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Comparative Analysis of Hindu and Muslim Succession Laws

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Abstract

The transfer of property following a person's death is referred to as succession. The law of succession is a set of rules that governs how a property is passed down through the generations. In basic terms, it refers to the process through which an individual's property is passed on to others, granting them ownership rights in the future. Succession is a complex and delicate topic in a society as diverse as ours, in terms of social structure and culture. As a result, distinct sets of succession rules apply to different communities across the country. This paper shed light on the differences between Hindu and Muslim Succession Laws.

Introduction

Personal laws are rules that apply to a certain religion in general as well as laws that regulate the faith. They can be customs or rules that have been observed for a long time, and these are the laws from which these faiths have obtained their basis, as well as how the law on these has developed and changed. These laws have been followed by the people for a long time, and they are followed by all members of their faith. These laws were created with the diverse beliefs and feelings of the people in mind. Hindus and Muslims have different rules regarding inheritance and property partition, which is sometimes referred to as succession of property. The items listed above are regarded to be elements of a succession. It has some parallels and some distinctions.

Act made by the legislators governing their religion.

Hindu Law

- Hindu Succession Act of 1956 dictates the laws for people of the Hindu religion. There are differences among Hindus schools of thoughts. Only in the recent years have these practises been seen. Dayabagha and Mitakshara are the two major schools of thought.¹ They each followed its own set of ideas and laws. The ideals that one group accepts are rejected by the other. The legislation reform was presented in parliament, and it went into force in 1956, and they are all controlled by the Hindu Succession Act of 1956. Although there are many schools of thoughts in Hinduism, due to its ever evolving nature as Hinduism historically was never a religion, but a geographical culture. An example of this is the amendment made in 2005 on succession of property for Hindu women². Due to the ever-evolving nature of Hinduism, such reforms are possible.

Muslim Law

¹ Difference Between Dayabhaga and Mitakshara of Hindu Laws, Ask Any Difference

<https://askanydifference.com/difference-between-dayabhaga-and-mitakshara-of-hindu-laws/#:~:text=Dayabhaga%20does%20not%20give%20anyone,the%20death%20of%20their%20fathers.>

² Amendment made in the Hindu Succession Act, UN Women [https://evaw-global-database.unwomen.org/en/countries/asia/india/2005/the-hindu-succession-amendment-act-2005#:~:text=The%20Hindu%20Succession%20\(Amendment\)%20Act,same%20manner%20as%20the%20son.](https://evaw-global-database.unwomen.org/en/countries/asia/india/2005/the-hindu-succession-amendment-act-2005#:~:text=The%20Hindu%20Succession%20(Amendment)%20Act,same%20manner%20as%20the%20son.)

- Muslim Shariat Act of 1937³ dictates the personal laws for people of the Muslim religion. There are various branches of Muslims, including Shia, Sunni, etc. Sunni and Shia are regarded to be the most prominent of these schools. Ninety percent of Muslims follow the Sunni school of thought. These schools of thoughts are concrete in nature, meaning the interpretations are based off the Quran and there cannot be any reforms made to the Quran as doing so would be considered a sin or haram which leaves their mindset and beliefs of conduct of behaviours in contempt towards modern civilisation. The schools of thoughts in Muslims are set in stone and cannot be changed, those who attempt to change face serious implications, eg. Ahmedias and Shias at the hands of Sunnis.

Adoption

Hindu Law

- Adoption was not legitimate under Hindu law unless the proposals and amendments were in place. The adoption is deemed void prior to the modification procedure. That is, following the deceased individual, the adopted son has no claim to the property. As a result, he is unable to enter into a succession agreement for that property. If a succession is formed, it will not be acknowledged by others and will be invalid. After some time, they began to recognise the adopted heir as a legitimate successor. They treated the child who was born naturally and the child who was adopted equally. Following the necessary reforms, the adoptive son is regarded in the same way as the family's natural son. He holds legal ownership of the property and is considered a candidate for inheritance. If the departed left the property without a legal successor, the adoptive heir will take his place and be qualified to inheritance, with the property devolved proportionately.
- Illustration:

‘A’ the deceased left the adopted son and a widow. Whether he can claim the right over the property. The adoptive son had no claim to the assets preceding to the reform. Following the modification, the adoptive son is considered in the same way as the natural son, with full rights and the ability to claim the property.

Muslim Law

- Adoption is not regarded legitimate in the eyes of Muslims. The adoptive son's ability to inherit has not been discussed in any of the schools of thoughts. Although some schools regard adoption to be legal, it does not grant them ownership of the land.

In basic terms, in Hindu law, an adopted son can inherit property and is deemed legitimate. According to Muslim law, an adopted child has no right to inherit property.

³ Muslim Shariat Act, 1937, India Code <https://www.indiacode.nic.in/bitstream/123456789/2303/1/A1937-26.pdf>

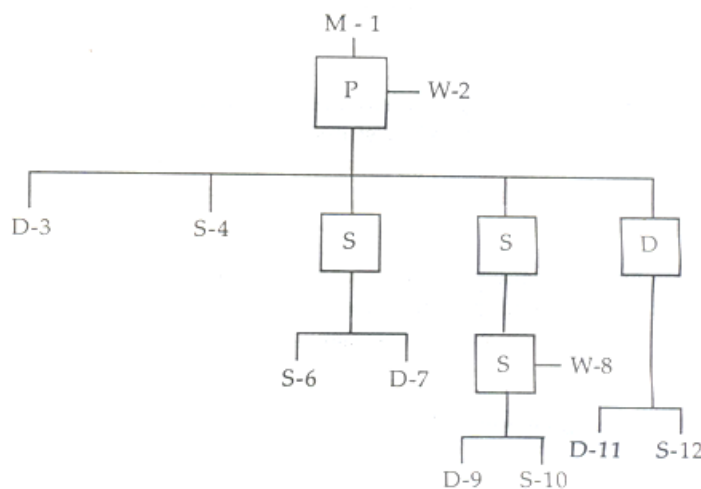
Categorisation of persons eligible for claiming the inheritance over the property:

Hindu Law⁴

Under Hindu law the categorisation is made and it involves the following.

- a) Class I heirs
- b) Class II heirs
- c) Agnates
- d) Cognates

The property will devolve based on this order subsequently. Class I heirs has 12 members and after the amendment it has been raised to 16 members. As of now, the importance is given to members of this class.



Class II heirs starts from the father and involves sister and main aimed at distant relatives.

I. Father

II. Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

III. Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter. (1) Father's father; father's mother.

(2) Father's widow; brother's widow.

(3) Father's brother; father's sister.

(4) Mother's father; mother's mother

⁴ Shahista Pathan, Succession to the property of a Hindu Male, Legal Service India

<http://www.legalservicesindia.com/article/1002/succession-to-the-property-of-a-hindu-male.html>

(5) Mother's brother; mother's sister.

Agnates are the members of the family from the male line of descendant and it involves the father, grandfather and great grandfather.

Cognates are the members of the family from the female line of descendant and it involves the mother, mother's sister and involves some other people.

Section 10 of Hindu succession act deals with the general rules of succession of male heirs deals with the above categorization of members for the inheritance over the property.

Muslim Law⁵

Under Muslim law the categorization is made as follows

- i. Sharers
- ii. Residuary
- iii. Distant kindred

Out of the two major schools Shia school does not recognise the category of distant kindred and under Sunni law it is accepted as most of the people follow this, Sunni Muslim.

The sharers or Ashabul-faraiz are altogether twelve in number - four males and eight females.

1. Husband 2. Wife 3. Daughter 4. Daughter of a son (or a son's son or a son's son's son's) 5. Father 6. Paternal grandfather 7. Mother 8. Grandmother on the side of the males 9. Full sister 10. Consanguine sister 11. Uterine sister 12. Uterine brother

The next category of persons is called as *Asabah or Residuary* because they take the residue after such of the sharers as are not excluded have been satisfied. They are divided into three classes:

(1) Residuary in their own right: It includes all the male relations and does not include any female relations. It is further divided into four classes.

- (1) Parts of the deceased, i.e. his sons and grandsons howsoever low.
- (2) His roots i.e. the ascendants, his father and true grandfather, how high so ever.
- (3) The offspring of his father viz. full brothers and consanguine brothers and their lineal male descendants.
- (4) Parts or offspring of the true grandfather, how high so ever, i.e., lineal male descendants, however remote, of lineal male ascendants, however remote.

⁵ Shaik Faizunnisa, MUSLIM LAW OF INHERITANCE, District Courts

<https://districts.ecourts.gov.in/sites/default/files/3-MUSLIM%20LAW%20OF%20INHERITANCE%20-%20by%20Smt%20S%20Faizunnisa.pdf>

(2) Residuary in another's right: They are those females who as sharers are entitled to one-half or two-thirds and who are eligible to inherit the property if they co-exist with others at the time of inheritance.

(3) Residuary together with another: It is a female heir who becomes residuary because of her co-existing with another female heir at the time of inheritance.

The final category of people involves the following persons as follows,

Distant kindred: The next class of heirs are known as Dhauil-arham or distant kindred. They include the relations who are neither sharers nor residuary; they inherit only if there are no sharers or residuary. Shafi and Maliki's do not treat them as heirs at all. They are further classified and involves four classes of people.

- a) The offspring of the deceased
- b) The roots of the deceased or his ascents
- c) The off springs of his parents
- d) The offspring of his grandparents. Even if they are remote, they are considered.

In the above said manner the categorisation of peoples for inheritance over the property is made under their respective laws.

Classification of Property

Hindu Law

- The property included in the inheritance under Hindu law includes ancestral property. Coparcenary property is another name for it. The successors for the male lineage are entitled to the succession of ancestral property. The Hindu Succession Act, Section 6, outlines how property is divided among all-male co-heirs. Before the modification, this was the situation. Females are now regarded similarly to males as a result of the change. "The female got the right by the birth as that of son. She is also having the same rights and liabilities over the property in the similar manner as that of the son."
- Self-acquired property is not governed by the Hindu Succession Act. The Hindu Succession Act does not apply to self-acquired property. If the right to the property is not dependent on a testament (also known as "intestate succession"), the individual has the right to claim succession. If the individual or the departed left a written testament, the property should descend according to the directions stated in the will.

Muslim Law

- There is no concept of ancestral property under Muslim law. They will either own a solo or shared home. This legislation governs the right of inheritance over certain possessions. The property will be divided into per-capita and per-stripe distributions.

- Per Stripe's distribution: The Shia sect of Islam follows a property allocation system based on stripes. A property is allocated to the successors of a family branch (strip) under per stripes distribution. As a result, the size of the family branch and the individuals in that part will decide the amount of the family members' interest in the property.
- Per capita distribution: Sunni Muslims are primarily concerned with property allocation per capita. The property is distributed evenly among all successors in per capita distribution. This indicates that the value of each heir's part in the deceased's property is determined by the number of heirs. The bloodline to which the heir belongs has no bearing on the succession that he or she will inherit.

Inheritance through Female

Hindu Law

- Prior to the amendment, the Hindu succession Act exclusively granted males the right to inherit property. Females were not treated equally under this legislation, and property passed solely to male successors of both ascendant and descendant lines. Even widows and mothers were denied the chance to inherit the property. Section 6 of the Hindu Succession Act has been modified and reformed to provide females the same right of inheritance over ancestral property as males. Following this shift, women are treated similarly to males. The widow is given first consideration, and given preference over other female members. She has full legal authority to inherit her late husband's assets. This reform was enacted and put into effect in 2005, and it is widely regarded as a watershed moment in the treatment of women as human beings and not regarded as inferior to men. The Hindu Succession Act, Section 15, deals with the distribution of property among female heirs, with specific priority. It outlines how the property should be split and how it should be done.

Muslim Law

- Females are granted the right to partake in the property under Muslim law. They are regarded to have a lower share than Muslim men. Women are entitled to half of the percentage of amount that men receive under Shia law. This is because Muslim women get maintenance and are only eligible to ancestral property when they marry, but Muslim males are only entitled to ancestral property.
- According to Muslim law, widows are also eligible to inherit property. If the widow has no children, she will be entitled to one-fourth of the estate left to her by her late husband. After paying off her husband's debts and legal and burial fees, the amount she will get will be determined. If the widow has children or grandchildren, she will be entitled to one-eighth of her husband's portion of the estate.

- A widow, on the other hand, had no claim to inherit if she married her husband while he was unwell and died later, provided that the illness was persistent with no interval of recuperation or if the pair had not consummated their marriage until the husband's death. If, on the other hand, an unwell husband divorces his wife and then dies from that illness, the widow will be entitled to inherit until she marries again.

Succession by Government

Hindu Law

- Section 29 of the Hindu Succession Act deals with the property being inherited and managed by the government if there are no successors to the departed.

Muslim Law

- The procedure through which the government can take over the rights and control of a deceased person's property is known as escheat. Only if there are no surviving successors may the state take over a deceased person's property. Because the state is the ultimate successor of every deceased person.

Conclusion

With the implementation of the Hindu Succession Act, 1956, Hindu law has progressed from full deprivation of women's inheritance rights to permitting a Hindu daughter to act as Karta, according to a Delhi High Court judgement on Mrs Sujata Sharma vs Shri Manu Gupta & Ors⁶. On the death of a Hindu male, the Act brought about a dramatic shift in Hindu law, as a Hindu mother, wife, or daughter received a portion equal to that of the son. In contrast to Talaq ul Biddat, the Muslim rule of succession has received little to no criticism by the ethnomasochistic and flamboyantly vocal liberals. Despite the fact that the Muslim law gave Muslim women inheritance rights, the succession law is heavily skewed in favour of Muslim males and discriminatory against women. As a result, a son receives twice as much as a daughter in a deceased father's estate, and a Muslim woman's portion is even smaller in some instances. In comparison to Hindu law, where personal law has become more equal and even marginally beneficial to women, this appears antiquated and barbaric.

⁶ Mrs Sujata Sharma vs Shri Manu Gupta & Ors <https://indiankanoon.org/doc/44964360/>