



## QUESTIONING THE APPROACH TO LAWS OF SUCCESSION: A CRITICAL EXAMINATION WITH A FOCUS ON INDIA

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### ABSTRACT

*The point of investigation in the article revolves around reasoning about succession laws in India- its historical, religious, and statutory foundations. Aspects of succession laws primarily deal with the transition of property/assets from one generation to the next in a regulated and orderly manner. However, succession law often brings to light, reveals, or reinforces those inequities deeply embedded within Indian society that may relate to gender, family structure, or customs. The source of succession laws in India springs from a coalescence of religious traditions and super-imposed colonial legal frameworks. It has undergone metamorphosis with time and is still undergoing gradual reformation with further statutory reforms and judicial interpretations, while the mainstay remains largely the direction from religious dogmas. It is, for example, that Hindu succession laws find their basis in ancient texts like the Manu smriti and are codified in modern statutes like the Hindu Succession Act of 1956. Likewise, Muslim succession laws find their source in the Quran and Hadith and are governed by the principles of personal law. However, provisions of the Indian Succession Act, of 1925 figure as an act of inheritance for Christians, Parsis, and other communities. Nevertheless, the last twenty to thirty years following the emancipation of many women have seen considerably greater discrepancies. Gender biases entrenched in the very fibre of our society and often justified through traditional customs continue to marginalize women within patrilineal communities where the male-centricity of all inheritance and succession issues exists. Moreover, the successions and inheritance laws sometimes do not fix the quandaries around membership acknowledgement of nontraditional families involving constructs such as unmarried parents, LGBTQ+ individuals, or blended families. The article evaluates whether Indian succession laws conform to the modern values of equality, justice, and inclusivity. Efforts to modernize the laws notwithstanding, their enforcement is uneven across states and communities. Courts*

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*have worked hand in hand with progressive interpretation of the laws; however, challenges at the systemic level, such as patriarchal notions and resistance at the societal level, pose barriers to achieving equality in the realm of inheritance rights. To better reflect the diversity and evolution of present-day India, a comprehensive reform of the succession legislation is needed. Modernization may include adopting a uniform civil code for inheritance, ensuring gender-neutral language in legal texts, providing for nontraditional family arrangements, and conducting public awareness campaigns in this regard. Legal aid programs may embolden marginalized groups to claim their full share of inheritance. Such measures will bring Indian succession law closer to fully delivering on the constitutional promise of equality and justice to all citizens. However, despite certain reforms aimed at equality, historic disparities continue to exist since one such reform is an amendment to the Hindu Succession Act that guaranteed the daughter equal rights over the ancestral property. Traditional customs, still perceived slightly as a form of gender bias, continue to act in opposition to greater participation for women, especially in patrilineal communities where the entitlement is male. Moreover, succession laws, by and large, often fail to take into consideration non-conventional family structures such as those formed by single parents, LGBTQ forces, or blended families. All these groups are severely under-represented. The article evaluates the extent to which Indian succession laws conform to values of equality, justice, and inclusion that are favored today. Laws in India progressed with changing times and yet the implementation of such changes is not uniform among different states and communities. Cases have been progressive in their interpretations of these laws, but such systemic constraints have come to disrupt the laws and how they are being portrayed.*

## **INTRODUCTION**

Succession law is arguably the most pivotal legal tool that will guide the immediate devolution of wealth, property, and family obligations on the demise of an heir. These laws are supplemented by the stance of religious beliefs, traditions, and remnants of colonial legal frameworks giving rise to a complex and unique legal landscape. In essence, they aimed to add a systemized inheritance process, preventing property disputes among heirs, and thus securing family and community cohesion. However, all these narrowly wielded laws have faced criticism for promoting inequality, particularly regarding women and other marginalized groups.

“Inflexible interpretations of sacred texts often fail to take into consideration the underlying principles of equity and compassion,” notes legal scholar Mahmood Masud. This assertion tends to ring true within the Indian milieu, where succession laws sometimes seem to prefer traditional interpretations over contemporary notions of justice and fairness. Such tensions transpired in the implementation of some key statutes like the Hindu Succession Act of 1956 and the Indian Succession Act of 1925. While legislative amendments under the veil of the Hindu Succession Act do offer some room to improve gender equity, much more remains to be done if substantive equality is to be achieved.

This article probes into these gaps, providing critical assessments of the ways in which India's succession laws live up to equality and inclusion. The article also brings forth suggestions for reform that could be undertaken towards bridging the chasm between tradition and progress to provide an equitable inheritance scheme for all. In discussing the chronological development of issues, the dialogue attempts to contribute to the greater debate on how India may reconcile the richness of her cultural heritage with the imperatives of modernity and a rights-based society.

## **HISTORICAL CONTEXT OF SUCCESSION LAWS IN INDIA**

### **Religious Foundations**

According to religions and cultures, deeply rooted in the Indian succession laws reflect the customs and values of the various communities. The practice of inheritance, historically regulated by religious injunctions, still wields influence over contemporary laws.

The ancient texts provide for Hindu inheritance laws, classified into two schools. The Mitakshara school, followed in most provinces, is based on the theory of coparcenary, which designates joint ownership of collective ancestral property for sons. In this system, the male line is the principal focus, leaving female heirs with lesser inheritance rights. Nonetheless, the Dayabhaga school, prevalent in Bengal and Assam, champions individual ownership rights. In this stratagem, the property is divided among all heirs, including females, thereby promoting more equitable distribution. Both evolved from ancient Hindu scriptures in correspondence with the then socio-economic conditions.

Indian Muslim inheritance law derives its authority from Sharia principles. The groundwork for these laws is laid in the Quran and Hadith. Sharia stipulates fixed shares for heirs, which

means different family members have shares of interest in the property. However, the distribution still tends to result in unequal shares: males inherit twice as much as females. There are justified reasons for this. In Islamic law, this is because males are charged with greater financial responsibilities with respect to their families. Under Sharia, extended family members are also considered for inheritance, indicating that Islamic jurisprudence is community-oriented.

Christians and Parsis are hence governed by the Indian Succession Act, instituted in 1925, which represents colonial British legal principles, having provided a fairly uniform framework for these communities with gender-neutral principles of inheritance; however, inflexibly responding to the urgencies of modern families that might not be traditional. For instance, the provisions of the body do not adequately deal with cohabitation, extralegal adoption, or the rights of LGBTQ+ persons in inheritance.

India's pluralistic approach to succession law reflects its multicultural fabric, but it presents a host of challenges as well. These laws are liberal but perpetuate gender injustice, omitting vulnerable groups. Over the years, reforms like the 2005 Hindu Succession (Amendment) Act giving equal coparcenary rights to daughters were introduced to bridge the gap. However, the debate around the codification of a uniform civil code is still raging, often couched in tradition, religion, and modernity as they respond to India's legal composition.

### **Gender Inequities in Indian Succession Laws**

Indian succession laws heavily imbue gender inequities as they are situated in historical biases sustained by societal and cultural practices. Although certain reforms were made long ago, still the thorny interplay between legal, social, and economic spheres is furiously at work against women in matters of inheritance and property rights in the country.

### **Historical and Colonial Legacy**

Basically, the rung of gender inequities within Indian inheritance laws was propounded during the colonial era. The British framed a few codified laws such as the Indian Succession Act of 1865 and 1925. In a nutshell, they were termed to create uniformity of succession across communities; however, they did not cater to varied cultural practices within India but were laid out for colonial administrative purposes. The communities of the country were all about

patriarchal attitudes; thus, within such an inheritance framework, the role of women was relegated in context to their male counterparts. The legacy of the colonizers consolidated gender hierarchies, with male heirs to completely subservient practices determining women's entitlements towards property ownership.

### **Personal Laws and Gender Bias**

India's legal framework concerning inheritance is fragmented- governed by separate religious personal laws with very different provisions. In most cases, these fail to redress gender inequities:

1. Hindu Succession Laws: Before the introduction of the Hindu Succession Act, 1956, Hindu women had hardly any forms of inheritance rights. Property was transacted infinitely through the male lineage, and women were invariably dependent on male relatives for economic sustenance. Further, with the enactment of the 1956 law, daughters continued to be omitted from coparcenary rights, which were completely reserved for males within a joint family set-up.

2. Muslim Succession Laws: Applying Islamic Sharia rules, these prescribe fixed shares for women to inherit from males. Generally, the female's share is about half that of the male. Though they are ensured a part, the difference in the amount reveals a very serious imbalance against women.

3. Christian and Parsi Succession Laws: It is governed by the Indian Succession Act, of 1925, which stands much closer to gender neutrality. However, the patriarchal behavior and the interpretative rules do create informal barriers for women in claiming entitlement over property across societies. The Hindu Succession Act, 1956, and Its 2005 Amendment

The Hindu Succession Act of 1956 was an important legislative step towards the codified inheritance laws for Hindus, Sikhs, Jains, and Buddhists. However, the law perpetuated gender-modelled favorites with the exclusion of daughters from the coparcenary rights in ancestral property, thereby upholding a preference for male heirs.

Captain of the turning point was the Hindu Succession (Amendment) Act of 2005, which offered great novelty by giving equal rights to daughters in coparcenary property. Soon after the amendment, the daughters, both married and unmarried, became coparceners, equally with

sons. Thus, the amendment was hailed in the domain of progressive reforms supporting gender equality.

However, the implementation of the amendment has not been smooth:

- **National Ignorance:** Many, especially women from rural areas, are still unaware of their legal rights. Even if they sometimes do become aware of their property rights, the patriarchal mindset will blunt their claim.
- **Social Taboo:** Women seeking inheritance are commonly socially stigmatized and cut off from their families, discouraging them from claiming their rights.
- **Judicial Disputes:** The contentious issue of retrospective applicability of the amendment has kept this issue in the courts, thus delaying and complicating the process of resolving claims.

### **Persistent Challenges**

Notwithstanding the legislative reforms, enacting reform from below comes up with considerable challenges:

1. **Cultural Norms:** Deeply entrenched patriarchal customs, such as kanyadaan, the symbolic "giving away" of daughters in marriage, are firmly reiterated as justifications not to give daughters property rights. After marriage, women are often considered outsiders to their own natal families.
2. **Economic Dependence:** Most women are economically dependent, thereby handicapped in claiming inheritance rights without male supportive power.
3. **Lack of Institutional Support:** Very often, the legal process to assert property and inheritance rights becomes painstaking, monetary, and time-consuming to the extent that women are easily deterred.

### **Pathways Through the Hurdles to Gender Equity**

To remedy these inequities, the solution is multi-pronged:

1. Awareness Campaigns of Inheritance Rights: As much awareness as possible is to be undertaken by the government and NGOs to inform women about their inheritance rights, especially from rural and backward portions.
2. Streamlined Legal Process: Simplifying legal proceedings and realizing cheaper legal aid will go a long way in enabling women to claim their rights.
3. Social Reform: Efforts to dismantle patriarchal norms will have to engage community leadership, educators, and media to change prevailing societal attitudes.
4. Judicial Reform: Inheritance cases should be prioritized by giving simplified strategies to build public trust in the system, with a common application of laws.
5. Policy Interventions: Programs that provide financial incentives to women to claim their inheritance rights; inheritance laws need enforcement.

Gender inequalities in succession laws in India mirror the broader societal challenge of achieving gender equality. Whereas legal reforms, including the Hindu Succession (Amendment) Act, 2005, mark significant victories, gender equity must contend with determining the cultural, social, and institutional barriers that obstruct women's exercise of their rights. Only by encouraging legal awareness, simplifying processes, and cracking through the eigenvalues of entrenched patriarchal norms can India ensure that every citizen, male and female, is entitled to all rights and opportunities.

### **The Laws of Islam and Gender Inequality**

The laws of inheritance in Islam, based on Sharia, allocate inheritance shares in ways that often disadvantage women. This system is characterized by the fact that in most cases, male heirs get double the share allocated to female heirs. For example, the traditional view of Sharia grants a son the right to inherit twice as much as a daughter. This unfairness is grounded in the notion that men are the principal breadwinners of the family and therefore deserve a larger inheritance to compensate for this. While many believe these laws are divinely mandated, criticism argues that such interpretations should give way to contemporary dictates of equality and justice. Legal scholars and feminists have for too long pointed this out: that Sharia as it has been interpreted historically has dealt with land rights by upholding patriarchy and thereby has placed women at a structural disadvantage.

Hina Azam, a distinguished scholar in Islamic law, notes that early legal definitions of inheritance and property rights were projected through entrenched patriarchal views

subordinating gender equality which is at the core of contemporary justice. This historical interpretation oftentimes forgets that social and economic changes have occurred in contemporary societies whereby women have increasingly evolved into independent contributors to the family economy. Thus, reformists call for inputs into the interpretation of Sharia that will address these imbalances in consideration of justice and equality for all heirs, irrespective of sex. To achieve true justice, critics argue, Islamic inheritance laws must therefore adapt to modern realities, whereby women receive inheritance shares that reflect their economic contributions and their rightful position in family structures.

### **Challenges Faced by Other Communities**

Many other communities face a contrasting equal right for inheritance. In India, the law governing inheritance differs for various religious communities. According to Christians and Parsis, the Indian Succession Act of 1925 provides a more gender-neutral succession than the laws concerned with Muslims. The act treats male and female heirs equally, with a leaning toward personal choice and testamentary freedom; nevertheless, it has certain limitations, including the fact that it does not cover all the country's various religious and cultural groups, which is particularly pertinent to tribal communities governed by their own customary laws. Different customary laws regionally bound and community-specific-tend to privilege the male heir, thereby leaving little or no right of inheritance for women.

The inclusion of tribal communities from the Indian Succession Act demonstrably highlights a significant loophole in the Indian legal system. It accentuates the need for a more unitary and inclusive legal framework that will guarantee equal inheritance for all Indians irrespective of their community. It is important to note that the uncertainty in inheritance laws for various religious communities furthers the social divide, thus perpetuating gender-heightened disparities. Thus, while a woman in most tribal areas may get no rights, thus making her economically disadvantaged because of customary laws, a woman in an Indian Succession Act-governed community may have greater rights but may face other impediments due to cultural or family pressures.

Thus, it becomes imperative to reform such laws, as it will only lead to a gender-just and participatory discourse on the inheritance rights of women. This would indeed require Trojan efforts looking into customary laws, their effect on women's rights and their conventionalization of them with those values reflected in the notions of equality and justice



witnessed in India's Constitution. These reforms, even if they are small, can aim toward diminishing disparities within gender in the exercise of inheritance rights for women.

Most succession laws in India formulated largely during the colonial period, still reflect traditional structures of family and are evidently incapable of enveloping changing modern relationships. The inheritance rights are still generally focused on the type of the traditional nuclear family, which consists of heterosexual marriage coupled with biological children. However, this is not so accommodating towards live-in relationships, gay partnerships, and stepfamilies, all of whom face neuralgic ambiguities or denials of their rights to inheritance.

Despite the improvement since the great judgment decriminalizing homosexuality in *Navej Singh Johar v Union of India* (2018), with Section 377 of the Indian Penal Code having been disposed of, issues on same-sex couples' inheritance rights choke the legal path. Though decriminalization granted some semblance of recognition, the subsequent shifts stopping there have been mere brushstrokes of numbness in terms of property rights, succession, and inheritance across the map, leaving same-sex couples without an apparent rights matrix akin to heterosexual marriage and, thus, exposed in matters of inheritance on the occurrence of one partner's demise.

In that context, illegitimate children also have a rough passage in the assignment of inheritance rights. Albeit incremental adjustments of the law, such as the Hindu Succession Act (1956), have attempted to become somewhat accommodating in terms of granting inheritance rights to children born out of marriage, the going is still quite rocky. Such children may have to contend in protracted legal battles to gain their counterparts in the parental estate, more so if the biological parent has never assumed legal recognition of the child or, even worse if parentage can be challenged in a court of law.

Live-in relationships in India have gained more acceptance in society, yet there is still no clear legal framework for them. While the Supreme Court has granted some recognition to live-in relationships, particularly in issues relating to domestic violence and women's rights, these relationships have been excluded from inheritance rights accorded to other relations by the present succession laws. There can be long-running legal disputes due to the aforementioned legal ambiguity on whether the partner in a live-in relationship any right must inherit from the estate of a deceased.

Stepparent families, where one or both spouses are remarried and children from a previous marriage are brought into the new family, face a host of legal challenges as well. The inheritance rights of stepchildren as affected by the property of a diseased spouse, are anything but simple in terms of legal recognition. In some cases, the existing rules do not even recognize stepchildren as heirs, which complicates the equitable distribution of property.

Such gaps in the law indicate a more profound concern: the disconnect between law and the nonlinear family forms emerging in India. The modern family consists of live-in partners, same-sex couples, children born out of wedlock, and stepfamilies that require legal recognition and protection, especially for matters concerning inheritance and succession. To make sure that all persons are treated fairly and justly redefined inheritance and succession laws and their enactment are necessary to cater to the needs of nontraditional families.

Without such reforms, the Indian legal system will continue to foster class-based discrimination and inequities against those who do not conform to definitions of family norms.

### **Comparative Insights: Lessons from Other Jurisdictions**

The Recognition of Customary Marriages Act of South Africa presents a model of struck balance between traditional practices and modern constitutional principles in general and equality in particular. This act recognizes the importance of customary marriages within a cultural context but maintains that they should be governed by the provision of equality within the constitution. The two-pronged approach would encourage respect for cultural diversity without infringing on fundamental rights and might, therefore, emerge as a model for reforming personal laws in India with specific reference to inheritance. It inspires India to incorporate customary law within the formal legal system such that traditional practices of inheritance are congruent with constitutional values such as gender equality and nondiscrimination.

India is likely to benefit from an approach such as this in codifying the customary law on inheritance. This would give clarity and consistency in the implementation of such laws alongside preserving the value of constitutional principles of equality.

R v R In England, the R v R case (1991) is an important step towards recognizing the autonomy of women. It advanced a movement that highlighted the necessity of revising laws to keep pace with contemporary values: care should now be taken in issues of consent. The ruling made it

explicitly clear that laws should reflect current societal changes with respect to modern understandings of rights and relationships. The great transformation of matrimonial law represents a vital lesson for India, especially in the context of inheritance laws.

In the UK, inheritance laws themselves have been evolving to encompass the notion of child and partner equality and fairness, particularly the inheritance rights of non-marital partners and children born out of wedlock. India could introduce similar reforms to the inheritance laws to give due recognition to all, live-in couples, same-sex couples, or stepchildren, and equality of inheritance rights therein.

### **Recommendations for Reform in India**

#### **Recommendations for Reform in India**

1. Codify Customary Laws:

Ensure that customary inheritance practices gain formal recognition and codification, thereby assuring against arbitrary interpretations. Such practices would henceforth ensure conformity with India's constitutional principles of equality and no-discrimination while retaining the richness of cultural diversity.

2. Increase Inclusiveness:

Amend the Indian Succession Act, 1925, to be more inclusive of same-sex couples, live-in partners, and stepchildren. Such a step would thereby align with societal transformations and ensure every individual equal rights often through a special succession.

3. Nationality-Based Gender Equality:

Strengthen the enforcement of the Hindu Succession (Amendment) Act, 2005, and find other, stronger ways to combat gender inequalities in Muslim inheritance laws. A proactive approach will include community outreach and engagement to enable women to fully assert their rights to inheritance. More civil, scaffolded judicial rulings can further buttress gender equality in inheritance laws.

4. Public Awareness Campaigns:

Launch national awareness campaigns to inform citizens about their inheritance rights. Awareness of legal rights will help in a more equitable and just implementation of succession laws across India. This is essential, especially for rural and marginalized communities, where knowledge of inheritance rights may be lacking.

#### 5. Judicial Interventions:

Encourage a progressive interpretation of personal laws by courts in matters of inheritance, wherein equity and justice assume far greater significance compared to rigid adherence to traditionalism. Courts should ensure equal and fair dealing in all inheritance matters under personal law.

India's succession laws, steeped in age-old cultural and religious traditions, stand at a point of historical transformation as modernity reshapes societal relations. Over the centuries, such laws have served to sustain the family systems and religious symbols. Their validity and need to evolve come to the fore, given the nuanced changes modern-day India has witnessed characterized by fast urbanization, globalization, and demands for gender equality. The challenge lies in striking an aim of balancing: the quintessential essence of India's cultural experiences with the millennium-developing legal environment leaning towards evolving values of pluralistic and progressive societies.

As the Indian legal shape becomes more diverse and inclusive, therefore it is necessary for succession laws to liberate from patriarchal perception that has historically marginalized women and other vulnerable groups. Considering the unconcealed gap between legal entitlements and actual social practices, especially concerning women's inheritance rights, reform must be demanded with great urgency. The improvements in some states in recent years toward equal property rights for women shed light on a vision of a more fair and just future, but still much must be done.

The wisdom contained within religious and cultural traditions can still provide a strong basis although legal reasoning must develop in accordance with the basic democratic principles established in India's Constitution. As Tariq Ramadan observes, "Legal reasoning must develop not to undermine religious principles but address the change in society." This statement summarizes all that must be done succession laws should reflect not only the current social fabric but also the ethics of justice, equality, and fairness. Just as these reforms flow with

modern and developed values, they embrace religious principles and cause the succession laws of India to serve as instruments of justice rather than a perpetuation of inequalities.

The real transformation of India's succession laws will lie in their ability to give expression to changes in the needs of society-equal, fair, and just for all citizens, no matter their gender, class, or caste. The whole process attempts to redress past injustices while moving towards a more just and equitable India, where law works in the direction of social progress and solidarity. Such a balance can create a legal system in India that is rooted in tradition yet is progressive and would be a light for the hope of a more inclusive and fair society.

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