
COMPARATIVE ANALYSIS OF INHERITANCE RIGHTS, AND GENDER INEQUALITY: AN EMPIRICAL STUDY OF MUSLIM AND HINDU LAW

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ABSTRACT

Laws of inheritance and succession have existed since time immemorial in every human society. The property of the deceased person is distributed amongst the legal heirs according to the laws of inheritance. In India, it is distributed according to the personal law of their respective religions. This paper focuses on the Hindu and Muslim law of inheritance in particular. Both religion's law has their own rule of inheritance regarding the distribution of property between males and females but it is often blamed for being discriminatory. This paper focuses on the interplay between inheritance laws and gender inequality within the frameworks of Muslim and Hindu legal systems. It aims to analyze the disparities in inheritance rights experienced by women in these two major religions. By examining the religious factors, customs, and the reasons that shape these laws, the study seeks to highlight the extent to which gender-based discrimination persists in inheritance rights. Through analysis of legal provisions and inheritance rules, the paper will explore the impact of these laws on women's inheritance rights. This paper will contribute to a deeper understanding of the challenges faced by women in accessing their rightful inheritance and advocate for legal reforms that promote gender equality.

Keywords: Inheritance rights, Personal law, Gender inequality, Customs, Legal reforms

INTRODUCTION:

Inheritance and succession play an important role in determining the ownership and transfer of property under personal law. In India, the two major religions Hinduism and Islam have different approaches to inheritance and succession which are governed by their respective personal laws. The Constitution of India guarantees equality for all citizens, promoting equal rights and non-discrimination. However, despite this constitutional framework, the application of personal laws has often resulted in inequality, particularly in the context of inheritance and succession.

Muslim inheritance laws are based on Shariah principles. These laws provide women with a guaranteed share in the inheritance. However, there is an inherent gender-based distinction like the women receive half the share of their male counterparts. On the other hand, Hindu law which was historically governed by the Mitakshara and Dayabhaga schools of thought has undergone reforms with the enactment of the Hindu Succession Act, 1956, and its amendment in 2005. Although these reforms intended to grant equal inheritance rights to women, Practices for instance the preference for male heirs continue to restrict gender equality.

Over the past few decades, women in India have actively claimed their legal rights to inherit property which reflects a growing awareness of rights and gender equality. However, despite this inequalities persist, and the interplay between legal provisions and customs continues to pose significant challenges. This paper aims to compare inheritance and succession rights under Muslim mainly the Sunni law and Hindu laws focusing on the intersection between legal frameworks and gender inequality. The study aims to highlight the persistent challenges faced by women under both personal laws.

LITERATURE REVIEW:

Shania (2022)¹ highlighted the law of inheritance followed by Muslims following the Hanafi School of thought. This paper contextualizes the Muslim law of inheritance within the broader framework of personal law and discusses the principles of pre-Islamic customary law of succession in which females and cognates were denied rights and male agnates were preferred and then how the principles of succession were reformed by Islamic law. Under Muslim property can be inherited only after the death of the ancestor. Under the Hanafi law heirs are

¹ Shania. (2022). Muslim law of inheritance: hanafi school. *Jus Corpus Law Journal*, 2(3), 725-737.

classified into seven categories 3 primary and 4 subsidiary classes. The paper explains key principles under the Muslim law such as intestate and testamentary succession and the doctrines applied to decide the fraction of shares. The paper highlights how the current system aims to balance traditional customary practices which gave preference to agnates by recognizing female rights and ensuring that all the eligible heirs receive the share based on the nearness and relationship to the deceased.

A comprehensive overview of the historical development of coparcenary rights within Hindu law and focuses on the changes made with regard to female inheritance is provided by **Saubhagya (2022)**². The paper traces the evolution from ancient schools of thought like Mitakshara and Dayabhaga to contemporary legislation like the Hindu Succession Act (1956) and its amendments. The paper highlights the gradual expansion of women's rights, particularly the landmark 2005 amendment that recognized daughters as coparceners by birth. However, a deeper analysis of the impact of judicial decisions and social factors could further enrich the understanding of this complex legal and social issue.

Bhandari & Jaswani³ critically examined the existing legislation relating to property rights in India, specifically focusing on gender inequality within Hindu and Muslim personal laws. It highlights the historical and legal context of these laws, analyzing how they have evolved and how they continue to discriminate against women. The paper delves into the Hindu Succession Act, 1956, which has brought about significant reforms but still leaves room for gender-based disparities. It also discusses the challenges faced by Muslim women under Sharia law, where they often receive unequal shares in inheritance compared to men. The paper concludes by emphasizing the need for further legal reforms and social change to ensure equal property rights for women in India.

Abdullah, H. F. H. (2014)⁴ provided a comparative analysis, drawing from historical texts like the Quran, Sunnah, and Laws of Manu, as well as modern legal frameworks. The Islamic inheritance system, outlined in the Quran and Sunnah, establishes a detailed framework for distributing a property among various heirs, including spouses, children, parents, and other relatives. The paper highlights the gender-based differences in inheritance shares, with men

² Saubhagya. Evolution of Coparcenary Rights Under Hindu Law, 24 JCLJ (2022) 885

³ Bhandari, A., & Jaswani, U. A Critical Analysis of Gender Inequality In The Existing Legislation Relating To Property Rights in India: A Comparative Study of Hindu And Muslim Law.

⁴ Abdullah, H. F. H. (2014). Laws of inheritance in Islam and Hinduism: A comparative study. *Al-Idah*, 29(2), 29-43.

typically receiving larger portions. Hindu inheritance laws, as depicted in the Laws of Manu, historically favored male heirs, particularly the eldest son. However, the modern Hindu Succession Act of 1956 has significantly reformed these laws, granting equal inheritance rights to sons and daughters. The paper explores the historical evolution of Hindu inheritance practices, from the joint family system to individual property rights.

Singh A. (2017)⁵ examined the intricate relationship between Hindu and Islamic inheritance laws and their impact on women's property rights and estate fragmentation in colonial India. Under Anglo-Hindu law, women were largely excluded from inheriting joint family property, with limited rights to maintenance and their husband's separate property. This system, while limiting women's rights, effectively preserved family estates. In contrast, Anglo-Islamic law granted women inheritance rights as Quranic heirs, leading to more frequent estate divisions. This comparative analysis highlights the contrasting approaches to inheritance and their implications for wealth distribution and gender dynamics in colonial India.

S. Khan, (2000)⁶ highlighted the complex issue of women's inheritance rights in India, highlighting the historical and legal barriers that have perpetuated gender inequality. Despite constitutional guarantees of equality and legislative reforms like the Hindu Succession Act, discriminatory practices rooted in tradition, religion, and custom continue to hinder women's access to property rights. The paper emphasizes the need for stricter enforcement of existing laws, addressing discriminatory customary laws, and empowering women through education and economic opportunities to ensure true equality in inheritance.

H. J. Rathore, (2020)⁷ paper focuses on the evolution of inheritance rights for women under Hindu Law in India. It delves into the historical context where women were often marginalized in property matters. The Hindu Succession Act of 1956 and its subsequent amendments, particularly the 2005 amendment, have been pivotal in empowering women by granting them equal rights to inherit property as men. The paper examines the implications of these reforms, including the concept of coparcenary and its impact on women's property rights. It highlights the challenges and potential for further progress in ensuring gender equality in inheritance

⁵ Singh, A. (2017). Women, wealth and law: Anglo-hindu and anglo-islamic inheritance law in British India. *South Asia: Journal of South Asian Studies*, 40(1), 40-53.

⁶ Khan, S. (2000). Inheritance of Indian women: a perspective. *India International Centre Quarterly*, 27(2), 139-154

⁷ Rathore, H. J. (2020). Inheritance of Property-An Overview under Hindu Law. *Nyaayshastra L. Rev.*, 1, 1.

practices within the Hindu legal framework.

M. Sharif, M. Karim & Rahman (2023)⁸ article highlights the issue of women's inheritance rights across major global religions. It highlights the significant steps made by Islam in granting women equal rights to inheritance, contrasting it with the historical and ongoing struggles faced by women in other religions. The article particularly focuses on Hinduism, detailing the Mitakshara and Dayabhaga systems of inheritance, which vary in their treatment of women's inheritance rights. While the Mitakshara system provides equal rights to both sons and daughters, the Dayabhaga system prioritizes sons as primary heirs, limiting daughters' inheritance to self-acquired property. The article concludes by emphasizing Islam's progressive stance on women's inheritance rights, positioning it as a more equitable system compared to others.

S.A. Kader⁹ advocates for a Uniform Civil Code of Inheritance, highlighting the disparities among various communities in India. It proposes a common set of rules that would apply to all, regardless of religion or caste. Key principles of this proposed code include gender equality, equal rights for spouses, and a streamlined approach to inheritance. By suggesting a unified system, the paper aims to simplify the complex and often discriminatory laws of inheritance prevalent in India, promoting fairness and justice for all citizens.

Meera Vinod Menon¹⁰ provided a comprehensive analysis of gender discrimination in inheritance laws across various religious communities in India. It highlights the historical roots of these discriminatory practices and their continued impact on women's economic empowerment. By examining specific personal laws and landmark cases, the article underscores the need for reform to ensure gender equality in inheritance rights. While the Uniform Civil Code is presented as a potential solution, the article also acknowledges the complexities and challenges associated with its implementation. To achieve lasting change, a nuanced approach that addresses both legal and social factors is essential.

RESEARCH OBJECTIVE:

1. To analyse the Evolution of Inheritance Laws in India.

⁸ Sharif, M. Y., Karim, M. R., & Rahman, M. M. (2023). Women's Economic Empowerment and Inheritance Rights across Major Global Religions: A Comparative Exploration. *Br. J. Arts Humanit*, 5(6), 309-326.

⁹ S.A. Kader. (1995). Optional Common Code of Inheritance, (1995) 2 LW (JS) 109

¹⁰ Meera Vinod Menon. (2022). Gender Injustice in Inheritance Laws of India, 24 JCLJ (2022) 2299

2. To Analyse and Compare Inheritance law in India particularly Hanafi law and Hindu law.
3. To investigate the extent and reason for Gender Inequality in Muslim and Hindu law.

RESEARCH QUESTIONS:

1. How do the principles of inheritance differ in Muslim and Hindu Law?
2. What are the key provisions of the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005, and how have they impacted women's inheritance rights?
3. What are the key rules of inheritance in Muslim law and how have they impacted women's inheritance rights?
4. What are the major challenges faced by women in inheriting property?
5. Do the current legal framework and the respective personal laws of both religions mitigate gender inequality?

METHODOLOGY:

This paper uses doctrinal and empirical. The doctrinal research involves a detailed review of legal and religious texts, articles and journals to understand the legal framework governing Hindu and Muslim inheritance laws. For the empirical data, a structured questionnaire was circulated among 60 individuals, 30 from the Muslim religion and 30 from the Hindu religion, out of which 52 responses were collected. The data from these responses was analyzed using statistical tools. By combining these methods, the paper provides a thorough view that mixes theoretical understanding with real-world findings to support the paper conclusions.

SUCCESSION:

One of the most significant areas of personal law is the law of succession. When a person dies, succession is a way for his property to devolve from him to his immediate heirs. Our society has been patriarchal and Women have been excluded from all spheres of life, including the political, social, and economic spheres. Women's economic independence can only be achieved

if they are granted the authority to regulate their property relations and access to the means of production.

India has several different and unique laws pertaining to intestate and testamentary succession, and how they are applied varies on a number of factors, including the parties' religion, their domicile, their community, the form of marriage, etc. These laws also differ according to factors like schools and sub-schools, such as the Hanafi and Shia schools of Muslim law and the Mitakshara and Dayabhaga schools of Hindu law. In light of these factors, a multiplication succession law is in effect and applicable.¹¹

SUCCESSION IN MUSLIM LAW:

The source of Muslim law of inheritance has its origin in the rule of succession which is provided in the holy Quran. Initially it was patriarchal society which was based on customary laws that developed throughout the Hijaz period and served as its foundation. These rules restricted inheritance rights to the deceased male agnates (Asaba), placed in hierarchical order. The muslim law of inheritance does not recognize the concept of Joint family property. The are initially just a tenant in common whose shares are legally specified. Under muslim law birth of the person does not generates his rights in the property. The person just remains a specs secessionist to inheritance which becomes accessible upon the death of a person. Additionally there is no distinction between movable and immoveable property under Muslim law.¹²

There are two sects in Islam that is Shia and Sunni and both sects have different rules of inheritance. The Sunnis still acknowledge the pre-Islamic system of agnate succession as relevant with the exception of the prophet's condemnation of it. Shias completely rejected the agnate system and set out to create a new system based on the Quranic provisions. Another important difference is the principle of representation, which is foreign to Sunni personal law but well-adopted by Shia personal law. While Shia law only recognizes two classes of legal heirs the sharers and the residuaries, Sunni law acknowledges three classes: the sharers, the residuaries, and the distant kindred. Shia law does not recognize the idea of distant kinship.¹³

¹¹ Sharma, P. (2008). LAW OF INTESTATE & TESTAMENTARY SUCCESSION.

¹² Garg, A., & Pateriya, M. (2021). UCC and Its Validity Taking in Consideration Concept of Succession and Inheritance under Hindu and Muslim Personal Laws. *Indian JL & Legal Rsch.*, 3, 1.

¹³ Cheema, S. A. (2012). Shia and Sunni Laws of Inheritance: A Comparative Analysis. *Pakistan Journal of Islamic Research*, 10.

INHERITANCE IN MUSLIM LAW:

Inheritance is the transfer of a deceased person's assets and any other transferable rights to the living person. In Islam, inheritance have different meanings in islam. Although the term "inheritance" is not specifically defined in the Qur'an, several scholars have given it their own definitions. According to Sir Abdur Rahim, inheritance is the transfer of the deceased's rights and responsibilities to the heir.¹⁴ The transfer of all the deceased person's assets to their lawful heirs, together with any transferable rights, is generally referred to as the law of inheritance. The rights that can be transferred include debts, property, and other rights that allow the surviving legal heirs to get compensation on the deceased's behalf.

Law of inheritance Is the Fundamental Component of islam which muslims are required to follow. Muslims inherit from one another in accordance with the share prescribed in the Holy Quran for the heirs of the deceased. The Holy Qur'an, the Hadith of the Prophet (PUBH), and Fiqh provide explanations on inheritance-related topics.¹⁵

The following are the primary responsibilities that must be fulfilled when a Muslim passes away:¹⁶

1. Payment of Burial and Funeral expenses.
2. Paying off debt if any
3. Execution of the deceased person's testamentary will (which cannot exceed one-third of the deceased's assets).
4. Allocating the deceased person's remaining property and assets to their surviving family members in accordance with Islamic law.

INTESTATE SUCCESSION IN MUSLIM LAW:

In Muslim law, intestate succession is said to have taken on its current form when the verses related to intestacy were revealed to Prophet Muhammad (PUBH) following the Umm Kujjah

¹⁴ Sir Abdur Rahim, 2000. The Principles of Muhammadan jurisprudence, P.346, Pakistan Law Publishing Company

¹⁵ Zubair, M., Khattak, S., Rehman, H., & Khan, M. A. (2014). The laws of inheritance in Islam. *Journal of Basic and Applied Scientific Research*, 4(8), 86.

¹⁶ Dinshah Fardunji Mulla. (2018). Principles of Mahomedan Law. Franklin Classics.

incident, in which the co-executors of her deceased husband despite having a will in their favor, denied her and her daughter's inheritance.¹⁷ The revelation of the verse was made in two phases first, the revelation of verse 4:7, and second, the verses 4:11 and 4:12. The first verse recognises the right of both men and women to inherit and the second verses specify the proportions of shares to which some of the heirs are entitled. Verse 4:8 lays down a directive that at the time of division relatives and orphans and the needy present at that time should be considered.¹⁸

SURAH-AN-NISA 4:7

*“For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave whether it is little or much. These are obligatory shares”*¹⁹

This verse helps embodies five aspects of law relating to succession among Muslims:

- 1) it upholds that both male and female have equal right of inheritance. Islam does not discriminate when it comes to the recognition of right to inherit on the basis of gender.
- 2) It mandates that the estate that remains after the death of the propositus or proposita be distributed. It makes no difference how much or how little property he leaves behind. The idea is the equitable distribution of property, regardless of its value. Whatever the remaining amount is it will be distributed among the heirs. If it is of a kind that it can be distributed, then anybody can buy it with the consent of al, and the money paid will be dispersed in accordance with the percentage.
- 3) It implies that property of all descriptions becomes a subject of succession when the succession is open.
- 4) The succession at the time of death of a muslim.
- 5) The nearer in blood are preferred

¹⁷ Jami' at-Tirmidhi, The Chapters on Inheritance Vol: 4, Book: 3, Hadith: 2092 Sunan Abi Dawud, The Book of Shares of Inheritance (Kitab Al-Fara'id) Book: 18, Hadith: 2885

¹⁸<https://shodhganga.inflibnet.ac.in/bitstream/10603/379704/6/008%20chapter%205%20sunni%20law%20of%20intestate%20succession.pdf>

¹⁹ Quran Verse 4:7

SURAH-AN-NISA 4:8

“If other near of kin orphans and needy are pre sent at the time of division of inheritance give them some thing of it and speak to them kindly”²⁰

This verse is a directive that is intended for the deceased's heirs. They are instructed not to treat their family, whether they are close or far away, with disrespect. They shouldn't be insensitive to orphans who are present when the inheritance is given out, or to weak and needy family members. Even if they have no legal claim to any portion, it seems reasonable for individuals to be generous and give them something from their inheritance.

SURAH-AN-NISA 4:11

“Allah decrees a will for your children; the male gets twice the share of the female. If the heirs are women, more than two, they receive two thirds of the estate. If only one daughter is left, she gets one half. The parents of the deceased are each entitled to one sixth if he has left offspring. If he left no children and his parents are the only heirs, his mother gets one third. If he has siblings then his mother gets one sixth after the fulfillment of any will the deceased has left and after the payment of all debts. Your parents or your children – you know not which of them are nearest to you in benefit. These shares are an obligation imposed by Allah. Indeed, Allah is ever Knowing and Wise.”²¹

From this verse the following inheritance rules can be derived:

- 1) Sons receive twice the inheritance share of daughters.
- 2) If there are only two daughters and no son then they can inherit 2/3 of the estate.
- 3) If there is only one daughter then she receives 1/2 the inheritance.
- 4) If parents (of the deceased) are alive, they each have an entitlement to 1/6 of the inheritance if there are children (of the deceased).

²⁰ Quran Verse 4:8

²¹ Quran Verse 4:11

- 5) If there are no children and the parents are sole heirs, the mother receives 1/3 and the father takes the remainder.
- 6) If there are no children, but the deceased has siblings, then the mother received 1/6.
- 7) All of this is contingent upon what remains after payment of funeral costs and debts.

SURAH-AN-NISA 4:12

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you may have made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment caused. This is an ordinance from Allah, and Allah is Knowing and Forbearing”²²

From this verse the following rules can be derived:

- 1) Widowers receive 1/2 of the property if there are no children.
- 2) Widowers receive 1/4 of the property if there are children.
- 3) Widows receive 1/4 of the property if there are no children.
- 4) Widows receive 1/8 of the property if there are children.
- 5) If there are no ascendants (parents) or descendants (children), the siblings stand to inherit 1/6 of the property.
- 6) If there are two or more siblings, they share a third if there are no parents or children.

SURAH-AN-NISA 4:33

“And to everyone We have appointed rightful heirs to what the parents and near of kin might

²² Quran Verse 4:12

leave behind. As to those with whom you have made a solemn covenant, give them their share. Allah watches over all things”²³

This verse affirms the right of a Muslim's surviving near relatives. It is stated that the rights of those relatives who would inherit from their parents and other relatives in the event of their death have undoubtedly been outlined in the Quran. Under 4:11 and 4:12, the list of inheritors and their specific amount of shares are prescribed. Additionally, the verse emphasizes the deceased's contractual obligations being fulfilled. In addition to the heirs' preferential right, creditors under those contracts ought to have the ability to settle claims against the deceased that were made during his lifetime but have since been unpaid. It is emphasized in the verse that in the best interests of the heirs, intestate succession to a deceased person's property should occur, accompanied with obligations to fulfill pre-death contractual commitments.

SURAH-AN-NISA 4:176

“They request from you a legal ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants as heirs.” If a man dies, leaving no child but only a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters or more, they will have two-thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you His law, lest you go astray. And Allah is Knowing of all things”²⁴

From this verse the following rules can be derived:

- 1) If a person passes away without ascendants or descendants (defined as a “kalalah.”), and only has one sister, the sister will inherit half of what is left.
- 2) If a widow passes away without any children, leaving only one brother, the brother inherits the entire estate.
- 3) If a person passes away leaving only two sisters, the sisters will have 2/3 of the estate.
- 4) If there are both male and female siblings, the males will take double the

²³ Quran Verse 4:33

²⁴ Quran Verse 4:176

shares of the female.

HANAFI (SUNNI) LAW OF INHERITANCE:

Under the Hanafi law of inheritance heirs are divided into seven classes, three principal classes and four subsidiary classes:

- **Principal Classes:**²⁵

- a) Quranic Heirs (Sharers):

“Sharers” are those who are entitled to a prescribed share of the inheritance.

- b) Agnatic Heirs (Residuaries)

“Residuaries” are those who take no prescribed share, but succeed to the ‘residue’ after the claim of sharers are satisfied.

- c) Uterine Heirs (Distant Kindred)

“Distant kindred” are all those relations by blood who are neither sharers nor residuaries.

- **Subsidiary Classes:**

- a) The successor by contract

- b) The Acknowledged kinsman

- c) The sole Legate

- d) The State, by Escheat

The first step in the disposal of the inheritance of a deceased Muslim, after payment of his funeral expenses, debts and legacies, is to distribute their respective parts to the Quranic Heirs. If any residue is left, it is to be divided among Agnatic heirs (Residuaries). The inheritance will be divided among Distant Kindred if there are neither Sharers nor Residuaries. As long as there

²⁵ Dinshah Fardunji Mulla. (2018). Principles of Mahomedan Law. Franklin Classics.

is a successor who belongs to the class of Sharers or Residuaries, the distant kindred have no right to succeed. However, there is one instance where a Sharer and the Distant Kindred will share an inheritance: when the Sharer is the deceased's spouse. When the three principal classes that is the Quranic, agnatic, or uterine heirs are absent then the right to inherit passes to subsidiary heirs, among whom each class excludes the next Subsidiary Classes.²⁶

SUCCESSION IN HINDU LAW:

The Law of Succession is the main point of contention in the hindu law due to its prominent position in Hindu law. It consists of the laws or standards that govern how a deceased person's property is distributed to one or more others. Consequently, it is concerned about what happens to a deceased person's property after they pass away.

Prior to the Hindu Succession Act of 1956, India had a number of different succession systems in existence. These regulations differed depending on the caste, creed and other characteristics of the people in each segment of society. Individuals Properties that were independent followed one way of devolution, whereas joint properties followed another. Regarding the succession rules, there was no consistency. There were essentially two schools with prevalent rules: Mitakshara and Dayabhaga. However, on June 17, 1956, the Hindu Succession Act, 1956, superseded all of the previous laws in India. The law of intestate succession among Hindus is amended and codified by this Act. In addition to applying to individuals ruled by both schools, the Act establishes a consistent and comprehensive system of inheritance for those in portions of southern India that were formerly controlled by the Marumakkatayam, Aliyasantana, and Nambudri systems of Hindu law.²⁷

INTESTATE SUCCESSION IN HINDU LAW:

The Hindu Succession Act provides for two entirely different schemes of succession, based on the sex of the intestate. The customary law of succession and ancient Hindu law have been abolished. On any subject for which the Act has a provision, it has superseded the statutory,

²⁶ Shafi, S. N. A. (2023). SUCCESSION UNDER MUSLIM LAW. In NALSAR UNIVERSITY OF LAW. https://nalsarpro.org/Portals/23/18%20MAR%202023%20SESSION%20-%20%20PPTs%20ON%20CONCEPT%20OF%20INHERITANCE%20UNDER%20ISLAMIC%20LAW%20Dr_%20Shafi.pdf

²⁷ Shodhganga : a reservoir of Indian theses @ INFLIBNET. (2024). Inflibnet.ac.in. <https://shodhganga.inflibnet.ac.in/bitstream/10603/325594/9/5.%20chapter%20%20intestate%20succession%20to%20hindu%20male.pdf>

customary, Shastric, and other laws. This Act's passage has made the term "sapinda" eliminated from the law of succession, and this Act has brought forth numerous other significant modifications. For the law of intestate succession to apply to Hindu intestate property the foremost condition is that the property must not have been devolved by the will in order. The law of intestate succession will not apply if the property has been devolved by the will.²⁸

INTESTATE SUCCESSION OF HINDU MALE:

The property of the hindu male dying intestate is to be devolved in accordance with section 8 of the Hindu Succession act 1956. According to the general rule provided in section 8 The property belonging to a Hindu male dying intestate devolves in the following manner:²⁹

- 1) First, upon the Class I heirs.
- 2) If there is no heir of Class I, then upon Class II heirs
- 3) If there is no heir of any of the two classes, then upon the agnates of the deceased;
- 4) If there is no agnate, then upon the cognates of the deceased.

- **Class I heirs includes:**

- Mother [M]
- Widow [W]
- Daughter [D]
- Widow of a predeceased son [SW]
- Daughter of a predeceased son [SD]
- Daughter of a predeceased daughter [DD]
- Daughter of a predeceased son of a predeceased son [SSD]

²⁸ Tahir Mahmood. (2014). Principles of Hindu law : personal law of Hindus, Buddhists, Jains & Sikhs. Universal Law Publishing Co. Pvt. Ltd.

²⁹ Hindu Succession Act 1956, Section 8

- Widow of a predeceased son of a predeceased son [SSW]
- Son [S]
- Son of a predeceased son [SS]
- Son of a predeceased son of a predeceased son [SSS]
- Son of a predeceased daughter [DS]
- Daughter of a predeceased daughter of a predeceased daughter [DDD]
- Son of a predeceased daughter of a predeceased daughter [DDS]
- Daughter of a predeceased daughter of a predeceased son [SDD]
- Daughter of a predeceased son of a predeceased daughter [DSD]

Section 10 deals with the rules for distribution of property among the heirs in class I of the Schedule. The property should be divided among the heirs class I in accordance with the following rules:³⁰

- a) Each son and daughter and that of the mother shall have equal shares.
- b) The widow of the deceased shall have one share and if there is more than one widow all of them, collectively will have one share.
- c) A predeceased son survived by a widow or son or daughter shall be allotted a share equal to a living son.
- d) Out of the portion allotted to the predeceased son his widow and living sons and daughters will have equal portions with respect to each other. Any branch of the predeceased son of this predeceased son will get an equal portion.
- e) The rule applicable to the branch of predeceased son of the predeceased son is the same as of predeceased son wherein son, daughter and widow will get an equal share.
- f) A predeceased daughter who is survived by a son or a daughter is to be allotted an equal

³⁰ Hindu Succession Act 1956, Section 10

share to that of a living daughter.

- g) The son and daughter of the predeceased daughter shall take an equal portion in the share. The same rule shall apply to any branches of a predeceased daughter of a predeceased daughter.

- **Class II heirs includes:** 19 heirs out of which 10 are male and 9 are females the heirs are divided into 9 subcategories:

1. Father.
2. Son's daughter's son, son's daughter's daughter, brother, sister.
3. Daughter's son's son, daughter's son's daughter, daughter's daughter's son, daughter's daughter's daughter.
4. Brother's son, sister's son, brother's daughter, sister's daughter.
5. Father's father; father's mother.
6. Father's widow; brother's widow.
7. Father's brother; father's sister.
8. Mother's father; mother's mother.
9. Mother's brother; mother's sister.

Among the class II heirs the property are distributed as follows:³¹

- The heirs in a higher subcategory will exclude the heirs in the lower subcategory. For instance, the heirs in the first subcategory will have preference over the heirs in the second subcategory, the second one will have preference over the third and so on.
- All the heirs in one category shall take the property equally according to per capita rule of distribution of property, the order in which the name appears in a

³¹ Hindu Succession Act 1956, Section 11

subcategory is irrelevant.³²

- **Agnates:** A person is said to be an “agnate” of another if the two are related by blood or adoption wholly through males.
- **Cognates:** A person is said to be a “cognate” of another if the two are related by blood or adoption but not wholly through males.

INTESTATE SUCCESSION OF HINDU FEMALE:

According to the Hindu Succession Act, 1956 (HSA), a Hindu woman's property can be classified into three types: property she inherits from her mother or father, property inherited from her father-in-law or spouse, and the third type, the and the third type, which consists of the properties not controlled by the first two categories. A Hindu woman held two types of property prior to the Hindu Succession Act's implementation:

(1) Stridhana

(2) Hindu Woman's Estate.

Stridhan was considered her absolute property over which the female has a full ownership and on her death it devolved upon her heirs. The Hindu Women's Estate was her limited estate with reference to which her powers of alienation were limited. The enactment Hindu Succession Act changed this and provides absolute ownership to women over all the property.³³ Section 14³⁴ of the act provides that “any property possessed by a female Hindu, whether acquired before or after the commencement of the act shall be held as her full owner thereof and not limited owner”

Section 15³⁵ of the act provides for the general rules of succession in the case of Hindu female. The property belonging to a Hindu female dying intestate devolves in the following manner:

- 1) Firstly, upon the sons and daughters (including the children of any predeceased son or

³² Arunachalam v. Ramachandran Pillai, 1962 SCC OnLine Mad 210

³³ Shodhganga : a reservoir of Indian theses @ INFLIBNET. (2024). Inlibnet.ac.in. <https://shodhganga.inflibnet.ac.in/bitstream/10603/325594/10/6.%20chapter%203%20intestate%20succession%20to%20hindu%20female.pdf>

³⁴ Hindu Succession Act, Section 14

³⁵ Hindu Succession Act, Section 15

daughter) and the husband;

- 2) Secondly, upon the heirs of the husband;
- 3) Thirdly, upon the mother and father;
- 4) Fourthly, upon the heirs of the father; and
- 5) Lastly, upon the heirs of the mother.

It is further stated that:

- a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) upon the heirs of the father; and
- b) any property inherited by a female Hindu from her husband or father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) upon the heirs of the husband.

GENDER INEQUALITY IN HINDU AND MUSLIM LAW:

In India, the various religious beliefs of various communities that have coexisted for a long time serve as the foundation for inheritance rules. These religious communities' beliefs and customs differed according to castes, region, and tradition, as did the inheritance-related customs. One of the most common means of obtaining and possessing property is through inheritance. However, a complex web of legal, institutional, social, and cultural considerations frequently regulate women's rights to inherit property.³⁶

HINDU LAW

According to the ancient perspective on women's rights, "*Na stri swatantramarhati*", "*swatantram na kachit striyah*" state that women are always subject to the authority of men. They lack the capacity to be independent. Unmarried women were not

³⁶ Deo, S., & Dubey, A. Gender Inequality in Inheritance Laws.

entitled to any property at the time.³⁷

The Hindu Succession Act (HSA), 1956, which was passed by the Indian parliament after independence, included some progressive provisions that female could inherit property, but it failed in giving women equal inheritance rights, and there were still large disparities. The 1956 act maintained the idea of coparcenary, or joint heirship, in the Hindu Undivided Family and prohibited women from being coparceners, even if it gave Hindu women an equal right to inherit property obtained by a deceased. Consequently, no female coparcener could be a coparcener and, therefore, had no birth right in the coparcenary property, while four generations of male coparceners shared ownership, had birth rights over it, and could request its partition.

The other significant flaw concerned inheritance of tenurial land, or agricultural lands governed by various acts, which were expressly exempted under section 4(2) of the HSA 1956 and were instead subject to state land reform and local tenancy laws. State legislation in several areas prevented women from inheriting agricultural land, maintaining male-dominated inheritance customs that impacted the financial stability of rural women. India took half a century to repeal the discriminatory clauses of the 1956 legislation. The Hindu Succession Amendment Act of 2005 strengthened Hindu women's inheritance rights by introducing two significant modifications. At first, It made women equal coparceners by birth in the family's joint property by amending Section 6 of the 1956 act. Second, it repealed the 1956 acts section 4(2), which gave local legislation governing the devolution of tenancy rights in agricultural holdings precedence.

The legal amendments significantly aided in preserving the constitutionally protected rights of women. But unfortunately, marital status still poses a significant obstacle to achieving complete equality in the area of succession rights and the Provisions pertaining to married women's rights in the event of an intestate death were entirely ignored. Since ancient times, India has been a patriarchal society. In India, preference for men has existed since the beginning. The main factor behind Indian women's oppression is dominance and inequality, which are manifestations of the biological difference between men and women.

³⁷ Comparative Analysis of Change in the Succession Rights of Women under Hindu Law - Academike. (2014, November 15). Academike. <https://www.lawctopus.com/academike/comparative-analysis-of-change-in-the-succession-rights-of-women-under-hindu-law/>

Impact of Section 15³⁸ on Married woman:

Section 15 of Hindu Succession Act which deals with the general of intestate succession in the case of female Hindus as mentioned above. Section 15(1)(b) makes it clear that the in-laws are given preference over the deceased female own parents, as stated in Section 15(1)(c). From the section it is clearly evident that the husband receives the deceased Hindu woman's property after her in-laws, and that the deceased Hindu woman's parents are not only not given priority, but are also given less weight than her in-laws. This biased behaviour is not limited to the biological differences between men and women; it also appears to have an impact on the elderly because if a female dies, it is obvious that in most cases she would prioritise her own parents over her husband's. The fact that the woman's self-acquired property is given to her in laws rather than her parents simply because she is not a Hindu male that is, because of her sex is a serious issue which shows inequality.

MUSLIM LAW

The rights of Muslim women have been a topic of discussion since the adoption of the Constitution. Many people consider Muslim law, or Shariah, to be male-dominated and controlling of women. However, the Quran addressed women's issues fourteen hundred years ago and brought about certain changes to improve women's status, even though these changes don't seem to be implemented in Muslim society today.³⁹ In pre-Islamic days woman had no right of inheritance. With the revelation of verses of Surah an Nisa of the holy Quran the status of Muslim female regarding inheritance changed. In Muslim law in most cases, the male receives twice as much as the female. The son receives twice than the daughter when they both inherit jointly. The husband gets 1/4th share and the woman 1/8th share when there is a child and when there is no child 1/2th and 1/4th respectively.⁴⁰

The difference between men and women in their respective shares of inheritance is established by the statement: "Allah commands you concerning your children; a male shall have as much as the share of two females". The discrimination between a son and a daughter is obviously caused by the different responsibilities and expenses that each must deal with in life as a result

³⁸ Hindu Succession Act, Section 15

³⁹ Bhandari, A., & Jaswani, U. A Critical Analysis of Gender Inequality In The Existing Legislation Relating To Property Rights in India: A Comparative Study of Hindu And Muslim Law.

⁴⁰ Chaudhary, P. (2015). Gender inequality in hindu and muslim personal laws in India. *Int J Home Sci Ext Commun Manag*, 1, 34-37.

of Shariah. The text merely states that the daughter will receive half of the son's inheritance. The justification often cited for this is when a muslim female marries the dower, or required bridal money, is paid by the man. Even if she is one of the wealthiest individuals in the world, her husband is the only one who must support her after she moves in. Whether she is wealthy or not, her living expenses are calculated based on her husband's income.

The Qur'an states: "Let him who has abundance of means spend out of his abundance"⁴¹

As the family grows and the male has to support his child, the man's responsibilities and expenses rise. By virtue of the Sharfiah and under specific circumstances, a man may also be required to care for elderly parents, financially dependent siblings who have no one to support them, or other family members in a comparable situation. Therefore, the men require a larger portion in order to fulfill their social and familial obligations. It is often argued that this distinction is not in any sense absolute Sometimes a woman's share in the inheritance is equal to that of the man's. For instance, when the two parents inherit from their children the Quran sates that: "And for one's parents, to each one of them is 1/6 of his estate if he left children"

The reason for this is that the requirements of the parents are frequently comparable. The maternal sister receives 1/6th of the inheritance, the same as her maternal brother, if siblings inherit from a brother who is childless. If there are more than two siblings, they inherit 1/3rd to be distributed equally among them⁴² In certain instances, the woman receives a bigger portion than the man. For example, the sister alone receives one-sixth if a woman passes away leaving behind a mother, husband, two maternal brothers, and one maternal sister. However, the two brothers receive only one-sixth. In addition, the husband gets half of the inheritance and the sister gets the other half if a woman passes away leaving a husband, a full sister, and a paternal brother; the half-brother, who is only an agnate, gets nothing. However, if the half-sibling is a sister rather than brother, she receives one-sixth as sustenance.⁴³

EMPERICAL ANALYSIS:

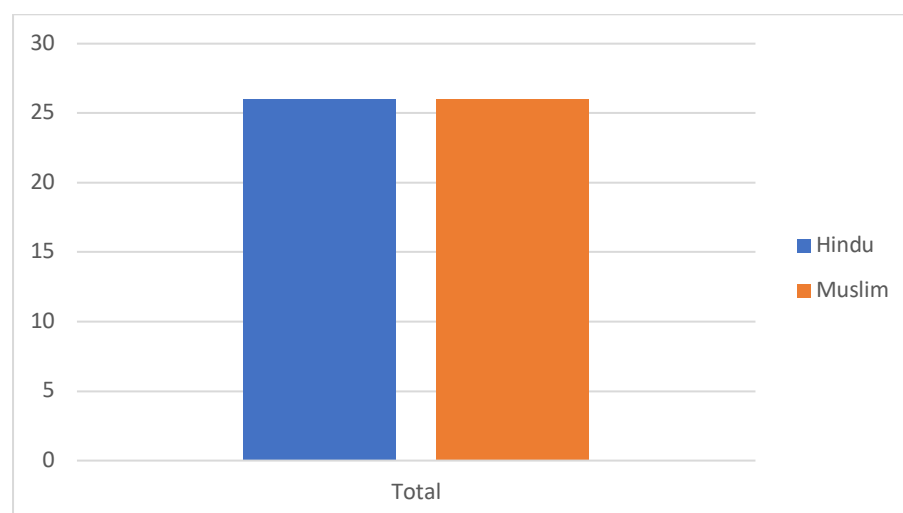
A survey was conducted through a questionnaire which wsa circulated among 60 individulas out of which 52 responses were received. The 60 individulas among whom the questionnaire

⁴¹ Quran Verse 65:7

⁴² Quran Verse 4:12

⁴³ Bello, Abdulmajeed Hassan. "Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women." *arab law quarterly* 29, no. 3 (2015): 261-273.

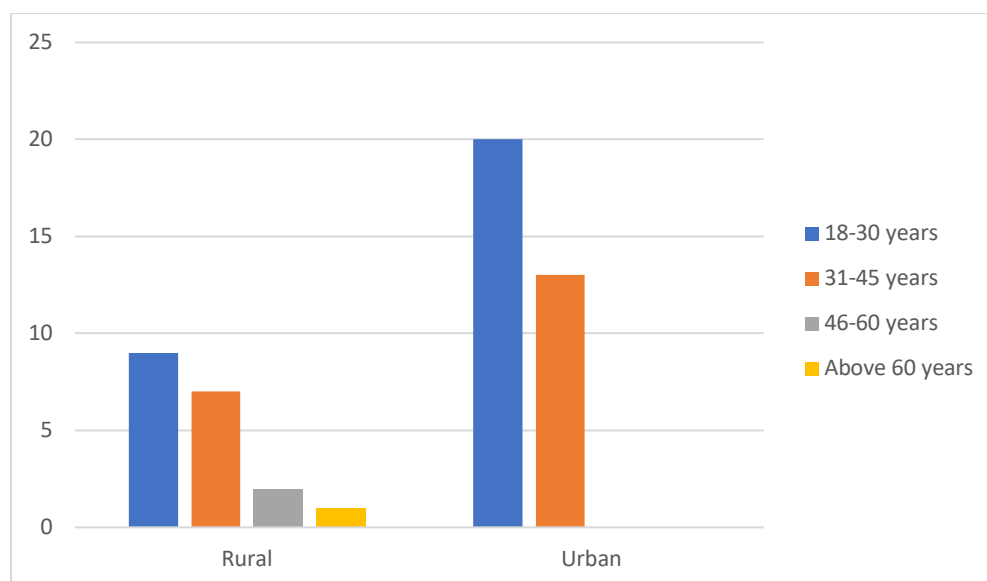
was circulated included 30-30 individuals from both the religion that is the Hindu and the Muslim. 52 responses that were received were in equal proportion that is 50% response were received from the individuals belonging to Muslim religion and the other half that is 50 % was from the individuals belonging to Hindu religion.



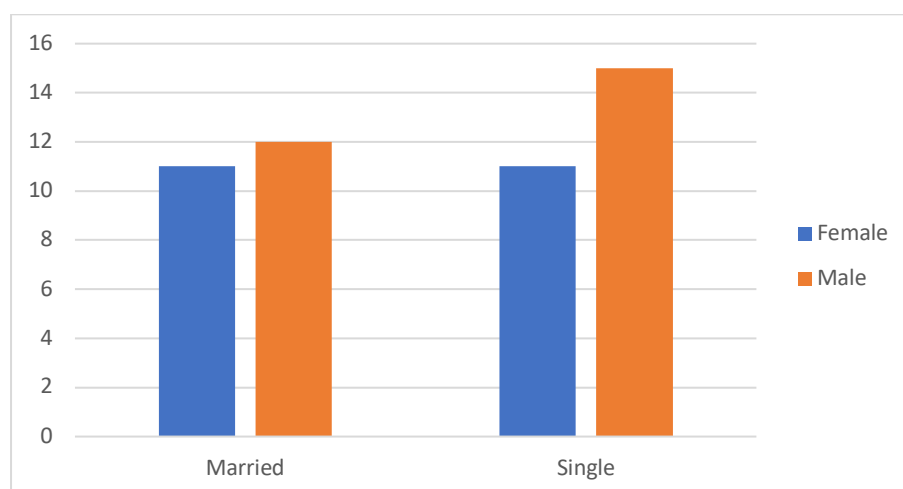
The purpose of the survey was to find out how public perception about inheritance rights, gender inequality, and the effects of legal and cultural frameworks. The survey was intended to target individuals in rural and urban areas of various ages, marital statuses, educational levels, and religions.

DEMOGRAPHICS:

As per the data collected the majority of the responds are between the age group of 18 to 30 which indicates a strong voice from younger adults who may have distinct perspectives on modern inheritance practices and gender norms. The 31 to 45 years age group also constitutes a significant portion, providing insights from middle-aged individuals who may have more direct experiences with inheritance and succession issues.

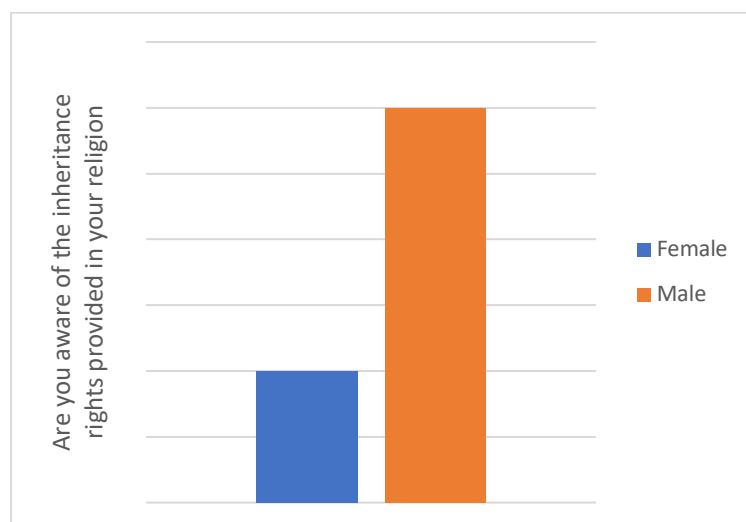


The graph shows that there are more urban respondents than the rural respondents therefore the study may include more perspectives from city dwellers who may have more up-to-date or knowledgeable views on the law. However, traditional and diverse viewpoints will still be featured because there are also a generous number of responses from rural areas.

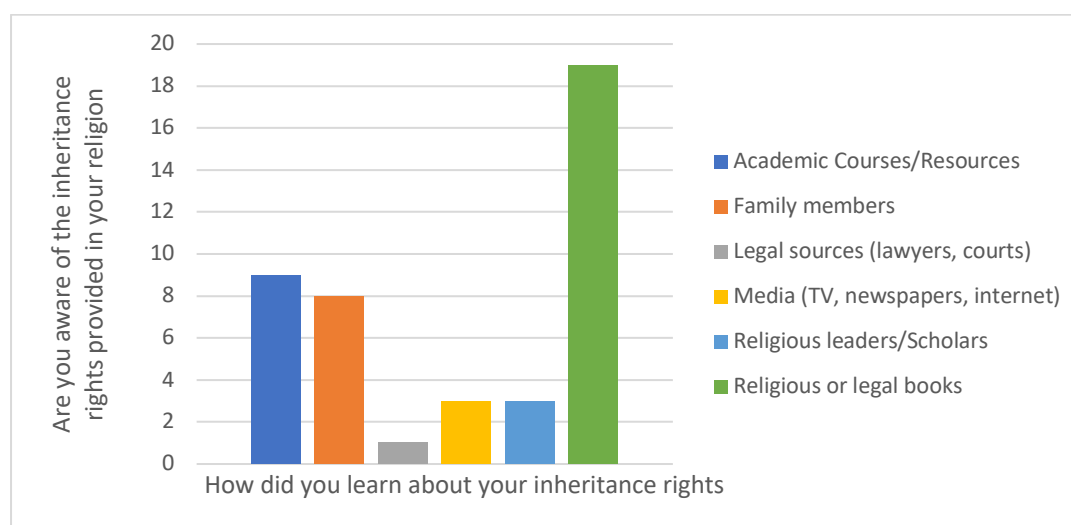


The data shows a mix of marital statuses for both men and women. Many women are single, while a significant number are also married.

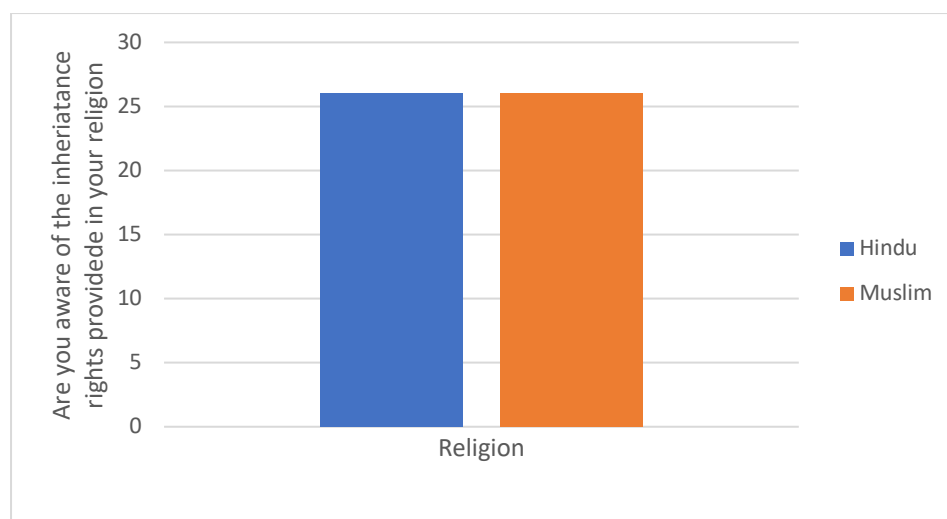
For men, there is a balance between those who are single and those who are married. Overall, the data highlights a variety of marital statuses among both men and women.

AWARENESS:

The above graph shows that the female participants are generally less aware of the inheritance rights that provided in their respective religion's personal laws. On the other hand the male participants are show a higher level of awareness regarding their inheritance rights.

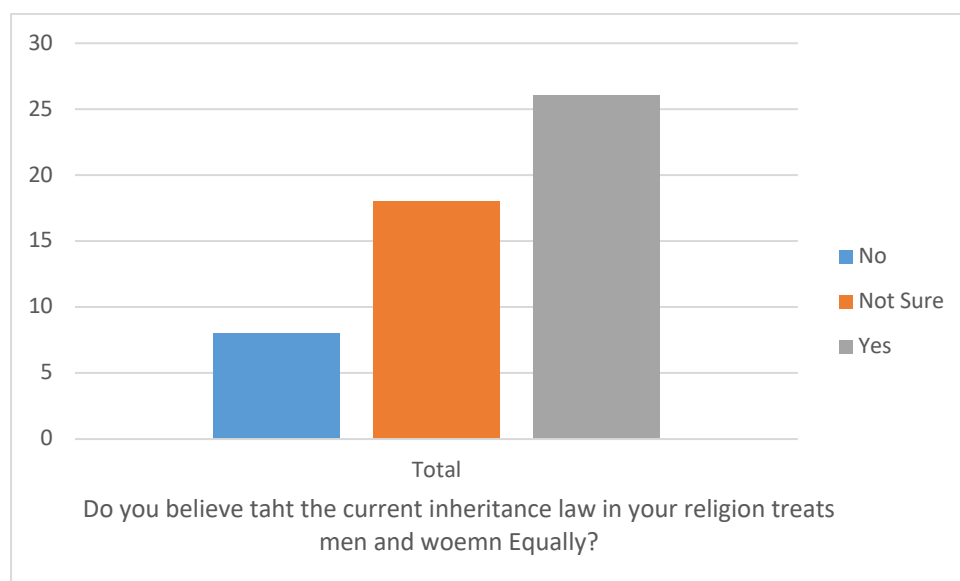


The data reveals that among those who are aware of their inheritance rights, the majority learned about these rights primarily through religious or legal books. This source appears to be the most common among the participants. Following religious or legal books, a significant number number also shows that they learnt through academic courses. Family members were also noted as an important source, contributing to the awareness of inheritance rights among participants.



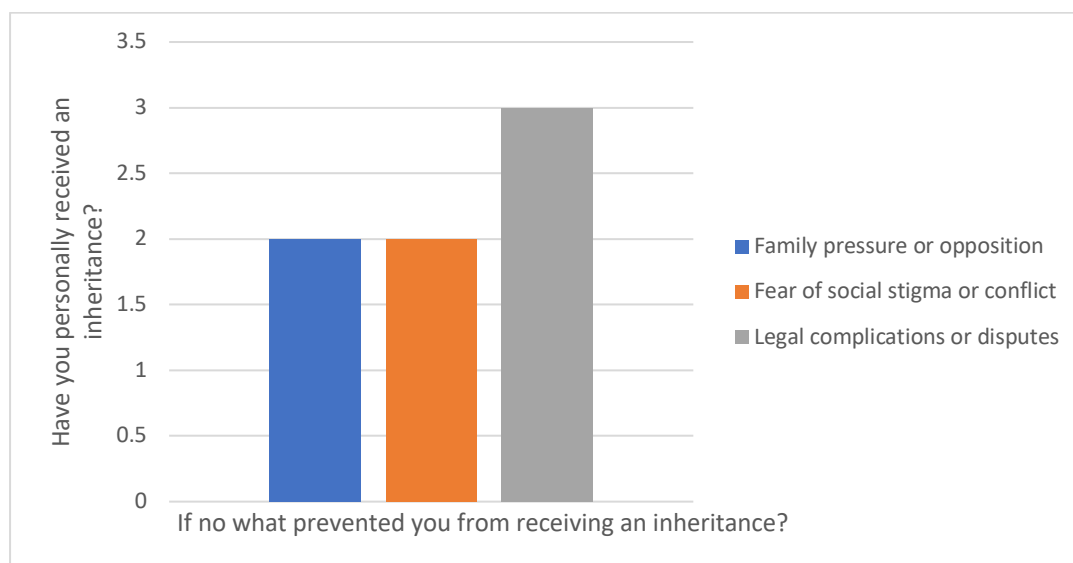
The above graph indicates that awareness of inheritance rights is relatively balanced between Muslim and Hindu participants. Both religious groups show similar levels of awareness about their inheritance rights, indicating that religious background alone may not be the primary factor influencing awareness.

EQUALITY:

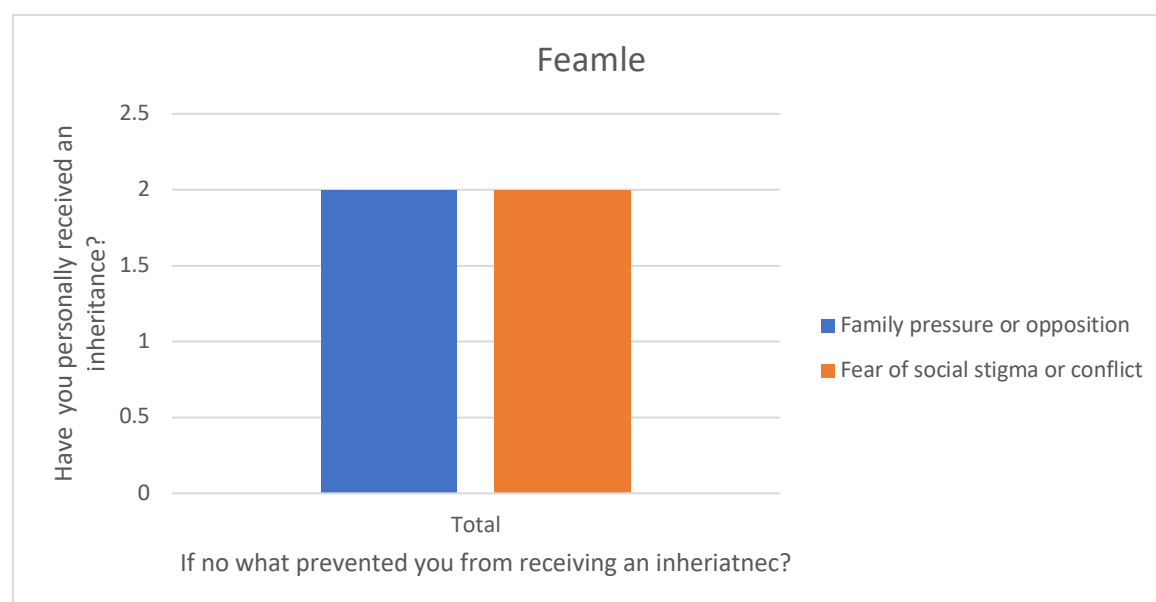


The above graph shows that the majority of participants believe that the current inheritance laws in their religion treat men and women equally. However, a significant number of participants are not sure about whether these laws ensure equal treatment or not. This indicates that while many hold the perception of gender equality in their respective religious inheritance laws, there is still a notable level of uncertainty among others, possibly due to limited

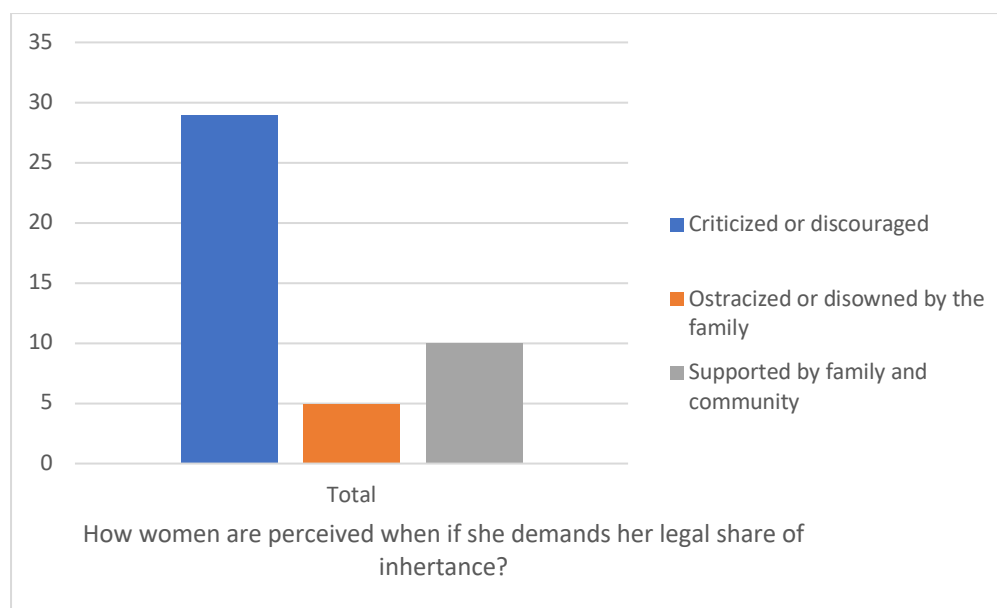
knowledge or differing interpretations of religious teachings.



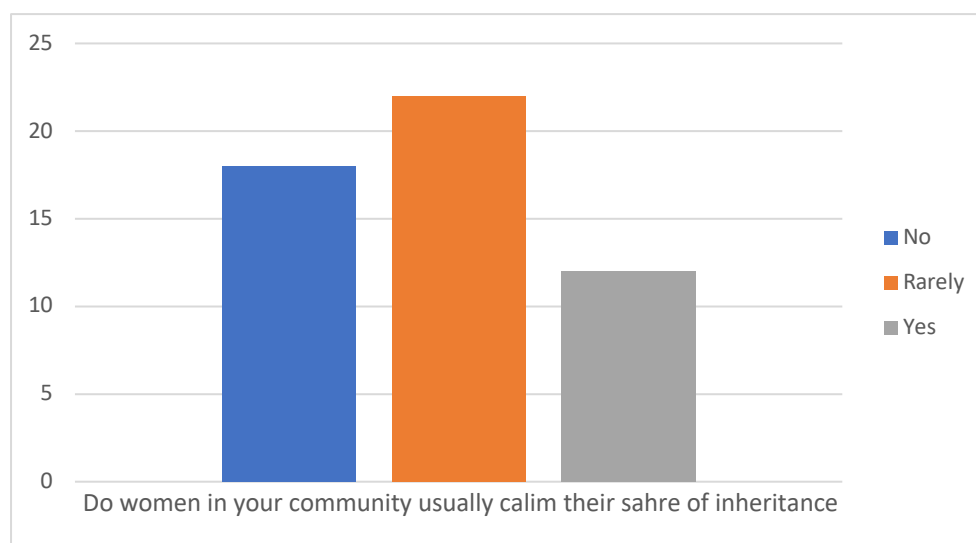
The above graph shows that a majority of participants have been prevented from receiving their inheritance due legal complications and a significant number could not are being prevented from receiving their inheritance due to family pressure, opposition and the fear of societal stigma or conflict



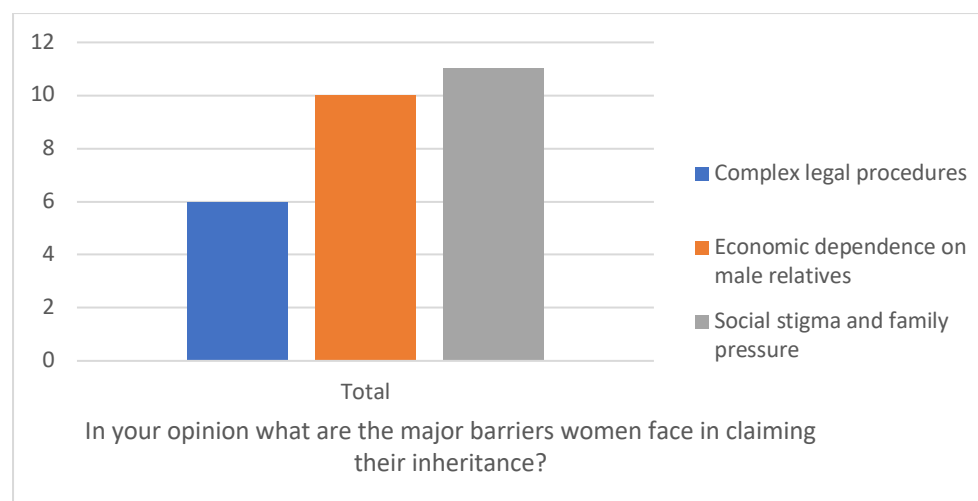
The data shows that in case of who have not received inheritance in the main reason is the family pressure or opposition and the fear of social stigma or conflict which prevented them from receiving inheritance rights.



The graph shows that in majority of the cases women are criticised, discouraged or ostracized if she demands her legal share of inheritance while the data also shows that in some cases they are even supported by family and community also.

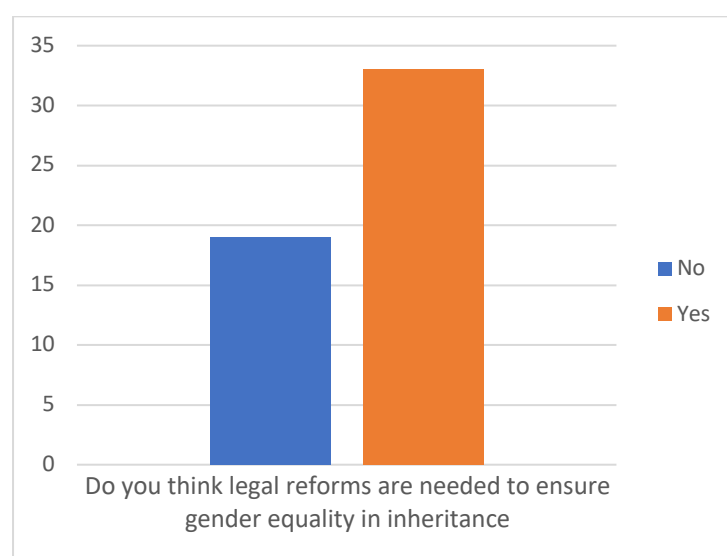


The above graph shows that in most of the cases women rarely claim their share of inheritance there is a significant number where the women simply do not even claim their inheritance rights.

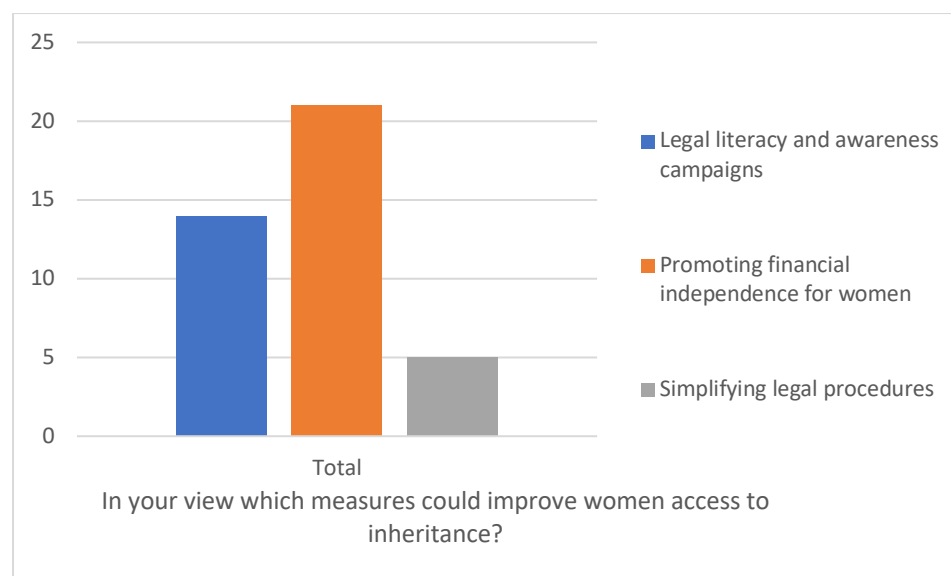


The above graph shows that the major barrier that women faces in claiming their inheritance rights is the social stigma and family pressure while the significant number also shows Economic dependence on male relatives. These findings shows that cultural and economic factors play crucial roles in limiting women's ability to claim their inheritance rights, which suggests that societal norms and financial dependencies are key areas needing attention to improve women's access to their rightful inheritance.

LEGAL REFORMS:

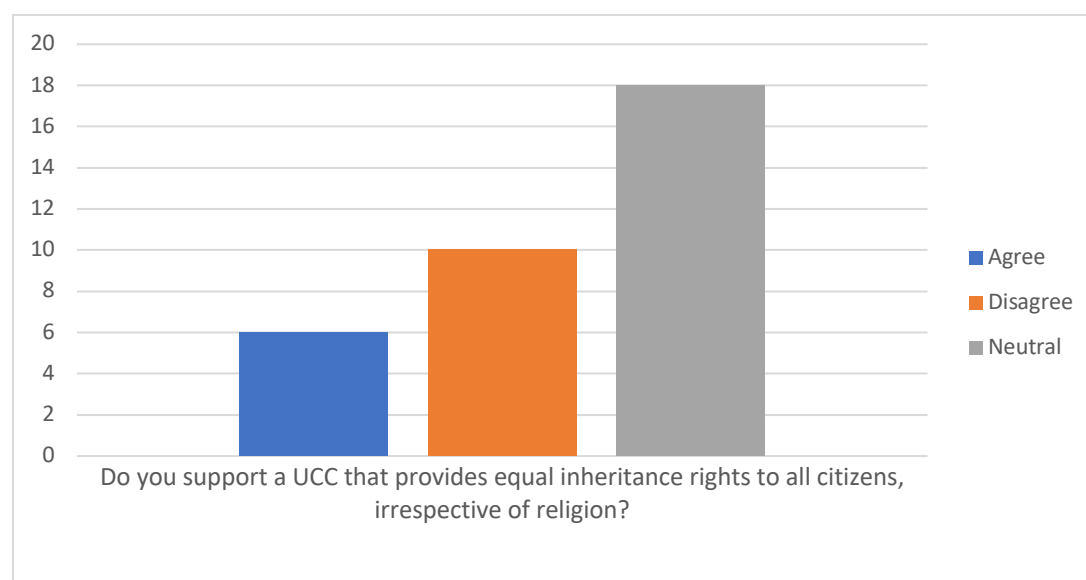


The graph indicates that majority of the participants supports and believes that legal reforms are needed to ensure gender equality in inheritance. This shows a widespread belief that current laws may not adequately address gender disparities and that changes are needed to create a more balanced and fair system for all.



The above graph represents that in view of the majority of the participants the key measures to improve women's access to inheritance include promoting financial independence for women and implementing legal literacy and awareness campaigns. These steps are seen as essential for empowering women and ensuring they can claim their rightful inheritance without barriers.

UNIFORM CIVIL CODE (UCC):



The graph shows that most participants have a neutral stance on the Uniform Civil Code (UCC) that provides equal inheritance rights to all citizens, regardless of religion. However, a notable portion disagrees with this idea, while a smaller group shows agreement. This distribution shows a range of opinions on the implementation of the UCC for equal inheritance rights.

ANALYSIS:

In recent years, personal law in India has been a hot topic of debate. Muslim and Hindu law of inheritance exhibit both advancements and difficulties, particularly with regard to fairness and gender equality.

Muslim inheritance law is based on the Qur'an and the Hadith. These laws clearly outline who will inherit what portion of the property of a deceased. Under Muslim law of inheritance one main issue is that sons get twice share than the daughters. The supporters of this often argue that this arrangement is because of the financial obligations which a Muslim man needs to fulfil as an obligation. However in contrast some argue and contend that this promotes gender inequality because women are viewed as having less inheritance right.

The Hindu law of inheritance has seen a significant development from the earlier practice which was unjust and patriarchal. The enactment of Hindu Succession Act of 1956 has marked a significant shift from old patriarchal practices. The Act established extensive guidelines for property inheritance and succession. It granted individuals complete coparcenary privileges by birth, except female members, following the death of a male member. This rule of survivorship prohibited females from being coparceners, which was discriminatory in nature. This rule of survivorship was repealed by the 2005 amendment act, which replaced it with "intestate succession" and "testamentary succession." This amendment's main purpose was to bring men and women at equal footing in terms of inheritance and succession. Through section 14 of the act, the women's rights were strengthened by giving them absolute ownership over the property. However the fact that in case of devolution of property of a Hindu female dying intestate, the in-laws are prioritized over her parents often makes it debatable and is often considered as discriminatory. Both the Hindu law and Muslim law of inheritance are often claimed to be discriminatory because of the way they treat men and women differently. Both religions provide their specific rule of inheritance for both males and females and ensure a particular share for women. However, from the findings it can be extracted that socio-cultural resistance still hinders practical application, frequently preventing women from claiming their lawful inheritance because of family pressure, economic dependency, and stigma.

The empirical findings show a key insight into inheritance rights and gender inequality. The response shows that men are more aware of their inheritance rights as compared to women. This gender gap in awareness can be attributed to societal norms that often prioritize male

inheritance rights. While many believe that their respective personal inheritance laws treat men and women equally, still women are often prevented from claiming their inheritance rights due to barriers like social stigma and economic dependence. Therefore, a subtle approach, combining legal reforms, social awareness, and economic empowerment, is essential to ensure gender equality in inheritance.

CONCLUSION:

The laws of succession in India particularly the Hindu and Muslim laws of inheritance, have historically been influenced by patriarchal societal norms and were discriminatory towards women. While significant changes have been made to address gender disparities the challenges still exist. Hindu law which was earlier characterized by discriminatory practices, has undergone substantial reforms. The Hindu Succession Act of 1956 provided certain rights to women and The Hindu Succession Amendment Act of 2005 further granted women equal coparcenary rights. However, women continue to face obstacles due to the complexities and interpretations of the law, particularly when it comes to intestate succession. On the other hand Muslim law of inheritance which is rooted in the Quran and Hadith, has its own provisions for inheritance. While the Quran mandates for fair distribution of wealth cultural and societal interpretations often lead to disparities. Despite being acknowledged, women's inheritance rights in both religions are frequently interpreted differently depending on local customs and societal norms which act as a barrier for them to claim their rights and the issue of inequality still persists.