* 13-24 (2024).

their personal law systems which are neither like Hindu nor Muslim personal law systems. Mostly they have moved to Indian Succession Act 1925. There are some community specific provisions which guides them.⁸⁶ For this reason these communities do not depend on any classical school of thoughts but still it should not be forgotten that they are still not complete gender neutral.

Within the Indian context, Christian succession law has for a long period been governed by the Indian Succession Act, 1925, though earlier legislative history and regional differences must also be acknowledged.⁸⁷ The position of Parsi women is also regulated under provisions of the same Act, but with a community-specific structure of devolution. Jewish succession in India, by contrast, has historically been more limited in terms of codified separate personal law and has often been discussed in relation to general legal principles, customary practice, and the broader framework of succession law applicable in the Indian legal system. Consequently, the comparative study of these communities reveals not only differences in legal substance but also differences in the degree of formal codification and institutional visibility.

5.2 Christian Women's Rights in Intestate Property Succession

The Indian Succession Act 1925 was the main governing law for Christian intestate succession. Not like other customs, position of Christian women under this act is more formalised and organised by providing statutes of who may inherit and in what order when a Christian dies intestate.⁸⁸

Widow – After death of a Christian who is having a widow and lineal descendants and has no will, then the widow will receive $\frac{1}{3}$ of the estate and the rest of the estate will go to the descendants. If there is no lineal descendant then it is to be looked whether there are and distant kindred, the widow receive $\frac{1}{2}$ of the estate.⁸⁹ If there are no descendant & no distant kindred, then the entire estate will go to the widow. This gives the widow a clear legal status.

Daughter – In Christian intestate succession, the daughter is given equality similar to son. She is not left aside like other customs. She has a direct claim within the scheme of devolution.⁹⁰ The order of devolution is 1st Surviving widow, then lineal descendant, i.e., daughter, grand daughter. In this case the daughter (along with sons if present) gets $\frac{1}{2}$ of the state & equally distributed among the lineal heirs irrespective of gender.

Mother, Sister – They are considered as kindred. If there are no surviving spouse (here widow), or no surviving lineal descendant (here daughter or granddaughter or daughter of granddaughter, of course along with sons), Then the estate will go to Mother (if Father is not alive, or father will precede over mother) and if mother is not alive then Sister and similarly the statute will look for other kindred like uncle/aunts or nieces/nephews etc.

Escheat – If there are no souse, no lineal descendant, no kindred, i.e., no valid heirs, then the estate by default will go to the state government. This is known as escheat.

So this is how the Christian succession law considers women as heirs and they can inherit property intestate as well.

5.3 Rights of Widow, Daughter, and Mother under Christian Law

The rights of female heirs under Christian intestate succession may be better understood by considering the positions of the widow, daughter, and mother separately.

Widows are given special attention under the succession schemes of Christian law. Her share generally depends on the presence or absence of other heirs, i.e., lineal descendants and distant kindred. If lineal descendants exist, she will not get the whole property but will receive a defined portion only, and the remainder will get distributed among descendants. This shows the attempt of the legislation to balance the

⁸⁶ *The Indian Succession Act, 1925, (Act 39 of 1925).*

⁸⁷ Archana Mishra, "Breaking silence: Christian women's inheritance rights under Indian Succession Act, 1925," 9 *Chotanagpur Law Journal* 1–30 (2014).

⁸⁸ Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (University of Chicago Press, 1989).

⁸⁹ Mark L Ascher, "Curtailling inherited wealth," 89 *Michigan Law Review* 69–151 (1990).

⁹⁰ *Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors, 1986 AIR 1011, 1986 SCR (1) 371, AIR 1986 SUPREME COURT 1011, 1986 UJ (SC) 515, (1986) 99 MAD LW 15, (1986) KER LJ 253, (1986) 2 SUPREME 296, (1986) KER LT 508, (1986) 1 SCJ 416, 1986 (2) SCC 209, (1986) 1 SCWR 195, (1986) 2 CURCC 86, 1986.*

interest of the surviving widow with the other children. But it is to be noted that a widow's share is not always the largest, but it is clear full ownership.

The daughter, on the other hand, inherits as a lineal descendant and gets equal share as a son would have been. This is a significant point to be noted from the standpoint of gender equality. The daughter's right is not declined just because of marriage. This indicates a direct commitment to equal succession for son and daughter.⁹¹

The mother may also inherit in the absence of closer lineal descendants, depending on the factual situation and the structure of the kindred. Though her role is not always as immediately prominent as that of the widow or daughter, the recognition of the mother as part of the succession order reflects the legal acknowledgement of maternal relationship within the family's property structure.

Taken together, these positions suggest that Christian succession law under the statute offers women a stronger formal footing than many historical personal law systems did. The widow, daughter, and mother each occupy legally recognised positions in the line of devolution. This does not mean that every aspect of the law is beyond criticism, but the statutory structure generally avoids the stark exclusionary patterns associated with older patriarchal systems.

5.4 Historical Disabilities and Subsequent Improvements

Although Christian women under the Indian statutory framework came to enjoy a more clearly protected position in intestate succession, the historical journey was not entirely free from difficulty. Old legal practices, social conditions, and local practices have impacted unwanted results in cases of women succession.

After development of the modern succession rules, these anomalies were reduced. After setting the current inheritance rules in a proper structure, succession of Christian women was somehow assured. This has benefited women because a codified rule is much better than a un-written one.

Thus, the history of Christian women's succession rights in India may be seen as one of comparatively stronger statutory recognition, supported over time by broader legal modernisation and constitutional values.⁹²

5.5 Parsi Women's Rights in Intestate Succession

Parsi intestate succession in India is governed through specific provisions within the Indian Succession Act, 1925. The Parsi scheme is distinct in structure and reflects a more community-specific legislative framework.⁹³ For women, the Parsi system is particularly important because it places them within a formal statutory order while also revealing how community-specific succession rules may structure shares and relationships in particular ways.

Parsi women are revered in multiple capacities, including as widows, daughters, and mothers. The law provides an identifiable scheme of devolution that generally includes women among the recognised heirs.⁹⁴ This statutory position gives Parsi women a clearer legal status than would exist under a purely customary regime. The widow is not merely protected through support; she is a successor. The daughter also forms part of the family line entitled to inherit.

The structure of Parsi intestate succession has often been regarded as comparatively orderly and precise. This can be advantageous for women because legal certainty enhances enforceability. However, as with any statutory system, the crucial question is not merely whether women inherit, but how the law values their claims relative to other heirs and whether the scheme reflects full equality in both principle and effect.

Even where the statute appears balanced, social and family realities may still influence women's ability to assert rights. Therefore, the position of Parsi women must be assessed not only textually but also through the broader lens of legal effectiveness and gender justice.

⁹¹ Mr Ashish Shahi and others, "CONCEPTUAL UNDERPINNINGS OF INHERITANCE LAW: A DOCTRINAL REVIEW OF THE INDIAN SUCCESSION ACT, 1925," 3 *International Journal of Multidisciplinary Research in Arts, Science and Technology* 59–77 (2025).

⁹² Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge University Press, 2013), XXII.

⁹³ Rachana Choudhary and Suman Yadav, *Modes of Transfer of Property in India* (Inkbound Publishers, 2023).

⁹⁴ Bhavya Bose, "Succession Laws amongst Parsi in India," 4 *Issue 3 Int'l JL Mgmt. & Human.* 1696 (2021).

5.6 Scheme of Distribution under Parsi Intestate Law

The scheme of distribution under Parsi intestate law is laid down in the Indian Succession Act through special provisions applicable to Parsis.⁹⁵ The law specifies the relatives entitled to succeed and the manner in which the estate is to be distributed among them. The widow, widower, children, and parents occupy important places within this order.

The significance of this scheme lies in its legislative precision. It seeks to identify the heirs clearly and to reduce uncertainty. Female heirs are not marginal to the system; rather, they appear as integral participants in devolution. A daughter is counted among the children entitled to succession, and a widow is a recognised heir with a direct proprietary claim.

The share completely depends on the surviving family members at the time of death. E.g., If the deceased leaves behind a widow and children, then the property is equally divided among all of them.⁹⁶ If parents are alive and getting shares along with the spouse and children, then the spouse & children gets equal shares but each parent will get exactly half of the share of a one single child. If no spouse is alive then the property will be distributed among the children equally.

The hierarchy of devolution is first Lineal descendants and spouse, Then parents, then Widows of predeceased lineal descendants, then Next-of-kin.

5.7 Jewish Women's Succession Rights in India: Legal Position and Practice

The Jewish community in India has not historically had the same kind of extensive, separately codified personal law framework in succession as some other communities.⁹⁷ The legal position of Jewish succession has therefore often been understood through a combination of community practice, private law principles, and the broader operation of succession law within the Indian legal system. This relative lack of a highly visible, codified separate regime makes the study of Jewish women's succession rights more complex.

In principle, Jewish women in India have been capable of inheriting property, and the legal system has not entirely excluded them from succession.⁹⁸ However, the extent and manner of succession may have been influenced by the specific traditions of the community, family arrangements, and the practical application of general legal rules. Because the Indian legal system eventually moved towards more structured statutory regulation of succession in many areas, Jewish women's rights must be understood within this broader environment of legal modernisation.

In case of the Jewish succession under the Indian Succession Act, If lineal descendants are present along with the widow, then the widow receives $\frac{1}{3}$ of the property. And the rest $\frac{2}{3}$ is equally distributed among the children. If there are no lineal descendants but only kindred are present then the widow gets $\frac{1}{2}$ and the remaining $\frac{1}{2}$ goes to the kindred. The daughter usually gets equal share same as her brothers. No distinctions are made. If there is no widow & no lineal descendant, then the Mother will get the property as mother is direct heir in that case.

The comparative importance of the Jewish position lies less in the existence of a large body of codified succession doctrine and more in what it reveals about smaller minority communities in India: namely, that the relation between community identity and formal succession law may be less rigidly institutionalised, and that practical outcomes may depend significantly upon general legal principles and social practice.

For the purposes of this study, it is sufficient to note that Jewish women in India have not stood wholly outside the legal order of inheritance, but the doctrinal and institutional articulation of their rights has historically been less prominent than in the Christian and Parsi contexts. This itself raises an important analytical point: visibility in formal law often affects the ability of women to identify, claim, and enforce their property rights.

5.8 Similarities and Differences among Christian, Parsi, and Jewish Laws

A comparison of Christian, Parsi, and Jewish succession frameworks in India reveals both common ground and important distinctions. The main common feature is that these systems do not rest on the male birthright

⁹⁵ *Ibid.*

⁹⁶ Lawrence M Friedman, "The law of the living, the law of the dead: Property, succession, and society" *Wis. L. Rev.* 340 (1966).

⁹⁷ Joan G Roland, *Jewish Communities of India: Identity in a Colonial Era* (Routledge, 2018).

⁹⁸ Poonam Pradhan Saxena, "Succession Laws and Gender Justice" *Redefining family law in India* 282–305 (Routledge India, 2020).

structure that marked traditional Mitakshara Hindu law. There is no comparable coparcenary idea, where sons acquire an interest in ancestral property simply by birth. They also do not follow the same juristic pattern of fixed sharers and residuaries found in Muslim inheritance law. Instead, particularly in the case of Christians and Parsis, succession is shaped largely by statute. In below table the similarities and differences are mapped

Feature / Scenario	Christian Succession	Parsi Succession	Jewish Succession
Governing Sections	Sections 33–48	Sections 50–56	Sections 33–48
Daughter's vs. Son's Share (Similarity)	Exactly equal; gender neutrality is maintained.	Exactly equal (since the 1991 Amendment).	Exactly equal; gender neutrality is maintained.
Marital Status of Daughter (Similarity)	No impact; married and unmarried daughters inherit equally.	No impact; married and unmarried daughters inherit equally.	No impact; married and unmarried daughters inherit equally.
Widow's Share (With Children) (Difference)	Receives a fixed 1/3 of the estate.	Receives an equal child's share (e.g., if 2 children, splits 1/3 each).	Receives a fixed 1/3 of the estate.
Widow's Share (No Children) (Difference)	Receives 1/2 of the estate; remaining goes to kindred.	Receives 1/2 of the estate; rest goes to specific relatives.	Receives 1/2 of the estate; remaining goes to kindred.
Remarried Widow's Status (Difference)	Remarriage does not disqualify her from inheriting.	Disqualified; if she remarried during the intestate's life, she gets nothing.	Remarriage does not disqualify her from inheriting.
Mother's Right to Inherit (Difference)	Inherits only if there are no children or spouse.	Inherits co-equally alongside children; gets half of a child's share.	Inherits only if there are no children or spouse.
Predeceased Son's Widow (Difference)	Completely excluded from the property.	Included; shares in the portion her deceased husband would have received.	Completely excluded from the property.
Testamentary Freedom (Similarity)	Absolute right to override rules using a Will.	Absolute right to override rules using a Will.	Absolute right to override rules using a Will.

5.9 Judicial Developments and Case Analysis

Judicial interpretation has played an important role in the administration of minority succession systems in India, particularly where questions arise concerning the meaning of statutory provisions, the identity of heirs, the extent of a widow's share, or the interaction between personal law and general succession principles. In the context of women's rights, judicial decisions have generally contributed to legal clarity by affirming women's status as heirs under the applicable statutory framework.

In Christian succession disputes, courts have often been required to interpret statutory provisions concerning widowhood, lineal descendants, and distribution among kindred.⁹⁹ Since the law is largely statutory, the judicial task has usually involved applying and clarifying legislative text rather than reconstructing ancient

⁹⁹ *Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors*, 1986 AIR 1011, 1986 SCR (1) 371, AIR 1986 SUPREME COURT 1011, 1986 UJ (SC) 515, (1986) 99 MAD LW 15, (1986) KER LJ 253, (1986) 2 SUPREME 296, (1986) KER LT 508, (1986) 1 SCJ 416, 1986 (2) SCC 209, (1986) 1 SCWR 195, (1986) 2 CURCC 86, 1986.

doctrinal schools. This can be advantageous for women because textual legislation leaves less room for exclusionary reinterpretation based on patriarchal custom.¹⁰⁰

Parsi succession cases similarly involve the interpretation of the statutory scheme applicable to Parsi intestates. Here too, the role of courts has generally been one of enforcing the legislatively designed order of succession and ensuring that female heirs recognised by law are not improperly displaced.¹⁰¹

The relative paucity of a separate and extensive judicial discourse on Jewish succession in India reflects the smaller doctrinal footprint of that system in reported case law. Nevertheless, the general point remains valid: where women's inheritance rights are articulated in law, judicial enforcement becomes critical to translating recognition into effect.

Thus, case law in these minority systems tends to underscore a broader lesson of succession jurisprudence: even when the substantive rule appears comparatively clear, women's rights still depend heavily on legal interpretation, procedural enforcement, and access to adjudication.

5.10 Conclusion

So far we have seen that the Christian, Parsi and the Jewish community in India follows the Indian Succession Act and these are important dimension to India's diverse succession systems. They have stable personal law arrangements than that of Hindu or Muslims. They have written rules, the rules are mostly followed gender equality, Women are not left behind the succession framework, they are considered as legal heirs.

Chapter 6: Customary Laws, Tribal Practices, Constitutional Principles, and Judicial Trends

6.1 Introduction

The study of women's intestate property succession rights in India cannot end with the examination of religion-specific personal laws alone. A major part of the Indian legal and social nature has also been shaped by customary laws, tribal practices, constitutional principles, and judicial intervention. These forces operate within and beyond formal personal law systems. In many communities, especially rural, indigenous, and tradition-bound societies, actual succession practices have historically been determined not only by codified law or classical doctrine but by local customs, clan structures, community norms, and patterns of social control.¹⁰² As a result, women's effective access to inherited property has often depended as much on custom and social practice as on formal legal entitlement.

Now this is important as historically Custom had never intercepted Indian Succession Law. But the Custom is considered as a source of Law, Community & communal recognition. In some cases custom helped patriarchal control over land, property family wealth by restricting or denying women access in those properties. In tribal situations this has been done to protect clan land maintaining community continuity or sometimes to protect tradition. But in India the constitution provides equality, dignity and non-discrimination to all citizens and it is getting difficult as India is a land of many religion, each of them have their own formal personal law systems.

6.2 Nature and Role of Custom in Succession Law

Custom has long been recognised as an important source of law in India. In matters of succession, especially before comprehensive codification, custom often functioned as the actual rule governing inheritance within families and communities. Even under formal personal law systems, local usage frequently modified, supplemented, or displaced general legal principles. A custom, when ancient, certain, continuous, and not opposed to public policy or statute, could be legally acknowledged and enforced by courts. This gave customs considerable normative power in inheritance matters.¹⁰³ The role of custom in succession law has been especially significant because property relations are deeply embedded in social structure.

¹⁰⁰ *B.C. SINGH (D) BY LRS. vs J.M. UTARID (D) BY LRS., C.A. No.-006935-006935 / 2011, 2018.*

¹⁰¹ *Mrs. Perviz Sarosh Batliwalla & Another vs Mrs. Viloo Plumber & Another, AIR2000BOM189, 2000(3)BOMCR404, 2000(3)MHLJ39, AIR 2000 BOMBAY 189, (2000) 1 ALLMR 78 (BOM), (2000) 3 CIVLJ 896, (2000) 4 CURCC 374, (2001) 1 HINDULR 84, (2000) 3 MAH LJ 39, (2000) 2 MARRILJ 123, (2000) 3 BOM CR 404, 2000 (1) BOM LR 601, 2000 BOM LR 1 601, 1999.*

¹⁰² Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press, 2008).

¹⁰³ *Laxmibai (Dead) Thru Lr'S. & Anr vs Bhagwanthbuva (Dead) Thru Lr'S. & Ors, CIVIL APPEAL NO. 2058 OF 2003, 2013.*

Inheritance in India rarely follows the exact written codified legal instructions. Rather it depends on how the family is organised, where do the people live after marriage, how the land is cultivated, how the clan is preserved, who controls the property etc. & many more. And by analysing these, we get to know that there are patriarchal and matrilineal communities, property devolution happens strictly through male and female line respectively.

So, at one side custom is protecting the land and or properties to keep within the family or clan or tribe and by doing so it maintains the social autonomy and community expression but on the other side the Indian constitution had to ensure equality, non-discrimination. Both are contradictory & now as the customary practices grew old and out of social life and became a disadvantage from the point of women succession and constitutional equality.

6.3 Tribal and Community-Based Succession Practices in India

India's tribal and community-based inheritance systems are highly diverse. Different regions and groups follow different rules concerning land, lineage, descent, and family property. In many tribal societies, succession has historically been organised around patrilineal descent, clan membership, and the preservation of community land within male lines. Women, particularly daughters, may be excluded from succession to immovable or ancestral property on the ground that marriage takes them outside the clan or village lineage. In some of the tribal systems, widows only get a place to live and or maintenance and the ownership remains with the male lineage of the deceased.¹⁰⁴

There are defences behind this is that the community land should be retained within the community and any right is not given to women because after marriage with non community person, she can transfer that property beyond that community. So the male succession is necessary to preserve traditional governance and clan continuity. So, we have understood from this argument that the issue not within the family preference but collective clan identity and land politics.

But this type of system imposes great disadvantages on women. But not all tribal practices are same, some are matrilineal and some gives limited rights to the women. Yet a broader pattern is female exclusion from the property rights. Now this raises a question on the Constitutional values that to what extent these community specific succession practices can continue when they deny equal rights of women on property?

So even where custom does not expressly say that women shall inherit nothing, it may still reduce their inheritance to something fragile. Temporary. Dependent. Negotiable. A right that should be legal and enforceable becomes treated as if it were a matter of family convenience.¹⁰⁵

6.4 Conflict between Personal Law, Custom, and Constitutional Morality

The conflict between personal law, custom, and constitutional morality lies at the heart of the modern debate on women's inheritance rights in India. In India the existing customary practices and personal laws can sometimes claim that by the constitution they have freedom to practice their own religion, they can have their own identity and they also can have historical continuity. Now the constitutional morality believes on equality, dignity, liberty, non-discrimination, etc. Here the conflict arises.

This is the reason understanding constitutional morality becomes very important in cases of succession law. The constitution does not allow a rule just because of it is old, traditional, old customary practice. The question changes. It is no longer only, "What has tradition permitted?" It becomes, "Can this rule be justified in a constitutional democracy?" In inheritance matters, that question is unavoidable. Can a custom that excludes daughters still stand when the Constitution speaks of equal protection? Can a rule that restricts widows be defended when dignity is promised to every citizen?

The answer is not always simple. Because judiciary has to deal with a very difficult balance. India has long valued its diversity, religious practices. But the problem is that this diversity can not be used to preserve discrimination. Constitutional morality suggests that tradition cannot operate as an automatic defence for gender injustice. A practice may be ancient and may be deeply embedded in social life, but still if it is denying

¹⁰⁴ Bidisha Das and Shivangi Banerjee, "Hindu Female Intestate Succession Laws and Their Impact on Fundamental Rights of the Elderly" *SSRN*.

¹⁰⁵ Aditya Suswaram, "The Discrimination and Anomaly in the Property Rights of Indian Women," 45 (2024).

women economic rights and keep them away from property, Then the constitutional legitimacy becomes questionable.¹⁰⁶

6.5 Equality under Articles 14, 15, and 21 of the Constitution

The constitutional framework for evaluating women's succession rights is anchored primarily in Articles 14, 15, and 21 of the Constitution of India.

Article 14¹⁰⁷ guarantees equality before the law and equal protection of the laws. This provision strikes at the heart of succession rules that privilege male heirs solely because they are male. It requires that legal distinctions be justified and not arbitrary. A rule excluding women from inheritance or giving them inferior status raises serious Article 14 concerns because it imposes a civil disadvantage tied directly to sex and family hierarchy.

Article 15(1)¹⁰⁸ prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Although personal law has historically occupied a complex position in relation to fundamental rights, the spirit of Article 15 strongly supports the view that legal systems should not treat women as lesser heirs simply because they are women. Article 15(3)¹⁰⁹ further empowers the State to make special provisions for women, thereby supporting remedial legislation aimed at correcting historical disadvantage in property rights.

Article 21,¹¹⁰ which protects life and personal liberty, has been judicially interpreted to include dignity, autonomy, and the right to live with security and self-respect. Property is not merely an economic asset; for many women, it is the material basis of dignity and survival. Denial of inheritance can therefore undermine substantive autonomy and personal security in ways that connect directly with Article 21 values.

Taken together, these provisions provide a strong constitutional basis for rethinking succession law from a gender-just perspective. Even where formal personal law has not been fully transformed, the constitutional commitment to equality has increasingly influenced legislative reform and judicial reasoning.

6.6 Role of the Judiciary in Advancing Women's Succession Rights

The judiciary has played a central role in the development of women's succession rights in India. Courts have often stood at the intersection of tradition and reform, called upon to interpret old legal doctrines, apply new statutes, assess the validity of customs, and reconcile personal law with constitutional values.

One of the most important judicial contributions has been the liberal interpretation of beneficial legislation. Where statutes were enacted to improve women's rights, courts have often preferred interpretations that advance rather than restrict those reforms. This is clearly visible in the judicial treatment of section 14 of the Hindu Succession Act and later in cases concerning daughters' coparcenary rights after the 2005 amendment.

The judiciary has also played an important role in testing the validity and proof of custom. Courts have repeatedly insisted that a custom excluding women must be clearly established and cannot be lightly presumed. This requirement itself operates as a check on casual invocation of patriarchal local practices.

Further, courts have increasingly used constitutional reasoning to support gender-sensitive outcomes, even when dealing with personal law frameworks.¹¹¹ Although the extent to which personal law can be directly invalidated under fundamental rights remains a debated issue, judicial discourse has clearly moved towards reading inheritance law in ways more consistent with equality and dignity.

The judicial role, however, has limits. Courts interpret and apply law; they do not always have the authority to fundamentally redesign personal law systems absent legislative mandate. Even so, within those limits, the judiciary has been a powerful force for advancing women's claims.

6.7 Landmark Judicial Decisions on Women's Inheritance

¹⁰⁶ Bina Agarwal and Shruthi Naik, "Do courts grant women their inheritance shares? An analysis of case law in India," 182 *World Development* 106688 (2024).

¹⁰⁷ *The Constitution of India, Article 14*.

¹⁰⁸ *The Constitution of India, Article 15(1)*.

¹⁰⁹ *The Constitution of India, Article 15(3)*.

¹¹⁰ *The Constitution of India, Article 21*.

¹¹¹ Maria Mousmoti, "Gender-sensitive law-making: concept and process," 10 *The Theory and Practice of Legislation* 223–33 (2022).

Indian courts have delivered several landmark decisions that significantly shaped women's inheritance rights. In the Hindu law context, *Vineeta Sharma v. Rakesh Sharma*¹¹² is among the most significant. Through this case, the Supreme Court clearly mentioned that a daughter is a coparcener by birth and that her right does not depend on whether the father was alive or not as per the 2005 amendment. This judgment firmly established the equality-oriented purpose of the amendment.

Another important decision is *Ganduri Koteswaramma v. Chakiri Yanadi*,¹¹³ where the Court held that daughters could claim the benefit of the 2005 amendment in pending partition proceedings where the final decree had not been passed. This prevented procedural delay from defeating substantive equality.

In the broader context of women's rights under personal law, *Mary Roy v. State of Kerala*¹¹⁴ occupies special importance. The decision had far-reaching consequences for the inheritance rights of Christian women in the former Travancore region by affirming the application of the Indian Succession Act and thereby removing discriminatory local rules. The case is significant because it demonstrates how judicial interpretation can transform the proprietary position of women in a whole community.

Courts have also repeatedly addressed questions of proof of custom, widow's entitlement, the scope of female ownership, and the legality of attempts to deprive women of shares through informal arrangements. Collectively, these cases reveal a judicial trend towards strengthening women's inheritance rights and reducing the space available for patriarchal evasion.

6.8 Constitutional Challenges to Discriminatory Personal Laws and Customs

The constitutional challenge to discriminatory personal laws and customs remains one of the most complex issues in Indian jurisprudence. On the one hand, personal laws are often defended as part of religious freedom and cultural identity. On the other hand, when those laws or customs produce clear gender inequality, they appear to conflict with the constitutional guarantee of equal citizenship.

The issue becomes sharper in cases involving customary exclusion of women from land and inheritance. Here, the justification is often framed not in theological terms but in terms of community preservation and local tradition. Yet the practical outcome remains the same: women are denied property because they are women. Such rules are increasingly difficult to defend in a modern constitutional order.

The challenge is not only doctrinal but institutional. Courts have sometimes moved cautiously, preferring incremental interpretation over sweeping invalidation. Legislatures have also reformed some areas while leaving others relatively untouched. This creates a patchwork pattern in which some discriminatory rules are dismantled while others continue.

Even so, the overall constitutional direction is clear. The legitimacy of inheritance rules today cannot rest solely on antiquity or community acceptance. They must increasingly answer to the standard of gender justice. This is one of the most important transformations in the law of succession in post-independence India.

6.9 Need for Reform, Harmonisation, and Gender-Just Interpretation

The analysis in this chapter reveals a clear need for further reform. Customary and tribal exclusions of women from inheritance continue to stand uneasily with constitutional commitments. Even within codified personal laws, remnants of patriarchal logic remain. The law, therefore, requires both substantive reform and gender-just interpretation.

Reform does not necessarily mean uniformity in the simplistic sense of erasing all community differences at once. It means ensuring that no succession system, whether based on religion, tribe, or custom, denies women the basic status of equal heirs. Harmonisation may take the form of targeted legislative amendments, judicial insistence on equality-consistent interpretation, and stricter scrutiny of customs that disadvantage women.

¹¹² *Vineeta Sharma vs Rakesh Sharma*, AIR 2020 SUPREME COURT 3717, AIRONLINE 2020 SC 676, 2020.

¹¹³ *Ganduri Koteswaramma and Anr. vs. Chakiri Yanadi and Anr.*, Civil Appeal No 8538 of 2011, 2011.

¹¹⁴ *Mrs. Mary Roy Etc. Etc vs State Of Kerala & Ors*, 1986 AIR 1011, 1986 SCR (1) 371, AIR 1986 SUPREME COURT 1011, 1986 UJ (SC) 515, (1986) 99 MAD LW 15, (1986) KER LJ 253, (1986) 2 SUPREME 296, (1986) KER LT 508, (1986) 1 SCJ 416, 1986 (2) SCC 209, (1986) 1 SCWR 195, (1986) 2 CURCC 86, 1986.

A gender-just approach must also address implementation. Women's names must be entered in land records, mutation procedures must be simplified, coercive relinquishment must be scrutinised, and legal awareness must be improved.¹¹⁵ Without such practical measures, formal reform will remain incomplete.

The future of succession law in India, therefore, lies not only in doctrinal change but in the creation of a legal culture that treats women's inheritance as ordinary, enforceable, and non-negotiable.

6.10 Conclusion

It has been shown that custom has historically been a major source of women's exclusion from inheritance, especially in land-based and lineage-based communities. Tribal and community practices often justified this exclusion in the name of tradition, clan continuity, or community preservation. Yet their practical effect was to keep women economically dependent and structurally subordinate.

Against this backdrop, the Constitution introduced a transformative normative standard. Articles 14, 15, and 21, along with the Directive Principles, reoriented the legal conversation from tradition to justice, from hierarchy to equality, and from dependence to dignity. The judiciary has played a crucial role in this transition by interpreting beneficial legislation liberally, scrutinising discriminatory customs, and strengthening women's rights through landmark decisions.

At the same time, the chapter has shown that the conflict between custom, personal law, and constitutional morality remains unresolved in many areas. Formal recognition of women's rights does not automatically ensure actual enjoyment. Social coercion, weak implementation, and lingering patriarchal norms continue to undermine equality.

The central lesson is that women's intestate succession rights cannot be secured by looking at statutory text alone. They must be examined in the wider field where custom, constitutional principle, and judicial enforcement interact. The next and final chapter will draw together the comparative findings of the study, identify the major themes emerging from the historical and doctrinal analysis, and offer concluding observations and suggestions for reform.

Chapter 7: Conclusion and Suggestions

7.1 Introduction

The question of women's intestate property succession rights in India is not merely a technical question of family law. It is a question that lies at the intersection of property, gender, identity, dignity, economic autonomy, and constitutional justice. This study set out to examine how women's intestate succession rights have developed across different religious personal laws in India and how those rights have evolved historically. The inquiry also tried to examine a deeper question: does the present legal framework give women real and effective equality in matters of succession, or does it still carry forward older patriarchal structures, only in a more modified legal language? We have already seen that the development of women's inheritance rights in India has not followed a straight or uniform path. Each legal system has moved through its own history, its own pressures, and its own pattern of reform. Some changed through legislation & some remained tied to religious precedents and some were shaped by custom, and others by judicial interpretation. The result is uneven, layered, and marked by both progress and continuing inequality.¹¹⁶

Constitutional principles have increasingly become the normative benchmark for assessing all such systems.¹¹⁷ Yet formal progress should not be mistaken for complete justice. Women's inheritance rights continue to be obstructed by custom, social pressure, weak enforcement, informal settlements, lack of awareness, and lingering patriarchal attitudes. The law has moved substantially towards inclusion, but in many contexts it has not yet achieved full substantive equality. This study seeks to synthesise the major findings of the study, identify the central themes emerging from the comparative analysis, assess the continuing gap between law and lived reality, and suggest measures for reform.

7.2 Major Findings of the Study

¹¹⁵ Deborah Anthony, "Eradicating women's surnames: Law, tradition, and the politics of memory," 37 *Colum. J. Gender & L.* 1 (2018).

¹¹⁶ Bina Agarwal, "' Bargaining' and legal change: toward gender equality in India's inheritance laws" (2002).

¹¹⁷ Phole Kamal Bhaurao, *Women and The Indian Constitution* (Addition Publishing House, 2025).

A central finding of this study is that women's intestate succession rights in India have evolved through a gradual but uneven historical process. The journey was from total exclusion of women from property to full owner with every right. But this journey was not same for all communities and the speed of progress was also different for each community.

We found out that traditional and customary inheritance systems in India were largely patriarchal earlier. Property was treated to be only kept through the male lineage. Sons were considered as natural successors. Widows were left with limited to maintenance & restricted rights. Daughters were kept outside of succession as after marriage they will move to his husband's home.

We have also found out that the recognition of women as heirs is different in different communities of India, e.g.,

- Under Hindu succession law, all women were kept under restricted position, but in future major legal reforms gave women equality status & right on property.
- Under Muslim law, women were always recognised as heirs but their shares remained small & fixed.
- Under Christian, Jewish and Parsi laws, women are benefited as they followed the Indian succession Act.

The Hindu Women's Right to Property Act, 1937,¹¹⁸ the Hindu Succession Act, 1956,¹¹⁹ the Hindu Succession (Amendment) Act, 2005,¹²⁰ and the operation of the Indian Succession Act, 1925,¹²¹ in minority communities demonstrate that statutory intervention has often been the most effective means of altering patriarchal inheritance structures. The Muslim Personal Law (Shariat) Application Act, 1937,¹²² also had protective significance insofar as it displaced exclusionary customs that denied Muslim women their formal shares.

The study finds that constitutional values, especially equality and dignity, have profoundly influenced the modern understanding of inheritance law. Even where personal law remains community-specific, it increasingly operates within a constitutional environment that renders overt gender discrimination normatively suspect.

Lastly, the study finds that there is still a significant gap between formal legal rights and actual enjoyment of inherited property. Many women continue to lose their rights not because the law denies them explicitly, but because social and procedural barriers prevent effective enforcement.

7.3 Comparative Assessment of Women's Intestate Succession Rights across Religions

In this study, I made comparative study on the Women's Intestate succession and found out the current status of it. Below table describes it in summary –

Point of Comparison	Hindu Law	Muslim Law	Christian Law	Parsi Law	Jewish Law in India
Main governing law	Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005. It applies to Hindus, Buddhists,	Muslim Personal Law (Shariat) Application Act, 1937; actual shares are governed by uncodified Sunni/Shia inheritance rules. Section 2 makes	Indian Succession Act, 1925, mainly Part V, Chapter II, for intestates other than Parsis.	Indian Succession Act, 1925, Part V, Chapter III, special rules for Parsis.	No separate codified Jewish succession statute in India; in practice, Indian Jews are generally governed by the Indian Succession Act, 1925 for intestate

¹¹⁸ *The Hindu Women's Right to Property Act, (Act 18 of 1937).*

¹¹⁹ *The Hindu Succession Act, 1956, (Act 30 of 1956).*

¹²⁰ *The Hindu Succession (Amendment) Act, 2005, (Act 39 of 2005).*

¹²¹ *The Indian Succession Act, 1925, (Act 39 of 1925).*

¹²² *The Muslim Personal Law (Shariat) Application Act, 1937,.*

	Jains and Sikhs.	Shariat the rule of decision in questions of intestate succession among Muslims.			succession, like other non-Hindu, non-Muslim, non-Parsi communities.
Basic nature of women's right	Statutory and largely gender-equal for male intestate succession. Widow, daughter and mother are Class I heirs. Daughter is also a coparcener by birth in Mitakshara joint family property after the 2005 amendment.	Women are recognised as heirs, but shares are generally fixed and often lower than corresponding male heirs. A daughter commonly receives half of a son's share where both inherit together.	Statutory. Widow and daughters inherit, but the widow's share depends on whether lineal descendants or kindred exist. Children inherit equally without son-daughter discrimination.	Statutory and comparatively gender-equal after the 1991 amendment. Widow/widower and sons/daughters generally take equal shares. Parents also inherit, but each parent gets half the share of each child where applicable.	Governed by the general Indian Succession Act framework. Hence widow/widower and children inherit according to the same secular pattern applicable to non-Parsi intestates.
Daughter's right	Daughter is a Class I heir. She receives an equal share with son, widow and mother in the separate/self-acquired property of a male Hindu dying intestate. She is also a coparcener by birth in ancestral Mitakshara property and has the same	Daughter is a Quranic heir. One daughter may take 1/2 in certain situations; two or more daughters may collectively take 2/3 in certain situations. Where son and daughter inherit together, the son generally takes double the daughter's share.	Daughter inherits equally with son as a child/lineal descendant. Where there is a widow and children, widow takes 1/3 and the remaining 2/3 goes equally among children.	Daughter receives an equal share with son and surviving spouse where the Parsi intestate leaves spouse and children.	Daughter inherits equally with son under the Indian Succession Act scheme, because children share equally as lineal descendants.

	rights as a son.				
Widow's right	Widow is a Class I heir. She takes one share along with son, daughter and mother. If there are multiple widows, all widows together take one share.	Widow is a fixed-share heir. Generally, she receives 1/4 if there are no children or lineal descendants, and 1/8 if there are children or lineal descendants.	Widow receives 1/3 if the intestate leaves lineal descendants; 1/2 if there are no lineal descendants but kindred exist; and the whole estate if there are no kindred.	Widow receives an equal share with each child when the intestate leaves widow/widower and children. If there are no lineal descendants, special rules apply; generally, the widow/widower receives a significant portion such as half in specified situations.	Widow receives the same statutory share as under the Indian Succession Act: 1/3 with lineal descendants, 1/2 with kindred but no lineal descendants, and whole estate if no kindred.
Mother's right	Mother is a Class I heir and takes one share along with widow, sons and daughters. Father is not Class I; he comes in Class II. This gives the mother a stronger position in male Hindu intestate succession.	Mother is a fixed-share heir. She usually receives 1/6 where the deceased leaves children or multiple siblings; in some cases she receives 1/3, subject to the precise configuration of heirs.	Mother does not inherit if the deceased leaves widow and lineal descendants. If there are no lineal descendants, succession moves to father/mother and other kindred according to statutory order. Where father is	Mother may inherit along with spouse/children/parents configuration. Where a Parsi dies leaving one or both parents in addition to children or spouse and children, each parent receives half the share of each child.	Mother's position follows the Indian Succession Act rules. She is not placed equally with children where lineal descendants exist; she may inherit in the absence of closer heirs according to the statutory scheme.

			dead and mother is living with no brother, sister, nephew or niece, the property belongs to the mother.		
Female heir's ownership after inheritance	Section 14 of the Hindu Succession Act converts property possessed by a female Hindu into her absolute property, not a limited estate, unless a restricted estate is expressly created by instrument/deed.	A Muslim female heir receives an absolute share in the estate after debts, funeral expenses and valid testamentary dispositions are accounted for. Her share is her separate property.	Female heirs take absolute ownership of their statutory shares.	Female heirs take absolute statutory shares. The Parsi reforms moved women from maintenance-type claims to proprietary inheritance rights; the 1991 amendment made the scheme more gender-equal.	Female heirs take absolute shares under the Indian Succession Act scheme.
Treatment of son and daughter	Equal in Class I succession. Equal in coparcenary after 2005.	Unequal in many standard cases: son generally gets twice the daughter's share when they inherit together.	Equal as children/lineal descendants.	Equal after the 1991 amendment.	Equal under Indian Succession Act rules.
Treatment of widow and widower	In male intestate succession, widow is Class I. In female intestate succession, husband is placed first along with	Husband and wife are both recognised, but their fixed shares differ: husband usually gets 1/2 if no child and 1/4 if child; widow usually gets 1/4 if no child	Section 35 gives a widower the same rights in his wife's property as a widow has in her husband's property.	Widow and widower are treated equally in the statutory language.	Widow and widower are treated equally under the Indian Succession Act framework.

	sons and daughters.	and 1/8 if child.			
Rules when a woman dies intestate	Section 15 creates a separate scheme for female Hindu intestates: first to sons, daughters and husband; then heirs of husband; then mother and father; then heirs of father; lastly heirs of mother. Property inherited from parents or husband/father-in-law may return to the source-side heirs if she dies childless. This remains a major gendered feature.	A Muslim woman's estate devolves among her Quranic heirs and residuaries. Husband, children, parents and other heirs inherit according to Muslim law. The husband's share is generally larger than a widow's corresponding share.	Same Indian Succession Act pattern applies, with husband having the same rights as widow.	Same Parsi statutory rules apply to male and female intestates in gender-neutral terms such as widow/widower and children.	Same Indian Succession Act pattern applies.
Position of predeceased child's children	Children of predeceased son and predeceased daughter are recognised in Class I. Branch-based representation applies.	Representation is limited compared with Hindu/Christian statutory systems. Classical Muslim law generally does not apply full representation in the same way; nearer heirs may exclude remoter heirs, subject to statutory/local	Representation is recognised. If a child predeceases leaving children, the share goes to that branch according to Sections 37–40.	Representation is recognised for predeceased children under Parsi rules, with specific treatment for predeceased son/daughter lines.	Representation follows the Indian Succession Act rules.

		reforms in some jurisdictions, but not by a general Indian codification.			
Major gender-progressive feature	Daughter's equal coparcenary status after 2005; widow, daughter and mother as Class I heirs; female Hindu's absolute ownership under Section 14.	Recognition of women as fixed-share heirs was historically significant because it replaced many exclusionary customs; women have defined shares that cannot generally be ignored.	Equal treatment of sons and daughters as children; widower has same rights as widow; secular statutory scheme.	Post-1991 Parsi law is one of the more gender-equal personal-law succession schemes, especially for sons and daughters.	Being governed by the Indian Succession Act produces a broadly gender-neutral treatment among children and spouses.
Major gender-discriminatory or problematic feature	Section 15 still treats the property of a female Hindu differently from that of a male Hindu. In childless cases, property inherited from husband/father-in-law may go back to husband's heirs, and property inherited from parents may go back to father's heirs, reflecting source-based patriarchal logic.	Female shares are often lower than male shares; widow's share is lower than husband's corresponding share; daughter's share is commonly half of son's share.	Widow is protected, but mother may be excluded where widow and lineal descendants exist. Also, the widow's share is only 1/3 where children exist.	Parents receive only half the share of each child in certain configurations; however, as between father and mother, and son and daughter, the modern scheme is largely equal.	No independent Jewish statutory scheme in India; reliance on the Indian Succession Act makes the position secular, but not community-specific.
Overall equality assessment	High but incomplete. Strong	Partial equality. Women inherit	Moderately high. Sons and	High. After 1991,	Moderately high. Governed by Indian

	equality for daughters and widows in male intestate succession, but female intestate succession under Section 15 remains unequal in structure.	as legally recognised heirs, but the quantum of shares often reflects gender hierarchy.	daughters are equal; spouse rights are clear; but the scheme prioritises spouse and lineal descendants over mother.	Parsi intestate succession is comparatively gender-just, especially between sons/daughters and widow/widower.	Succession Act, giving equality among children and parity between widow/widower.
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7.4 Historical Patterns of Exclusion and Legal Reform

The historical inquiry undertaken in this study shows that women's exclusion from succession was not accidental. It was embedded in the social and legal structure of the family. Patrilineal descent, male ritual centrality, control over agricultural land, and the assumption that women would marry out of the natal family all combined to restrict women's inheritance. Women were often constructed as dependents to be maintained, not as coequal participants in family wealth.

This historical structure explains why reform had to take legislative form in many contexts. Social change alone was insufficient to overcome entrenched inheritance hierarchies.¹²³ The law had to intervene directly in order to enlarge women's rights. This was particularly evident in Hindu law, where the transformation from a widow's limited estate to absolute ownership and from a daughter's exclusion to a daughter's coparcenary status required statutory reform. Similarly, where Muslim women's shares were displaced by custom, legislation was needed to reassert doctrinal entitlement. In minority communities, too, statutory succession rules helped provide women with clearer legal rights.

The history also shows that legal reform has not been a single event but a continuing process. Codification may improve women's rights, but later amendments, judicial clarification, and constitutional interpretation are often required to complete or deepen that reform. The journey from limited recognition to broader equality has thus been iterative and unfinished.

7.5 Gaps between Law and Social Reality

One of the most important findings of the study is the continuing gap between formal legal entitlement and social reality. This gap appears across communities, though its intensity and form may vary.

In practice, many women do not claim inheritance because of family pressure, fear of social conflict, economic dependence, or lack of legal awareness. Daughters are often told that marriage expenses, dowry, or gifts are sufficient substitutes for succession. Widows may remain in possession only precariously and may be pressured by in-laws or sons. Sisters may relinquish shares in favour of brothers to preserve family relationships. Mothers may defer to male relatives in expectation of support. These patterns show that the denial of inheritance is frequently social rather than purely legal.

The practical barriers are also institutional. Mutation procedures, land records, proof of title, partition litigation, and possession disputes often require resources and sustained effort that many women do not possess. Informal oral family settlements may be used to bypass women's legal claims. In rural and customary settings, patriarchal norms often influence local administration and documentation, making statutory rights difficult to realise on the ground.

This gap between law and reality demonstrates that legal reform is necessary but not sufficient. The recognition of women as heirs must be accompanied by mechanisms that ensure they can actually enter possession, control property, and resist coercive relinquishment.

¹²³ Duane Champagne, *Social Order and Political Change* (Stanford University Press, 1992).

7.6 Need for Uniformity versus Reform within Personal Laws

One of the larger questions raised by this study is whether gender justice in inheritance requires a completely uniform law of intestate succession, or whether reform within existing personal law systems is sufficient. This is, at once, a legal question and a politically sensitive one.

The research suggests that the immediate issue should not be reduced to a hard choice between complete uniformity on one side and unrestricted pluralism on the other. That framing is too narrow. What is more urgent is that every succession system — whether based on religion, custom, or statute — must at least satisfy the constitutional requirement that women are not denied real and effective inheritance rights. The route may not be the same everywhere. In some systems, targeted legislative amendment may be necessary. In others, the answer may lie in stricter judicial scrutiny, removal of discriminatory customs, or procedural reforms that make women's rights easier to claim and enforce.

A rigid demand for uniformity may ignore the possibility of gradual, community-sensitive reform. But an uncritical defence of pluralism is equally problematic, because it can allow gender inequality to survive behind the language of tradition. A better path may be constitutional harmonisation: allowing community-specific rules to remain where they do not harm equality, but refusing protection to any rule or custom that places women under structural disadvantage in matters of inheritance.¹²⁴

In this sense, the question is not only whether succession laws should be the same, but whether they should all be equally just. The present study strongly supports the latter principle.

7.7 Suggestions and Recommendations

In light of the findings of this study, several suggestions may be offered for improving women's intestate succession rights in India.

- ▶ All discriminatory, customary and tribal inheritance rules which excludes women from property solely based on sex, should be reviewed and reformed. Custom cannot be allowed to operate as a shield for systematic gender injustice.¹²⁵
- ▶ Legislative reform should continue in areas where remnants of patriarchy remain within codified personal laws. For example, provisions that still reflect unequal assumptions about the devolution of a female's property or that preserve indirect gender bias should be reconsidered.
- ▶ Greater legal clarity should be provided through simplified statutory language, administrative guidelines, and public legal awareness campaigns. Many women lose inheritance not because the law is wholly absent, but because they do not know how to claim it.
- ▶ Mutation and land-record procedures should be made more gender-sensitive and accessible. Authorities should be required to ensure that women's names are entered promptly and that inheritance documentation does not default automatically to male heirs.
- ▶ Coercive relinquishment of women's shares should receive stricter legal scrutiny. Family settlements and release deeds involving women should be examined carefully to ensure that they are genuine, informed, and free from pressure.
- ▶ Legal aid and support systems should be strengthened for women involved in inheritance disputes, especially widows, daughters in rural areas, and economically dependent women.
- ▶ Judicial training and revenue administration training should emphasise gender-just approaches to succession disputes. Many rights are defeated at the level of implementation, not doctrine.
- ▶ Research and policy should focus more closely on the gap between formal succession law and actual possession of property by women. Statistical, empirical, and socio-legal studies can help reveal where enforcement failures are greatest.

¹²⁴ Amanda Dale, Krys Maki and Rotbah Nitia, *A Report to Guide the Implementation of a National Action Plan on Violence against Women and Gender-Based Violence* (Women's Shelters Canada, 2021).

¹²⁵ ANAZOR AMALACHUKWU FAUSTINA, "A CRITICAL ANALYSIS OF WOMEN'S INHERITANCE RIGHTS UNDER CUSTOMARY AND STATUTORY LAW" *ALEX-EKWUEME FEDERAL UNIVERSITY FACULTY OF LAW LL. B PROJECTS* (2025).

- ▶ Inheritance law should be understood not as a narrow private matter but as a key element of women's economic justice. Reform in this field should therefore be treated as central to broader projects of gender equality and social transformation.

7.8 Concluding Observations

The evolution of women's intestate property succession rights in India is a story of struggle against deeply rooted structures of exclusion.¹²⁶ For centuries, women's relationship to property was mediated through dependence, maintenance, limited estates, and patriarchal control. Different legal systems expressed this inequality in different ways, but the underlying pattern was remarkably persistent. Contemporary time has brought significant transformation. Women are far more visible in succession law today than they were in earlier legal orders. They are no longer spoken of only as dependants, maintenance-holders, or persons standing outside the main line of inheritance. Increasingly, the law recognises them as heirs, owners, and participants in family property.

But the study also shows that the journey is still unfinished. Formal rights have moved ahead faster than social acceptance. Statutory reform has gone further than actual enforcement. Constitutional values have advanced more quickly than many community practices. Indian inheritance law, therefore, stands in a kind of middle position. The old logic of patriarchy has certainly been weakened. It has not disappeared.

The central lesson of this research is that women's intestate succession rights are not merely about the division of property after death. How women were treated within the family during life. Are they equal members, or only protected dependants? Are they recognised as persons with claims of their own, or expected to surrender those claims for the sake of family peace? A legal system which denies women inheritance, denies more than property. It takes away security, dignity, bargaining power and equal standing. On the other hand, a succession system that genuinely treats women as equal heirs strengthens not only fairness within the family, but also the constitutional promise of justice.

For that reason, reform of intestate succession cannot be treated as a side issue in women's rights. It lies at the centre. The movement from formal equality to substantive justice will remain incomplete until women can inherit, hold, control and enjoy property as an ordinary right — not as an exception, not as a favour, and not as something to be negotiated away under pressure.

¹²⁶ Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety* (Suny Press, 1999).