CHAPTER-IV
COMPARATIVE STUDY OF WOMEN'S
PROPERTY RIGHTS IN OTHER LAWS

1. INTRODUCTION
Right to property is well recognized as an important instrument of freedom and development of human beings in general and women in particular throughout the world. It is not merely a symbol of a dignified living but also significantly affects the life-style of the individual concerned as well as the society as a whole. Presently, no one can deny the fact that in law women are equal to men, not only in enjoying the property right, but also in all walks of life. But, one can also not deny the fact that in reality, apart from a few exception of the elite class, the women’s right to property is still a long lasting dream in the Indian society.

At present the most material and controversial issue is regarding women’s property rights under succession laws. Whether, the law of succession in India is biased against women or not is a very important aspect of the ongoing debate on their economic equality with man. In the age of gender equality, the debate has laid emphasis on women lacking the economic independence in the area fully dominated by male. The important role played by the laws of succession with regard to facilitating or impeding economic independence is generally ignored. Succession laws deal with the passing of property from one generation to another, if they are biased against woman, they lose a great chance of acquiring property in a manner, which is available to males, and thus their chance of being economically independent is greatly hampered.1

As the succession matters are governed by personal laws and India is known for the multiplicity of personnel laws, hence succession laws are diverse in their nature, owing to there varied origins. In India the succession laws can be broadly classified into two groups. The first set of laws is religion based and is ancient in time. These laws have either their roots in their respective religion or deeply influenced by them. The other set of laws are passed by various legislative bodies. The former category consist of Muslim law, Paris law and Hindu law as it stood before the

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intervention of legislature, while later refers to the Indian Succession Act, 1925 and Hindu Succession Act, 1956.

The notable difference between these two groups of laws was that wherein the latter group of law, respectable position is attributed to women in comparison with men, the former groups of laws were unanimous in relegating women to background with respect to inheritance and other rights. An analysis of these religion based succession laws show that they stem from a fundamental desire to secure and keep control over property in the hands of men and to assert the superiority of one gender over the other. In the present chapter, the researcher would try to make comparative study of these succession laws prevalent in India.

2. COMPARATIVE STUDY OF HINDU SUCCESSION ACT, 1956 AND MUSLIM LAW OF SUCCESSION

In the first part, comparative study of Hindu law and Muslim law is made. The Muslim law of inheritance has always been admired for its completeness as well as for the success with which it has achieved the ambitious aim of providing not merely for the selection of a single individual or homogeneous group of individuals, on whom the estate of the deceased should devolve by universal succession, but for adjusting the competitive claims of all the nearest relatives. Praising the excellence of the system in a formal sense, Sir William Jones said: “I am strongly disposed to believe that no possible question could occur on the Mohammedan Law of Succession which might not be rapidly and correctly answered. The verse IV: 1-14 and 176 of the holy Quran deal with the matter of inheritance. The fabric of this law consists of two elements: the custom of ancient Arabia and the rules laid down by the Quran and the founder of Islam. The Prophet reformed certain social and economic evils then prevalent.

In the pre-Islamic Arabia, the law of inheritance was based on comradeship-in-arms, that is, the law of inheritance was based on the principle of agnatic priority and exclusion of females. The following were the main principles of pre-Islamic law of succession—

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(1) The nearest male agnate or agnates succeeded to the total exclusion of remote agnates.

(2) Females were excluded from inheritance and also the cognates.

(3) The descendants were preferred to ascendants and ascendants to collaterals.

(4) Where there were more than one agnate of equal degree, all of them inherited the property and shared it equally per capita.

With the revelation of the Holy Quran, the basic principle of comradeship in arms was substituted for blood ties. There is no bond stronger than the blood tie, became the guiding principle and succession rights were extended to all the blood relations of the intestate, irrespective of their sex or the sex of the line of the relatives through whom they were related to the deceased. Consequently, blood relatives (primarily females and cognates) who were earlier excluded were called Quaranic sharers and in competition with the already established agnates, were awarded half of the share of the later. Thus Islam introduced the following main reforms:

(1) The husband or wife was made an heir.

(2) Females and cognates were made competent to inherit.

(3) Parents and ascendants were given the right to inherit even when there were male descendants.

(4) As a general rule, a female was given one-half of the shares of a male.

Thus, Islam gave a share to woman which was denied to her in the pre-Islamic Arabia. The pre-Islamic Arabs were against the inheritances to woman because of her weakness in the performance of acts of defence and bravery. The distant males of the family inherited the property.


At present the Mohammedan law of inheritance differs from sect to sect. The two principal sects in which the Muslims are divided are Sunnis and Shias. Sunnis are further sub-divided into four sub-sects namely, the Hanafis, the Malikis, the Shafeis and Hanabali. As most of the Sunni Mohammedans in India belong to the Hanafi sub-sect, the law of inheritance as propounded by the Hanafi School has been discussed in respect of the Sunnis residing in India. The Shias are further sub-divided into three sub-sects. These are Athna-Ashariyas, the Ismailiyas, and the Zaidyas. The most of Shias residing in India belong to Athna-Ashariya.
The rules of inheritance in India, in the case of Sunnis, who are in majority, are governed by the Hanafi School. According to the Hanafi Law women enjoy the right to acquire, hold and dispose off property as full owners. They are entitled to inherit the property of propositus along with male heirs. As Muslim can bequeath his property only to the extent of one-third by will, the remaining property has to be disposed off according to the rules laid down in the Muslim Law inheritance. The right of the Muslim woman to inherit the property cannot be deprived of by the deceased. The Hanafi Law divides the heirs into three categories viz; (1) Sharers, (2) Residuaries, (3) Distant Kindred.

**Sharers:** - Sharers under the Mohammedan law are those relations whose shares have been specifically fixed by Koran, that is to say, those relatives who get a fixed share of estate of the deceased. Fixing the shares of this class is the main contribution of Mohammedan law to the pre-Islamic customary laws of inheritance in Arabia. In pre-Islamic days the shares of those relatives were either totally exclude or their shares were not fixed. Islam recognizing the preferential claim of this class changed the old law and allotted fixed share to each of these.

**Residuaries:** - Residuaries are those relatives who get the residue, if any, left after satisfaction of the sharer's claim. If there are no sharers, then the whole of the heritable property will be treated as residue. Their share thus depends on the amount of residue left in each particular case. They don't get a fixed share, like the sharers.

**Distant Kinдерж:** - No precise definition of distant kindred is available. The definition that is generally given is that distant kindreds are those relations by blood who are neither sharers nor residuaries.

The sharers always have a priority over the other two categories to the property left by the propositus. After allocating the shares to the sharers, the property is divided among the residuaries according to the legal principles. If there are only sharers and no residuaries, then the property remaining after allocating the shares to sharers, again return to the sharers as residue in the same proportion. The only exception in the case of husband or the wife, for whom, the property does not return to them as sharers but is distributed to the third category heirs, distant kindred. For example, if a Mohammedan dies leaving a widow and distant kindred, the wife as sharers will take her share which is $1/4$ and the remaining $3/4$ will go to the distant kindred.
kindred. If a Mohammedan female dies, leaving behind husband and distant kindred, the husband as a sharer will take 1/2 and other 1/2 will go to the distant kindred. After satisfying the claims of first two categories; the sharers and the residuaries; any property remaining is distributed among the distant kindred. It is to be noted that the claims of the distant kindred will be taken up and considered only if there are no sharers and residuaries. The Shia Law does not recognize the category of distant kindred.

The Shia Law of inheritance is very different from the Sunni Law. The Shias divide heirs into two groups, namely

(a) **Heirs by consanguinity:** These are the blood relations. The heirs by consanguinity are, in turn, divided into three classes and each of the three classes is again sub-divided into two sub-classes as follows:

I (1) Parents
   (2) Children and other lineal descendants, how low so ever;

II (1) Grand parents (whether true or false), how high so ever;
   (2) Brothers and sisters and their descendants, how low so ever;

III (1) Paternal uncles and
   (2) Maternal uncles and aunts of the deceased, of his parents and of his grand parents, how high so ever, and their descendants (how low so ever).

(b) **Heirs by special cause:** The heirs by special cause may be divided into two kinds:

   (1) Heirs by marriage (*Zoujiyat*)
   (2) Heirs by special relationship (*Wala*)

It should be noted, that the heirs by special legal relationship are not recognized in India. However, they were such persons who acquired the right of inheritance by the virtue of spiritual hardship, or delicts committed by the deceased.

The heirs whose details are given above inherit the heritable property of a person, in the following order and in accordance with the following rules:

1. Among the heirs by consanguinity the first group excludes the second and the second excluded the third. That is to say in the presence of an heir of the first group, the heirs of the second or the third group will not be entitled to a share and so on.

2. As we have noticed each of the groups is divided into two sections. Now among these two sections of the heirs of each group, the claimants succeed
together, that is, if there are heirs of both the sections, they will succeed
together, and that is, if there are heirs of both the sections, they will succeed
together.

3. In each section there can be various heirs, e.g., in section (ii) of Group I there
can be son and son's son. The question arises as to who will then inherit. The
rule in this regard is that the nearer in degree in each section will exclude the
more remote in that section.

For the purpose of distribution of estate among the heirs of the deceased,
affiliated by marriage or affinity and blood or consanguinity, the Shia law divides
them into two categories i.e., sharers and their descendents, how lowsoever and
residuaries and their descendants, how lowsoever

2.1 Proprietary position of females in Muslim law and Hindu law:

2.1.1 Daughter:

Sunni Law: Under the Hanafi law, the daughter is a residuary with a son, so that in
the residue her share will be half of his share. But in the absence of a son her position
is that of a sharer and a single daughter takes ½ and two or more daughters share 2/3
of the estate. Two questions call for an explanation in this context: (1) why should a
daughter not be a sharer in the presence of a son? (2) why in the absence of sons and
when there are a number of daughters, their share is rigidly fixed at two-thirds? To the
first, Mulla points out that if a daughter is made a sharer, no residue might be left for
the son to partake. As to the second, it was suggested that in the pre-Islamic Arabia,
infanticide was common and the number of daughters in a family was not high.

Shia Law: Under Shia law, a daughter in the absence of a son inherits as a sharer. If
there is only one daughter or only one descendant of such daughter, she will take ½ of
the property and if there are two or more than two or their descendents they take 2/3
of the property. With the son a daughter inherits as a residuary and takes a share that
is equal to half of his share. As the rights of agnates are not recognized, the daughter
gets a higher share under the Shia law. So too, if the deceased left behind a mother,
daughter and a brother under the Shia scheme, the mother gets one-fourth and the
daughter three-fourths of the estate, whereas under the Hanafi scheme the mother gets
one-sixth, the daughter half and the brother one-third. The children of a predeceased

(1890), p. 94.
daughter are entitled to succeed on the strength of their propinquity instead of being postponed, as in the Hanafi law to distant agnates. Thus, if a Muslim dies leaving behind daughter’s daughters or sons. Father’s mother and a full brother, the daughter’s daughters being Class 1 heirs would have succeeded to the exclusion of other claimants, whereas under the Hanafi law they would have been excluded altogether.

Under Muslim laws daughters always have full control over this property. It is legally her to manage, control and dispose off as she wishes in the life or at the time of death.

**Hindu Law:** Under the Hindu law daughter's position is the much better as compare to Muslim law, because daughter always gets a share equal to son. Even two or more daughters are present they all inherit the property in equal portions along with the sons. Though earlier under the provisions of section 6 of Hindu succession Act, 1956 the share of the daughter is less as compare to son, but now after the Amendment Act, of 2005, this discrimination is also removed and now daughter become a coparcener in the own right along with son. Under Hindu law, daughter has become absolute owner of all property which was in her possession at the time of passing of Act, 1956 and for all the properties acquired after the passing of the Act by virtue of section 14(1), so in the Hindu law also the concept of limited ownership has been abolished and the daughter has full control over her property.

**2.1.2 Widow:**

**Sunni Law:** Under the Hanafi law, if the deceased died leaving a child or the descendant of a son, the widow’s share was one-eighth of the estate. If, however, he left no child or descendant of a son, her share was one-fourth of the estate. It should be remembered that it is open to a male Muslim to take four wives and in such cases the widows together take the share. A wife (as also the husband) is not entitled to “Return” so long as there is any other heir whether he is a sharer or distant kinsman. One anomalous aspect of the Hanafi law may be indicated by the following example: if a deceased dies leaving a widow or widows and three brothers, the widow (or widows) will be entitled to one-fourth of the estate, and the three brothers to the residue. Generally, both considerations of affection and fairness entitle her to a much-larger share than is now available. Under the present social conditions prevailing in

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India the wife of a deceased would be a non earning member, whereas the brothers of
the deceased would either actual or potential earning members. Though this may help
to keep the land in the agnates and thus accommodate the sentiments that prevail in
rural communities, it hardly meets the ends of social justice.\(^9\)

**Shia Law:** Like the Sunni law, the traditional Shia law holds that the wife is not
entitled to the “Return”. In addition, a childless widow is under a special disability i.e.
She is not entitled to share the lands of her husband. Baillie states:\(^10\)

"When a wife has had a child by the deceased she inherits out of all that he has
left; and If there was no child she takes nothing out of the deceased’s land, but her
share of the value of the household effects and buildings is to be given to her. It has
been said, however, she is to be excluded from nothing except the mansions and
dwellings; while Moortuza (may God be pleased with him) has expressed a third
opinion to the effect that the land should be valued and her share of the assigned to
her. But the first opinion is that which appears to be best founded on the traditional authority."

The present legal position of a childless widow in the Shia law of inheritance
had been stated by Mulla thus: “A childless widow takes no share in her husband’s
lands, but she is entitled to one-fourth share in the value of trees and buildings
standing thereon, as well as in his movable property including debts due to him
though they may be secured by usufructuary mortgage or otherwise\(^11\).

**Hindu Law:** Under Hindu law, widow of the deceased is a Class 1 heir and she
inherits the property of the intestate in equal shares with all other Class 1 category
heirs. There is no difference between widow having children or childless widow.
Widow always has a right to inherit the property that too as Class 1 heir i.e., the
preferential heirs.

**2.1.3 Mother:**

**Sunni Law:** In the Muslim law of inheritance, the mother occupies apposition of
considerable inferiority among the parents, which is attributable to the strong
patriarchal tendencies that prevailed in the Arab society. She is not ranked as a
residuary. Though it is frequently stated that she is a sharer and not a residuary,
perhaps it is more accurate to say that her position is sui generic in the Hanafi

\(^9\) Ibid., pp. 142-143.
\(^11\) Mulla: Principles of Mohammedan Law, 14\(^{th}\) Ed, Bombay, (1968), p. 120.
classification of heirs. As Tyabji points out, “she is to all intents and purposes, a Kroanic co-residuary with the father”\textsuperscript{12}. When a person dies without issue, leaving behind the mother, father, and husband or wife, the husband or wife takes his or her allotted share. Out of this residue the mother takes one-third. When there are two or more brothers or sisters (full, consanguine, or utrine) co-existing with the mother, she (mother) takes only one-sixth of the estate, notwithstanding the fact that there may be no agnatic descendants. Tyabji rightly characterizes this reduction in the share of a mother as anomalous. Thus, if the claimants are mother, father and two sisters, the mother’s share is reduced to one-sixth and the father as a residuary, takes five-sixths. Here, the sisters though they do not take any share, curtail the mother’s share from one-third to one-sixth. If the deceased left two full sisters and mother, the Hanafi law gives the mother one-sixth and the two full sisters take two-thirds. The full sisters take the residue in their capacity as female agnates.

The superior rights of brothers and sisters of a deceased as against a mother are objectionable in principle. The utilitarians advance two convincing arguments as to why succession should pass to the father and mother, rather than to the brothers and sisters, in the event of the death of a deceased without issue: (1) on the ground of immediacy in relationship, and (2) As a recompense for services rendered and as an indemnity for the trouble and expense of educating the child.

**Shia law:** The mother enjoys a better position under the Shia law than under the Hanafi law of inheritance. In the absence of children, she takes one-third of the whole estate even if it affects a reduction in the share available to the father. Thus, if the deceased left behind a father, mother and husband the mother gets one-third, husband one-half and father one-sixth.

**Hindu Law:** Under the Hindu law mother is again Class 1 category heir. Her position is far better even as compared to father because father is Class II Entry I category heir where as the position of mother is Class I category heir and she inherit equally along with other Class I heirs. In case of female intestate, the position of mother is as under: if the female intestates inherit the property from any other source except from her father or mother or husband or father-in-law, then both mother and father are Entry I category heir and thus mother inherit the property in equal share along with father.

Secondly, if female inherits the property from her father or mother, then mother is excluded from inheritance because in this case, if she died issueless then property devolve upon heirs of father and if father is alive, mother will not be able to get anything.

2.1.4 Son’s Daughter, Son’s Son’s Daughter:

**Sunni Law:** The sharer category does not include all grandchildren but includes only the daughter of a son. A son’s daughter inherits as a sharer only in absence of a son, a daughter or a son’s son. Her share is half (1/2) if she is alone, and it is two-third (2/3\textsuperscript{rd}) where there are two or more daughters of the son. If a son’s son is also present then she inherits as a residuary with him taking a share that equals half of what he takes. Under the rules of inheritance, the rule of nearer in blood excluding the remoter is followed strictly. Here, however, if only one daughter of the intestate is alive but no son or a son’s son, a son’s daughter would take one-sixth (1/6\textsuperscript{th}) of the property.

A son’s son’s daughter inherits as a sharer in the absence of a son, daughter, son’s son or son’s daughter and son’s son’s son. Her share is ½ when she is alone and two-third (2/3\textsuperscript{rd}) when there are more than one, which they divide equally amongst themselves. With a son’s son’s son, she would become a residuary taking a share that is equal to half of his share. Here also though the rule of nearer excluding the remoter applies, in presence of only one daughter or one son’s daughter, son’s son’s daughter (whether one or more) would take one-sixth (1/6\textsuperscript{th}) of the property.

**Shia Law:** Lineal descendants inherit subject to the rule of of exclusion. Rule of exclusion means, nearer in degree excluding the remoter. For example, if the deceased leaves behind a son and son of another predeceased son, the son who is nearer in degree to the deceased would exclude the grandson who in his comparison is a remoter lineal descendant.

Where the heirs are the descendants of two or more children (irrespective of their sex), but are in the same degree of relationship to the deceased, for the purposes of calculating their shares, the rule of representation is applicable. The lineal descendants of one child would take the share that would have been inherited by their respective parent and would divide it amongst themselves, males taking a double...
portion than females. Succession among the lineal descendants is per stripes and not per capita\textsuperscript{13}.

**Hindu Law:** Under Hindu law, son’s daughter and son’s son’s daughter they all are Class I heir of Hindu male. They all get property in accordance with the rule of upresentation and divide it equally among themselves. Similarly, daughter’s daughter is Class I heir though daughter’s daughter’s daughter is Class I category heir. In case of female intestate also son’s daughter, or daughter’s daughter, they all are Entry ‘a’ heir.

2.1.5 Daughter’s Daughter’s, Daughter's Daughter's Daughter:

**Sunni Law:** As compared to son’s daughter, the children of a daughter suffer considerable reduction in rights to succession under the Hanafi law. For, they are ranked as “distant kindred” and stand postponed to the claims of sharers and residuaries. Thus, a male agnate, however remote, has a preferential right to succeed over them.

**Shia Law:** As mentioned above in the principles of lineal descendants.

**Hindu Law:** Under Hindu law daughter's daughter is Class I heir though daughter's daughter's daughter is Class II category heir. In case of female intestate also son's daughter, or daughter's daughter they all are Entry 'a' heirs and they inherit the property in the accordance with the rule of representation and divide it equally among themselves.

2.1.6 Sister:

**Sunni Law:** A full sister takes half share in the property when she is alone and if there is more than one, they together take two-third (\(2/3\)). She inherits this share as a sharer only in absence of a child, child of a son, father, true grandfather or a full brother. With a full brother she becomes a residuary taking half of what is his share. Her presence also affects the share of the mother.

A consanguine sister is excluded in presence of all the above mentioned relations whose presence excludes a full sister from inheriting the property. In additional, a consanguine sister is also excluded by a full brother and sister or even a consanguine brother. In presence of a consanguine brother she inherits as a residuary taking half of what is his share. Where there is only one full sister and she inherits as a sharer, the consanguine sister (whether one or more) would not be excluded in her

presence but will take one-sixth (1/6th) (alone or collectively as the case may be) provided she is otherwise eligible to inherit.

Uterine brother and sisters share a common mother with the deceased but they are from different fathers. The shares of both vis-à-Vis the other is same. The share of one is one-sixth (1/6th) and if more than one is present, then they together take one-third (1/3rd). Their turn to inherit comes in absence of a child, child of a son how low so ever, father or a true grandfather.  

Shia Law: Brothers, sisters and their descendants inherit with the grandparents of the deceased, how high so ever if present. In their absence, brothers and sisters inherit in accordance with the following rules:

(i) A full sister is a sharer in absence of a full brother, parents, father’s father, children or lineal descendants. She takes half (1/2) of the property alone and two-third (2/3rd) if more than one full sister is present.

(ii) Full and consanguine brothers inherit as residuaries.

(iii) With a full brother, a full sister does not inherit as a sharer, but becomes a residuary with him taking a share that is equal to half of his share.

(iv) Full blood brothers and sisters exclude consanguine brothers and sisters.

(v) A consanguine sister inherits as a sharer taking a fixed half (1/2) share if she is alone and two-third (2/3rd) if there are two or more than two consanguine sisters. With a consanguine brother she inherits as a residuary taking a share that is equal to half of his share.

(vi) Uterine brothers and sisters inherit as sharers and are not excluded by either the full brothers and sisters or consanguine brothers and sisters. The share of one such uterine brother or sister is one-sixth (1/6th) and if there are more than one such brother or sister they collectively take one-third (1/3rd). Thus a sister under Shia law may find herself to be in a position of relative disadvantage as her status as a female agnate does not find recognition in its scheme.

Hindu Law: Under Hindu law. Sisters are Class II Entry II category heirs but the rule is that sisters along with brothers inherit the property in equal shares. Under Hindu law sisters by full blood always got preference in comparison to brother and sister by half blood. Uterine relations are excluded in Hindu law.

2.1.7 Widowed Daughter-in-Law:

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14 Ibid., pp. 634-635.
15 Ibid., p. 662.
**Muslim Law:** One notices a conspicuous omission of a widowed daughter-in-law as an heir in Islamic law of inheritance. As the remarriage of the widows was common in Arabia, perhaps there was not any sociological necessity to provide a share for them.

**Hindu Law:** Widowed daughter-in-law i.e., son’s widow and even son’s son’s widow find a place in the Hindu Succession Act. Under Hindu law son’s widow or son’s son’s widow they are Class I category heirs of Hindu male. Thus these relations are also finds their due place in Hindu law. Besides this, even the brother's widow also finds her place in Hindu law. She is Class II, Entry VI heir.

So going through the comparative study of proprietary position of Muslim female vis-à-vis Hindu female, one primary principle of Muslim law which grossly discriminates against women is that under the law of inheritance, if there are male heirs and female heirs of the same degree like a son and daughter, full brother and a full sister, the share of a female member is half that of the male under the Hanafi law the widow, though a sharer in every case, is not entitled to take as residuary. The share of a widow (or widows if there is more than one) is one eighth. If deceased dies without leaving a child, the widow's (or widows') share is one fourth. The wife is not entitled to radd (return).\(^\text{16}\) Under the Shia law also neither husband nor wife is entitled to the radd but if either of them is the sole surviving heir's then they inherit the whole property. If a Muslim dies leaving a daughter as his only close relative, she will not goto some distant agnatic relative. Under the Shia law the daughter would, in a similar situation, take one half as her share nad the remaining half under the doctrine of radd.

The social conditions of the present day necessitate that the measure of protect and security that a wife is entitled to, should be in no way inferior to that of any other member in the family, either during the life time of the husband or after his death. Therefore, a widow's position in the law of succession deserves particular attention.

Under Hindu law if we analyze the position of females especially, daughter, widow and mother as compare to their Muslim counterparts, these female had better inheritance rights. The share of these females are not fixed rather they are Class 1 category heirs of Hindu male and inherit the property, as 'preferential heirs' and divide it equally among other Class 1 heirs. Further, by the amendment act of 2005 their gender discrimination which existed in Act of 1956, regarding the position of son and

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\(^{16}\) Radd is the portion which remains after the heirs have got their specific share. The general rule is that the radd returns to the Koranic heirs in proportion to their shares.
daughter is also removed altogether. Now the position of son and daughter is totally on equal footing.

But one positive feature of Muslim law is unlike Hindu and Christian law, Muslim law restricts a person's right of testation. A Muslim can bequeath only 1/3 of his estate. The question is whether he has the power to correct any hardship that might arise under the law of intestacy by the exercise of his testamentary power (i.e. of one-third of his estate). It is beyond cavil that such hardship arises generally in the case of female heirs. But the Hanafi law appears to be particularly rigid in not permitting any device whereby the inequalities of the laws of inheritance may be rectified. Where by the female heirs may be disinherited from getting the property. Therefore, under Hindu succession Act, by conferring unrestrained testamentary power, the legislature has facilitated the circumvention of the right of inheritance conferred on females. This mode of disinheritance is available in respect of all Hindus, whether they are governed by Mitakshra, Dayabhaga, or Marrumakattayam laws.

3. COMPARATIVE STUDY OF HINDU LAW AND CHRISTIAN LAW

Though the Indian Succession Act is generally applicable to Christians there are various regions in the country where the Act is applied. This legislation seemed to apply mainly to Europeans and other foreigners than to Indian Christians, as large section of the Christian community governed by customary laws were excluded from the application of this Act, by the virtue of Section 29(2) of the Act of 1925.

The general scheme of the succession applies to the property of Jews, Christians, all Indian, who marry under the special Marriage Act, 1954 or get their marriage registered under this Act, and the issue of such marriages.

The Act incorporates the Roman and English Principles of inheritance. A uniform scheme is provided, irrespective of the sex of the intestate. Consanguinity is the determining factor for title to succession and relations by affinity are not included among the list of heirs. Adoption does not confer any right of inheritance. In nature a secular Act, it does not make difference of religion as between the intestate and the heirs, a disqualification.

The preference of succession is determined in the terms of nearness in relation to the deceased, accordingly surviving spouse and lineal descendants are made primary heir. Principles of representation among lineal descendants applies without any reservations and with some restrictions, it also applies to the brothers-sisters of
the deceased and their descendants. In all other cases, the general rule of nearer in
degree excluding the remoter applies. The Act does not prefer agnates over cognates
or male over females in general.

3.1 Proprietary Position of Females under Hindu Law and Christian Law:
3.1.1 Daughter:

**Indian Succession Act, 1925 (hereinafter referred to as Act of 1925):**

The daughter of an intestate inherits as his child along with his son and other lineal
descendants, taking a share which is absolutely equal to that of the son in all respects;
(whatever may be the character of the property) out of the total of two-thirds of the
property, the other one-third going to the widow of the intestate. In absence of widow,
the children and the lineal descendants do not have to share the property with any of
his other relations and they succeed to the whole of the estate (section 34). Thus, it is
only within this Act, till 2005 which did not discriminate between the rights of the
dughter and the son.

**Hindu Law:** Before the Amendment of 2005 there was discrimination in Hindu law
between son and daughter. Though by virtue of section 6 daughter was given right to
have a share even in coparcenary property of father but her share is less as compared
to son because son took one share as coparcener and one as Class I heir where as
daughter takes only as Class I heir, but after Amendment now the daughter under
Hindu law also shares equally property in all types of property.

3.1.2 Widow:

**Act of 1925:** The widow of an intestate succeeds to his property along with his
children and other lineal descendants taking a fixed one-third share (section 33 (a)).
Her share in absence of the lineal descendants with all other kindred is a fixed one-
half. Where none of the heirs is present she takes the whole of the estate (section 33
(b)). Where the total value of the property is less than Rs. 5,000, the widow succeeds
to the whole of the property in absence of the lineal descendants. Where the value
exceeds Rs. 5,000 she takes, in the first instance Rs. 5,000 out of it (in case of its non-
payment has a charge over the whole property with an interest of 4 per cent per
annum from the date the succession opens till its actual payment) and the rest
devolves by succession in which the widow has her usual rights (section 33-A (2)).
The provision for the widow made by this section shall be in addition and without
prejudice to her interest and share in the residue of the estate of such intestate
remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of Section 33 as if it were the whole of such intestate's property (section 33-A (3)). The net value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administrative expenses of the intestate and all other lawful liabilities and charges to which the property shall be subject (section 33-A (4)).

The Law commission of India, in working paper, in which it has documented sections of the Indian Succession Act which are in need to reform, has suggested that a widow's share in her husband's estate should be increased from Rs. 5,000 to Rs. 20,000. At the same time it has observed that under the English Intestates Estates Act, 1925, where the husband leaves no children, the widow inherits all his property.

But inexplicably even this limited benefit of Rs. 5,000 denied to the following categories of persons:

1. Indian Christian;
2. Any child or grandchild of any male person who is or was at the time an Indian Christian.
3. Any Hindu, Buddhist, or Jain, Succession to whose property is governed by the Indian Succession Act. [section 33 (a)]

Since this provision seeks to give better rights to widow without lineal descendants, the denial of the benefit to the above mentioned groups can not be justified on the grounds of policy.

**Hindu Law:** Under Hindu law, widow of the deceased is a Class 1 heir and she inherits the property of the intestate in equal shares with all other Class1 category heirs. There is no difference between widow having children or childless widow. Widow always has a right to inherit the property that too as Class 1 heir i.e., the preferential heirs.

**3.1.3 Mother:**

**Act of 1925:** The term mother has reference to the natural mother of an intestate and not his adoptive mother. The mother of an intestate is not primary heir and is, therefore, completely excluded in presence of his lineal descendants and also his father. When she co-exists with the spouse, the spouse takes one half and the other half is shared by the mother, brothers, sisters and the children of deceased brothers-sisters of the intestate. The mother and each of the living brothers-sisters taking the
property per capita, while the children of pre-deceased brothers-sisters inherit per
stripes. This is laid down in section 44, which lays down, if the intestate's father is
dead, but the intestate's mother is living and if any brother or sister and the child or
children of any brother or sister who may have died in the intestate's life-time are also
living, then the mother and each living brother or sister and the living child or
children of each deceased brother or sister shall be entitled to the property in equal
shares, such children (if more than one) taking in equal shares only the shares which
their respective parents would have taken if living at the intestate's death. The
quantum of the share of the mother thus depends upon the number of the brothers and
sisters of the deceased. In contrast, the father does not share the property with anyone
else beside the widow. Where only the parents of an intestate are the present, the
father is preferred and succeeds to the property to the complete exclusion of the
mothers.

This unequal placement can cause tremendous hardship in cases of separated
parents. Where the parents were separated from each other, either under a decree of
divorce, or even otherwise and the custody of their children was with one parents, but
due to the operation of the Act, the property of any of these children on their death
goes to the other parent. For example, a Christian couple is separated from each other,
under a decree of divorce and the custody of their child is given to the mother. The
fallen re-marriage and entirely engrossed in the new family. The mother brings up the
child, educates him and sees him, well settled in the job. The child now dies as
bachelor, with both the parents living. Now due to the operation of this Act, the
complete property will devolve on the father to the exclusion of the mother17.

Hindu Law: Under the Hindu law mother is again Class 1 category heir. Her position
is far better even as compared to father because father is Class II Entry I category heir
where as the position of mother is Class I category heir and she inherit equally along
with over Class I heirs. In case of female intestate, the position of mother is as under:
if the female intestates inherit the property from any other source except from her
father or mother or husband or father-in-law, then both mother and father are Entry I
category heir and thus mother inherit the property in equal share along with father.
Secondly, if female inherits the property from her father or mother, then mother is
excluded from inheritance because in this case, if she died issueless then property

17 Poonam Pardhan Sexana, Property Rights of Women under the Indian Succession Act, 1925 in Dr.
devolve upon heirs of father and if father is alive, mother will not be able to get anything.

3.2 Proprietary Position of Females among Christians of Goa and Pondicherry:

The Christians of Goa were governed by the Portuguese Civil code and continue to be so even today. The result is not only an addition to the multiplicity of laws but the prevalence of a legal system which is totally different from the ones prevailing in the rest of the country.

While the Portuguese Civil Code makes no differentiation on the basis of sex, it relegates the widow to a very low position. The orders of the legal heirs of a person are first sons and daughters who get property in equal shares. Failing them the parents inherit, followed by the brothers and descendants. The widow will inherit only if there is no heir in the above Classes. But the widow will become the owner of “the agricultural commodities and fruits, called or pending, meant and necessary for the consumption of the conjugal couple.” She will however lose even this right if she is divorced or separated from her husband

Unlike the Christians in other parts of India, a person cannot will or gift away his entire property to the exclusion of his legal heirs. The portion over which a person has no control is known as legitim and usually consists of half of the property. But even this legitim can be denied to an heir under certain conditions e.g. if a child lodges a complaint against his parents for an offence which is not against his person or against his spouse. In the case of a child he can be disinherited in the following cases:

(i) if he comments against their person any offence punishable with term of imprisonment over six months;

(ii) if he judicially charged or lodges a complaint against his parents for offence which is not against the child person or against his consort, ascendants or brethren;

(iii) if the child, without just cause, denies to his parents due maintenance (Art. 1876). The other grounds by which the remaining classes of heirs can be disinherited are given in the Articles -1877 to 1899.

18 Portuguese Civil Code, Art, 1969.
19 Ibid., Art. 1784.
But even a disinherited heir is entitled to maintenance by the person who gets the property in place of the disinherited heir, but his liability to maintain disinherited heir is only up to the extent of the property he has inherited (Art. 1883). The recognition of equal rights for sons and daughters is undoubtedly to be welcomed but to relegate the widow to the fourth position and leave her with only the fruits and agricultural commodities needs to be remedied immediately.

The legal system for the Christians prevailing in Pondicherry is extremely anomalous. During the French rule both Hindus and Indian Christians were governed by Hindu Law. After Pondicherry became a part of India, the Hindu succession Act was extended to the States but as that Act only applies to certain categories of persons who come under the term ‘Hindu’, the Indian Christians in Pondicherry can no longer be governed by it. The Indian succession Act has not been extended to the State, so the Christians there continue to be governed by the precodified Hindu Law, which relegates a woman to an inferior position and does not even regard her as being full owner even in the few cases where she can inherit property. The resultant position is anachronistic and should be remedied immediately. Thus, the Law Commission of India in its 174th Report recommended the extension of Indian Succession Act to Goa and Pondicherry.

3.3 Proprietary Position of Christian Females in Kerela:

To add the diversity of laws, the Travancore High Court held that the Indian Succession Act did not apply to the Christians of the State. The result of the decision was that Christians in Kerala those outside are governed by different laws. The decision also continues the multiplicity of laws which govern Christians even with the State. The Travancore Christian Succession Act governs the Succession rights of Christians in Travancore, but the Act is not applicable to those following the “Marumakkavazhi System” of inheritance. To add to this certain sections of the Act are not applicable to certain classes of the Roman Catholic Christians of the Latin Rite and to Protestant Christians living in the five taluks mentioned therein among whom male and female heirs of the intestate share equally. The Cochin Christian Succession Act, generally governs the succession to the properties of Christians in former territory of the Cochin State. The Cochin Act exempts members belonging to the European, Anglo-Indian and Parangi communities, and the Tamil Christians of the Chittur Taluk who follow the Hindu Law. This was confirmed by the Suprme Court
in the case of *Anthonyswamy v. Chinnaswamy*20. A characteristic feature of the Tarvancore and Cochin Christian Succession legislations was that they are based on the former notions of the Hindu Law of Inheritance which discriminated against women. Therefore, a widow or mother inheriting immovable property takes only a life-interest terminable on the death or remarriage. A daughter’s right is limited to “Streedhanam”. Even in cases where she is entitled to succeed she takes a much lesser share. In this Act, the position of female was as under:

**3.3.1 Widow:** Under the Travancore Act if the intestate has died leaving a widow and lineal descendants the widow is entitled to a share equal to that of a son. If on the other hand, the intestate dies leaving a widow and daughter (or the descendants of a daughter) her share will be equal to that of a daughter. The nature of her interest (i.e. life interest) is the same when she takes the property in the absence of any lineal descendants. The widow’s share is half when the intestate dies without leaving any lineal descendants but has left behind his father or mother. According to the Cochin Act when there is a son or the lineal descendants of a son, the share of a widow is equal to two-thirds that of a son. If the intestate has left no son or the lineal descendant of a son, she entitled to a share equal to that of a daughter.

**3.3.2 Daughter:** Even though she is mentioned as an heir along with a son in Group I of section 25 of the Travancore Christian Succession Act, a daughter is entitled to “Streedhananam” only. The Streedhananam of a daughter, for the purpose of the Act, is fixed at one-fourth of the value of the share of a son or Rs. 5,000/-- whichever is less.

The Cochin Act provides that where an intestate lefts sons and daughters, each daughter shall take one-third share of a son. But like the Travancore Act an important limitation in regard to a daughter’s share is laid down in Section 22. This in effect makes the right of a daughter to receive streedhanam only. But the Cochin Act does not specify a limit on the amount of streedhanam. Both legislations, however, provide that streedhanam which has not been paid, but promised by the intestate, will be charge on his estate. It is, therefore, apparent that the rights of inheritance of Christian women under the Travancore and Cochin Acts are meagre. Even these rights may be defeated as the testator has the absolute power of willing away his entire property.

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Now after the coming into force of Indian Succession Act, 1925 as per the provisions of section 29 (2)\(^{21}\), the question is that whether the Travancore Christian Succession Act, 1792 is saved or not? This question came for consideration before the Supreme Court in Mrs. Mary Roy v. State of Kerala, overruling Kurian Augusty v. Devassy Aley, the Supreme Court said it was not saved. The Travancore Act was promulgated by the erstwhile Princely State of Travancore to regulate succession among the Indian Christians living in the State. It had several provisions discriminatory against women.

This was a writ petition under article 32 of the Constitution challenging the discriminatory provisions of the Act being violative of article 14 of the Constitution. Further, it was contended that in view of part B States (Laws) Act, 1951 the Indian succession Act has been extended to these areas and the Travancore Succession Act stood repealed. Under the Indian Succession Act, a widow is entitled to one-third share in the property of the intestate and sons and daughters share equally in the remainder. It should be noticed that the Part B States (Laws) Act with a view to provide for uniformity of legislation in the country. This Act provided for extension of some statutes to Part B States and the Indian Succession Act, 1925 is one of those Acts.

However, the supreme Court in this case did not go into the issue of violation of the right of equality in the matter of succession and inheritance, but provided for equality by holding that the Travancore Succession Act was repealed by the Indian Succession Act, 1925, when under section 3 of the Part B States (Laws) Act, the same was extended to Part B States.

The Supreme Court considered the following two issues:

1. Whether after the coming into force of the Part B States (Laws) Act, the Travancore Christians Act continues to govern intestate succession to the property of a member of the Indian Christian community in the territories originally forming part of the erstwhile State of Travancore or in such intestate succession governed by the Indian Succession Act, and if it continues to be governed by the Travancore Christian succession Act, whether sections 24, 28 and 29 of the Act are Constitutional and void as being violate of article 14 of the Constitution.

21 Section 29(2): Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of India in all cases of intestacy.
(2) Whether the Travancore Christian succession Act comes within the ambit of "such other law" in section 29(2) of the Indian succession Act (which is the saving clause) and is saved.

The respondents contended that section 29(2) of the Indian succession Act saved the provisions of the Travancore Christian succession Act and therefore, despite the extension of the former Act to part B State of Travancore-Cochin, the Travancore Act continued to apply to the Christians in those territories. The Supreme Court held that the Travancore Act stood repealed and was not saved by section 29(2) of the Indian Succession Act. The Indian Succession Act is applicable throughout the State of Kerala and in Kanyakumari district of Tamil Nadu. This is so with effect from 1st April 1951.

This is a landmark judgment inasmuch as it removes discrimination against the Christian women in Kerala. Now daughters have been given equal right of succession with son. Before this judgment, even the 174th Report of Law Commission also recommended that immediately legislative measures be taken to bring Christian women of Kerala under the Indian Succession Act as a first step to unify the law and restrictive power be placed on the unfettered right of a person to will away his entire property. Similarly for the Christians of Goa and Pondicherry, the Indian Succession Act has not been extended to the State, so the Christians there continue to be governed by the pre-codified Hindu Law, which relegates a woman to an inferior position and does not even regard here as being full owner even, in the few cases where she can inherit property. The resultant position is anachronistic and should be remedied immediately. Here also Law Commission recommends the extension of Indian succession Act to Goa and Pondicherry, but unfortunately nothing has been done so far.

Thus, under Indian succession Act, 1925 the position of daughter is satisfactory as she inherits equally with any brothers and sisters to her father's estate or her mother's. She is entitled to shelter, maintenance before marriage but not after marriage from her parents. She has full rights over her personal property, upon attaining majority. Until then, her natural guardian is her father.

But so far, rights of widow and mother are concerned like under the Muslim law they inherit a fixed portion of share which is not equal as compare to other heirs. The widow upon the death of her husband is entitled to 1/3 share of his estate, the rest being divided among the children equally. She must inherit a minimum of Rs. 5,000/-
from her husband's estate. If the total value of the estate is less than Rs. 5,000/- she may inherit the whole. Similarly, the mother is entitled to maintenance. In case, her only children die without leaving any spouse or children, she may inherit 1/4th of estate. Under Hindu law the position of these females is much better.

But again one common feature is that both the Acts confer no restrictions on the power of a person to will away his property. Therefore the protection enjoyed by a Muslim females to a share of the estate, is denied to females under these laws. Therefore, there is a need to incorporate some restrictions, on testation similar to that prevailing under Muslim, law to prevent the females from being left completely destitute.

4. COMPARATIVE STUDY BETWEEN PARSi INTESTATE SUCCESSION AND HINDU SUCCESSION ACT

The Parsi community in India initially had no law of their own. While preserving their separate identity, they had adopted the customs of the residents of the area where they had first taken shelter. In 1925, when the Indian Succession Act was enacted, (which governs mainly Christian succession) the Parsi Intestate Succession Act was verbatim incorporated in Chapter III of this Act. Interestingly, during the years 1870 to 1925, considerable progress was made in the realm of married women’s property rights under the English statutes and the concept of equality between men and women regarding inheritance had been accepted. Based on these developments, the Indian Succession Act did not discriminate between male and female heirs. But before the Amendment of Parsi intestate Act in 1991, the Paris inheritance laws, continued to maintain the discrimination and females continued to inherit half the share of their male counterparts. Section 50-56 of Indian Succession Act, 1925 deal with the Parsi.

Before the Amendment in 1991, the main feature of the rules governing the Parsi intestates was that like the Hindu law and unlike the Muslim law, there are separate rules for the devolution of the property of male and female Parsi intestates. The rules relating to the intestate succession of males have the characteristic of Muslim law, namely, the share of a male heir was double that of a female heir of the same degree. For example, if a male Parsi dies leaving a widow and children, the property will be divided so that the share of each son and widow will be double the share of each daughter. Further, if a male Parsi dies leaving one or both parents, in addition to a widow and children, the property will be divided so that the father shall
receive a share equal to half the share of a son and the mother shall receive a share equal to half the share of a daughter. The inferior position of a mother in the scheme of succession thus becomes evident and the position was radically different from that which prevails under the Hindu Succession Act, 1956. This position may be contrasted with the rules applicable to the succession of a female Parsi intestate. If she dies, leaving a widower and children, the property will be divided equally among them and if she dies leaving children only, among the children equally. Thus, while a son was entitled to an equal share in the mother’s property along with the daughter, the daughter is not entitled to the same right when she inherits the property of the father along with the son.

4.1 Proprietary position of Females under Hindu Law and Parsi Law:

4.1.1 Daughter:

Parsi Law: Before the Amendment: In case of Parsi male dying intestate the position of the daughter was very much inferior as compared to son because (a) where he dies leaving a widow and children, among the widow and children, so that the share of each son and of the widow shall be double the share of each daughter, or (b) where he dies leaving children but no widow, among the children, so that the share of each son shall be double the share of each daughter (section 51). In case of females dying intestate the position of daughter was better, because she get a share equal to son as where she dies leaving a widower and children among the widower and children so that the widower and each child receive equal shares; or where she dies leaving children but no widower, among the children in equal shares (section 52). In the case of Smt. Dhanbhai v. State of M.P\textsuperscript{22} where a Parsi male dies intestate leaving behind him his widow, three sons and two daughters, it was held that under Section 51, the two daughters together would get a share equal to the share of their mother or brother. It was further held, that the mere fact that the daughters took no step to get their names mutated or make any demand on other heirs for separation of their shares, cannot defeat their title, or effect it in any way to their disadvantage.

After the Amendment: After the period of 1991, by Act 51 of 1991 Section 51 have been newly drafted. Now it runs as :

(1) Subject to the provisions of sub-section (2), the property of which a male parsi dies intestate shall be divided-

\textsuperscript{22} A.I.R., 1979, M.P. 17.
(a) Where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child receive sharers.

(b) Where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.

(2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children, the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.

Thus, now the daughter sharers equally with the son and if a Parsi intestate dies leaving behind only one son and one daughter, both the children will inherit equally.

**Hindu Law:** Before the Amendment of 2005 there is discrimination in Hindu Law between son and daughter. Though by the virtue of section 6 daughter was given right to have a share even in coparcenery property of her father but her share was less as compared to son because son takes one share as a coparcener and one as a Class 1 heir where as daughter takes only as Class 1 heir. But after the Amendment, now the daughter under Hindu law also shares equally in all types of property. Thus, her position is far better as compared to the Parsi daughter.

**4.1.2 Widow:**

**Parsi Law:** The widow of an intestate is one of his primary heirs and inherits along with his lineal descendents, taking a share which is equal to that of her children. In case where the intestate leaves no lineal descendents but leaves a widow or widower or a widow or widower of any lineal descendents than the position of widow is that:

(a) If intestate leaves a widow or widower but no widow or widower of lineal descendents, the widow or widower shall take half of the said property (section 54(a)).

(b) If the intestate leaves a widow or widower and also a widow or widower of any lineal descendents, his widow or her widower shall receive one-third of the said property and the widow or widower of any lineal descendents shall receive another one-third or if there is more than one such widow or widower of lineal descendents, the last-mentioned one-third shall be divided equally among them (section 54 (b)).

(c) If the intestate leaves no widow or widower but one widow or widower of a lineal descendant, such widow or widower of the lineal descendant receive one-
third of the said property or if the intestate leaves no widow or widower but
more than one widow or widower of lineal descendants, two-third of the said
property shall be divided among such widow or widower of the lineal
descendants in equal share. In absence of all his kindred, she succeeds to the
whole of his property (section 54(c)).

**Hindu Law:** Under Hindu law, widow of the deceased is a Class 1 heir and she
inherits the property of the intestate in equal shares with all other Class 1 category
heirs. There is no difference between widow having children and childless widow.
Widow always has a right to inherit the property that too as Class 1 heir i.e., the
preferential heirs.

**4.1.3. Mother:**

**Parsi Law: Before the Amendment:** - In case of male Parsi dying intestate the share
of mother is as follows:

Where a male Parsi dies leaving one or both parents, in addition to children or a
widow and children, the property of which he dies intestate shall be divided so that
the father shall receive a share equal to half the share of a son and the mother shall
receive a share equal to half the share of a daughter$^{23}$.

But where Parsi dies leaving no lineal descendants, the presence of mother
excludes all other relation from succession, but again she inherits only the half of
father and other half goes to the widow. Where the intestate was a female, her mother
inherits with her father only in absence of her widower and the lineal descendants.
Here also the share of the mother is equal to half of the share of the father.

**After the Amendment:** The mother now shares equally with the father but under the
Parsi law the share of the parents is half the share of each child. Now where a Parsi
dies leaving one or both parents in addition to children or widow or widower and
children, the property of which such Parsi dies intestate shall be so divided that the
parent or each of the parents shall receive a share equal to half the share of each child.

Similarly where the Parsi intestate dies leaving neither lineal descendents nor
a widow or widower nor (a widow or widower of any lineal descendants) his or her
next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed
to whole of the property of which he or she dies intestate. The next-of-kin standing
first in Part II of that Schedule shall be preferred to those standing second, the second
of the third, and so on in succession, provided that the property shall be so distributed

$^{23}$ Ibid, (Sec. 51 Cl. 2)
that each male and female standing in the same degree of propinquity shall receive equal share (section 55).

Among the next-of-kins mentioned in Part II of Schedule II, the order of preference will be as listed therein.

1. Father and mother.
2. Brothers and sisters (other than half brothers and sisters) and lineal descendents of such of them as have predeceased the intestate.
3. Paternal and maternal grandparents.
4. Children of the paternal and maternal grandparents and the lineal descendents of such of them as have pre-deceased the intestate.
5. Paternal and maternal grandparents' parents.
6. Paternal and maternal grandparents' children and the lineal descendents of such of them as have predeceased the intestate.
7. Half brothers and sisters and the lineal descendents of such of them as have predeceased the intestate.
8. Widows of brothers or half brothers and widowers of sisters or half sisters.
9. Paternal or maternal grandparents' children's widow or widowers.
10. Widows or widowers or deceased lineal descendants of the intestate, who have not married again before the death of the intestate.

Similarly, where the Parsi intestate dies leaving no lineal descendants but leaves a widow or widower of any lineal descendants then the position of the mother is defined under section 54(d), which lays down that the residue after the division specified in clause (a) or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares.

Part I of the Schedule II contains the following heirs:

1. Father and mother
2. Brother and sisters (other than half-brothers and sisters) and lineal descendents of such of them as shall have predeceased the intestate.
3. Paternal and maternal grandparents.
4. Children of the paternal and maternal grandparents and the lineal descendents of such of them as have predeceased the intestate.
(5) Paternal and maternal grandparents' parents.

(6) Paternal and maternal grandparents' parents' children and the lineal
descendants of such of them as have predeceased the intestate.

Thus, after the Amendment the mother and the father among themselves
inherit equally and their presence would exclude all other heirs as both of them are in
Category I. but here it is also worth mentioning that in the presence of children,
widow, widower or lineal descendants, their number comes after exhausting all the
other above mentioned heirs.

**Hindu Law:** Under the Hindu law mother is again Class 1 category heir. Her position
is far better even as compared to father because father is Class II Entry I category heir
where as the position of mother is Class I category heir and she inherit equally along
with other Class I heirs. In case of female intestate, the position of mother is as under:

(i) if the female intestates inherit the property from any other source except
from her father or mother or husband or father-in-law, then both mother and
father are Entry I category heir and thus mother inherit the property in equal
share along with father.

(ii) if female inherits the property from her father or mother, then mother is
excluded from inheritance because in this case, if she died issueless then
property devolve upon heirs of father and if father is alive, mother will not be
able to get anything.

Thus Parsi intestate succession before the Amendment was one which was
categorically mentioned as Act based on gender discrimination. But here, it should be
pointed out that the provisions of Parsi Act were enacted in 1939. At that time these
rules conferred better rights on women than the then existing Hindu and Muslim laws,
because with the colonization of the country by the British, the Supreme Court of
Judicature in 1873 made the rule that Muslims should be governed by Muslim law,
Hindu by the Shastras and smaller communities like the Parsis should be governed by
English Civil Law, as it was assumed the latter’s laws had no religious identity and
the English law at that time was considered as much more progressive.

But this, however applied only to the three presidency towns of Bombay,
Calcutta and Madras. Elsewhere the Diwani Adalats established by Warren Hastings
in 1772 as the highest Civil Courts of the districts, continued to apply the personal
laws of every community in matters of inheritance, marriage and religion on the basis
of “Justice and Equity”. This sort of quality raised the expected problems and women
suffered in both town and country. In the Presidency towns the English statute of
distribution meant the Parsi widows got just one-third of the estate and the residue was divided equally among the children and their descendants. The English common law rules prevailing at that time, meant that the married women had no right to hold or dispose of any property during overture.

The mofussil Parsi, following Hindu custom, excluded Parsi women from a share in the estate of the male. They were given only rights to maintenance and adoption. But with the passage of time and later on with the Amendment of 1991, these rules have become out of step with the progressive trends in society.

So, on the whole after going through the comparative study of all the Succession laws applicable in India i.e. Muslim, Christian and Parsi, the proprietary position of females under Hindu law is very much better. Further, after the Amending Act of 2005, in one stroke all the features under the Act of 1956 which discriminated between male and female heirs got removed and both the sexes were placed on equal footing.

5. CONCLUSION

But to conclude, legislation cannot be an end in itself. Publicity of new legislation and educating women about their rights need to go hand in hand. Otherwise, like much other social legislation, the rights remain only on paper. During its tours the Committee found a large number of women completely ignorant about their rights of inheritance. Even where they know, they have been so conditioned that many of them oppose sisters depriving their brothers' property. The survey report of the Committee confirms this finding, as 68.16% expressed their opinion against girls having some share with their brothers in paternal property and 57.54% were against girls and boys having equal property rights. But in the absence of social security and inadequate opportunities for employment, a woman without financial security faces destitution in our country. It is true that in a country where a large section of the people is below the poverty line, measure for ownership of property will benefit only a limited section. However, for this section ownership of property will make women independent and they will undoubtedly gain in status. Besides, this will effectively check “the feeling that women are a burden to the family”24.