CONCLUSION AND RECOMMENDATIONS

Women’s property right in India have mediated through various Religious Personal laws and customary practices. As a result we see that women have been granted only a limited equality. The concept of RPLs is treated as an inevitable idea; it is actually persistent remnant of the colonial period of our history and is a constructed category. It is a colonial legacy and thus was used selectively to further their own governance needs. RPL has its origin in religion but its neither divine nor immutable.  

As discussed RPL being derivative of the religious practices and understanding has contributed to the marginalization of women. It has been used as platform for the male dominated society. RPL in the garb of religion has consoled women to accept their fate as the will of God. The result is inequitable property rights.

In a article in the Texas Journal of Women and the Law, Edieth Wu identified what she called "global burqas," or disguised forms of discrimination. She listed five fundamental rights where women around the world are not finding equality: “(1) the right to life; (2) the right to equality; (3) the right to equal protection under the law; (4) the right to be free from all forms of discrimination; and (5) the right to be free from torture or other cruel, inhuman, or degrading treatment or punishment.” And all these discrimination can come to an end if women have economic freedom, of which inheritance is a very powerful weapon.

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1 Archana Parashar “Gender Inequality And Religious Personal Laws In India” Brown Journal Of World Affairs (2008).
We find that the Hindu Succession amendment Act 2005 significantly increased women’s probability of inheriting land, although it did not bring about full gender equality. Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains elusive.

Justice cannot be secured for one category of women at the expense of another as the position of the mother and widow stays same. They, not being a member of the coparcenary will not get a share at the time of notional partition. The mother and widow will be entitled to an equal share with the class I heirs only from the separate share of the deceased computed at the time of notional partition. In effect the actual share of the mother and widow will decrease because their shares depend upon the shares of their respective predeceased son and husband which they get after notional partition. As Hindu law does not grant any rights to wives in marital property, their only chance of getting anything was on an inheritance, as equal share with the sons and daughters, if the marriage was subsisting on the death of the husband. On divorce, of course, even that right to inheritance disappears.

The Indian legislators who passed the amendments were certainly keen to promote it as an important step towards improving women’s right and gender equality and a lot of academicians like Bina Aggarwal and Flavia Agnes “as landmark step toward gender equality” but the problem cannot be solved by deleting few provisions and

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4. Section 6 Hindu Succession Act, 1956
5. Poonam Pradhan Saxena Family Law Lectures Family Law II (Lexisnexis 2016)
7. Flavia Agnes Family Law And Constitutional Claims (Oxford University Press, 2011)
adding a few.\(^8\) Firstly this amendment has been criticized by feminist as it only benefits the Hindu women. Indira Jaisingh argued “are these reforms and guarantees available to Hindu women only.” She feared that the 2005 amendment could further entrench a dichotomous view of Hindu and Muslim personal law.

The exclusive focus of 2005 amendment to tackle gender inequality was to include daughters as coparcenary and not to abolish the structure. Despite the question of abolition of coparcenary raised during the debates which in details looked at historical development of HSA, 1956 and was aware that initially most of the legislators were in favour of abolishing joint family,\(^9\) but later on when the congress member took over the debate, instead of abolishing they proposed that, it will automatically fizzle out in few years. Also the law commission itself did a survey though the sample size was very small, the majority respondent opposed the retention the coparcenary.\(^{10}\)

Despite all these results and committees observation, they came to conclusion to retain the coparcenary and make daughters coparcenary, and further reinforcing the legal and social importance of Mitakshara coparcenary.\(^{11}\) thus the act removed one set of difference that was between hindu male and female, and made females property holder, but this process of equality was achieved through a process that affirmed the difference between hindu and non-Hindus property holder as well as between who are part of Mitakshara coparcenary and those who are governed by variant stream of Hindu legal system.\(^{12}\)

\(^{8}\) Supra Note 6
\(^{9}\) Ibid.
\(^{11}\) Ibid
\(^{12}\) Eleanor Newbigin The Hindu Family And Emergence Of Modern India (Cambridge University Press, Cambridge, 2013)
These amendments when properly implemented can empower women both economically and socially and have far-reaching benefits for the family and society.\(^{13}\)

Independent access to land and property can reduce a woman and her family's risk of poverty, improve her livelihood options, and enhance prospects of child survival, education and health.\(^{14}\) Women owning land or a house also face less risk of spousal violence. And land in women's names can increase productivity by improving credit and input access for numerous de facto female household heads.\(^{15}\)

It was observed in research done by National Council of Applied Economics\(^{16}\) that the amendments in Inheritance law have given considerable progress to equalize economic opportunities for women. Reform of inheritance laws in India, in the form of 2005 amendment, although females have increased access to economic opportunities, lack of human or physical capital may prevent them from actually making use of these opportunities.

Indeed we see that the provisions of amendment act appears to have little impact on the women access to property as by one way or other women are denied inheritance in name of culture, family honour love and affection. The need of hour is not only to work upon the legal barriers but a holistic solution to solve the problem.

Whereas in the case of Islamic inheritance has many complicated rules that are well defined within the Quran. Unfortunately in the past fourteen centuries of Islamic


\(^{14}\) Ibid.

\(^{15}\) Ibid.

\(^{16}\) Supra Note 9
thought, most of the passages have been interpreted through various *qiyaq* (the process of analogical reasoning) and *ijtihad* done only by men.\textsuperscript{17}

When we look at the rights of Muslim women, it is much more complicated and much less in quantity. Muslim women problem is not the denial but the absence of a definite and complete legal system. The Shariat Application Act is incomplete as well as outdated. It only concerns that Muslim should be governed by the Muslim law, but the essence of Muslim law is nowhere seen or defined, which thus raises the issue of Uniform Civil Code. Muslim personal Law has become synonyms to Muslim identity.

Women's rights of inheritance under the Muslim law do not give rise to the same kinds of problems as under the Hindu law. For example, unlike the Hindu law the right of inheritance is adequately protected. On the other hand the notion that the law is a revealed law and is therefore immutable presents considerable difficulty in introducing any reform. In India no attempt has yet been made to modernize the Muslim law.

We see that in India there is an increasing demand both among the theologian as well as legislature that the Shariat Application Act should be amended and women to given property rights in agriculture land also and to make it in complete consonance with Islamic law. Under Islam there is no distinction between agricultural or other property.\textsuperscript{18} Therefore a no distinction should be made. But as we already discussed that whether this amendment in the Act will improve the condition of women, when it has been perceived that Islam in itself does not give equal property right to women.

\textsuperscript{17} Tahir Mahmood, *Muslim Law In India And Abroad* (Universal Law Publication, New Delhi, 2016).

\textsuperscript{18} Ibid.
Another important facet to be understood is the dilemma faced by the present generation of the Muslims because of the belief that the Laws of Holy Quran are not man-made and thus cannot be changed or modified by human. This makes the position of Muslim women very dicey as in if she agrees with the present system of law she tends to compromise with her rights and if she goes against the established law she is not respecting her faith and going against the commandment of Allah. Thus there need to be awareness in this regard that neither the inheritance rules are divine or immutable

Prophet Mohammad (SAW) bought a revolutionary change in the status of women of that time and for a many years. The reforms brought by prophet of Islam regarding the status of women were a path breaking and keeping in mind the society of that time, it is not possible to bring absolute changes in ones idea and belief overnight. They need to be slowly and gradually moulded and changed. So in the longer run they are accepted and respected by the society at large.

Islam need to be understood as social reform movement by Muhammad to teach the barbaric Arabs the laws of humanity and to respect everyone whether women or vulnerable. The prophet of Islam paved the path for emancipation of women and was a social reformer in all sense. Prophet of Islam propagated the idea of equality all his life. In the last sermon at hajj he clearly stated:

"All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a White has no superiority over a Black nor a Black has any superiority over a White except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute
one brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly.”

In the entire sermon the prophet talk about superiority of one the almighty and equality of all others.

It is noted that whether it’s Hindu Law or Muslim Law both have denied women their true place in the society. One gives right and takes away individuality, whereas other gives individuality and takes away equality.

The conceptual issue for legal scholars is to develop arguments that gender and religious autonomy can coexist. India, being a religiously plural society, faces this tension more so than many other societies. It is no surprise that most legal theory, developed in industrialized countries, does not concern itself with this issue. The specific responsibility of Indian legal scholars, feminists, and others is to develop ideas about the relationship between law and their social institutions. It is not enough to simply replicate ideas developed elsewhere and end up with the absurd situation that in contemporary India women are denied equality by reference to anachronistic laws that are now supported in the name of progressive pluralism.

**Recommendations**

On the basis of the analysis and conclusion, there are certain recommendations which can help ameliorating the condition of women property rights in India. I have tried to provide solutions in two aspects- the first some general recommendations and second some specific solutions for Hindu as well as Muslim women. The discrimination faced by women is multifarious, she is not only discriminated on her gender but also

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on the basis of class, caste, religion etc. There is a need to change the structure and attitude of the society.

**General Recommendation:**

1. **Legal Level**

*Concept of Matrimonial Property:* to minimize the equality and discrimination it is necessary that a legal mechanism to be applied which recognises wife contributions to the acquisition of assets by the husband. Marriage should be seen as an equal economic partnership between the husband and the wife. It is difficult to break the societal mould of concept of provider and nurturer assigned to men and women respectively, but this economic partnership will help in decreasing the disproportionate holding of assets and will help in improving the property rights of individual. B. Sivaramaya in his book\(^\text{21}\) has beautifully justified the importance of a system of Matrimonial Property as well as addressed a plethora of issues to put such a system in place. Like when marriage breaks due to domestic violence or terminated by divorce or death. He also takes into account the duration of marriage as well as how the assets accumulated during the marriage should be apportioned.\(^\text{22}\) Most of the developed nations have matrimonial property regime.

*Inclusion of males in female centric laws* – laws need to be gender neutral as far as possible also the areas which are seen traditionally as women fields should have inclusion of males. Women should be given as far as possible equal rights as well as responsibilities. Example Child Care leaves, child is the responsibility of both the parent. There should not be women centric but gender neutral laws. A lot depend upon the parenting and the atmosphere a child is brought in. A person can choose to

\(^{21}\) B Sivaramaya *Matrimonial Property Law In India* (Oxford University Press, 1999).

\(^{22}\) *Ibid.*
be gender neutral or gender stereotypical. But law cannot; laws ought to be gender neutral. Society shall mould itself around it. Laws cannot work in vacuum and remain static it changes with the changing need of the society likewise society cannot work without law and that law helps bringing changes and transformations in the society.

Legislature and judiciary plays a pivotal role in bringing social change and development. We cannot start with removing protective discrimination but start with positive inclusion implying inclusion of men in women centric laws. The need is to not curb the problem but remove it from the root itself. As Virginia Wolfe in her book has aptly remarked, what is required is not gender-neutrality but antipatriarchy. Roles can be defined but is same in every household need not be a necessity. The only requirement is equality.

2. **Community Level**

It is vital to communities’ awareness of women’s rights to land and women’s ability to exercise these rights. Examples of the former include legal education centres’ and awareness-raising campaigns. Examples of the latter include legal aid centres’, community-based paralegals, and behavioural-change tools. The community-based paralegal model implemented by APMSS in Andhra Pradesh, with support from RDI, is particularly attractive in settings where there is a network of SHGs. Members of these groups can self-select, be trained as paralegals, and offer their assistance to their communities, particularly to women. This approach is cost-effective, ensures broad coverage, and empowers the women who become paralegals because they develop skills, expand their networks, and gain status in their communities. Behavioural

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23 *Virginia Wolfe* *Killing The Angel In The House* (Penguins 60, 1995)
24 Gender And Land Tenure Security: Challenges And Barriers To Women’s Entitlement To Land In India (UN Women 2014).
change tools such as the community conversations piloted by the government of West Bengal with assistance from RDI,\textsuperscript{25} can empower communities to find ways of addressing strongly held norms that prevent women from gaining access to property and control over land.

The law is not only a theoretical issue but it is an issue of people’s everyday lives. If the issue of access to justice and awareness among the intended beneficiaries is not addressed then the law and the amendments per se will have nominal impact. The legal processes for realizing women’s claims must also be reworked so as to remove any psychological and social barriers to women who want to approach the law.\textsuperscript{26} The desired change will be brought about once social legitimacy is established. For this purpose, programmes have to be developed and sustained.

Role of judiciary

For gender sensitization positive judgments need to be highlighted. The judges need to be extremely careful while making observations with regard to women empowerment and role of women in family and society.

There is need to develop in-house policies on sexual harassment and discrimination that contain a broad definition of sexual harassment as well as a detailed description of common offending behaviours. Develop and institutionalize mechanisms for reporting, investigating, and enforcing policy. Provide annual sexual harassment

\textsuperscript{25} Ibid.

\textsuperscript{26} Reena Patel Hindu \textit{Women's Property Rights In Rural India: Law, Labour And Culture In Action} (Ashgate Publications. 2013)
training and awareness-raising activities for all court employees and judicial professionals as a component of policy implementation.  

Provide members with regular, relevant, and up-to-date domestic and international literature in the fields of gender- and sex-based discrimination, domestic violence, sexual assault, child abuse, and family law (child custody, alimony, child support, and parental rights) related to evidence-based best legal practices.

Organize specialized clinics for law students on the influence of gender in legal practice and decision making. Provide law students with opportunities to review cases in which gendered components are especially relevant, including those involving sexual harassment, domestic violence, sexual assault, child abuse, child custody awards, and maternity and paternity leave.

**Legal and Policy Environment**

It is important to ensure that government services that affect women’s access to and control over land are provided in a gender-sensitive manner. This entails building the capacity of the Revenue administration, at all levels of the hierarchy. Officers need to understand why it is important to protect and enhance women’s access to land, how their actions might currently hamper this access, the responsibility they have to implement guidelines in a gender-sensitive way, and how they can do it.

Capacity building exercises should enhance officers’ ability to interact with women in a gender-sensitive fashion and should help them make sure that processes are described in clear and simple language, posted in public spaces, and advertised

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27 Gender And Judiciary: Selected Reading And Recommendation From Bosnia And Herzegovania, ADCFA, (2014)
through media that men and women can access, such as the television. Capacity building exercises should also equip officers to make the necessary adjustments to the tools, guidelines, or processes that fall under their responsibility. The patta ceremonies in West Bengal and Orissa are an example of a simple but innovative government effort supported by RDI to improve women’s effective access to land whereby male and female beneficiaries sign their patta and receive the document at a well-attended public act, ensuring not only that women’s rights are captured in writing, but also that women, and their families and their communities, know they have become landowners.

Second, it is essential to increase the representation of women at all levels of the Revenue administration. It is particularly important to ensure that there are women officers at the level of village patwaris and patels because these are the officers with whom rural women will need to have face to face interactions. In some cases, the most effective way to reach out to women might be to have officers or offices whose mandate is to focus on women. This is the case, for instance, of the Women’s Land Rights Facilitation Center in Orissa that was specifically created by the Revenue administration with support from RDI to improve women’s ability to gain rights to land.

**Recommendations for Hindu Women**

The Hindu Succession Act, 1956 along with the amendment 2005 the position has improved considerable but still the equity and equality remain elusive concept. Certain solutions can be

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31 Ibid.
32 Supra Note 27
33 Ibid.
Amendments of 15 of the Hindu Succession Act, 1956: The HSA in all its effort to provide uniform rule for the Hindu Community has retained the traditional Joint Family system and the Mitakshara Coparcenary which differentiate between males and female with respect to property rights. Further under the Current scheme of Hindu Succession Act there is different scheme of succession for men and women which promotes the prominent ideals of patrilineal and patriarchal society that women firstly after marriage belong to her husband family and secondly the property should continue to be inherited through the male line from where it came either back to their father’s family or to their husband’s family.

In the entire scheme of inheritance the heirs are referred to as husband heirs or fathers heirs and not as a woman own brother, sister or mother. A woman has been given no individuality.34 Furthermore she is treated as only a temporary occupier in the light of reverting the property to the source. There is a need to amend the current provision if women are to be accorded equality within the property law regime. A proposal was submitted by the Law Commission in 2009 in its 204 report to amend the section 15 of the HSA, 1956 in the light of the changing needs of the society. In this report the Law commission has suggested that in case of the self acquired property of the women dying issueless both her natal as a well as husband family should inherit equally as she belongs to both the family35 and to bring equality it is necessary that

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34 Poonam Pradhan Saxena –“Succession Laws & Gender Justice” In Archana Parashar, Amit Dhand, Refining Family Law In India (Routledge, New Delhi, 2008).
35 Section 15 Along With The Proposed Amendment Will Be: “The Property Of A Female Hindu Dying Intestate Shall Devolve According To The Rule Set Out In Section 16, -
(A) Firstly, Upon The Sons And The Daughters (Including The Children Of Any Pre-Deceased Son Or Daughter) And Also The Husband;
(B) Secondly, Upon The Heirs Of The Husband;
(C) Thirdly, Upon The Mother And The Father;
(D) Fourthly, Upon The Heirs Of The Father; And
(E) Lastly, Upon The Heirs Of The Mother.
Notwithstanding Anything Contained In Sub-Section Any Property Inherited By A Female Hindu From Her Father Or Mother Shall Devolve, In The Absence Of Any Son Or Daughter Of The Deceased (Including The Children Of Any Pre-
both the males as well as females should have same scheme of succession. Any discrimination based on gender cannot be allowed in the name of culture and society. To curb the menace of son preference in our society it is necessary to treat our daughters at par with son.

**Abolition of Joint family system:** it should be noted that in the initial draft of the Hindu Code Bill till 1945, there was agreement between the proposer that there is no need to retain the Hindu Joint Family System, it was only after partition that it was decided that joint family system shall be retained as with the changing societal conditions and attitude, it shall automatically fazed out.

According to Eleanor Newbigin the HUF has nothing to do with the ancient values or Joint family system and was introduced more as Tax haven and remain so. Furthermore after the amendment of 2005 all the classical features attributed to joint family has been either deleted or diluted to an extent that has no implication-introduction of daughters in the coparcenary, abolition of survivorship, etc. Also there is massive shift towards nuclear family and joint family system to a large extent has come to an end.

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Deceased Son Or Daughter) And Not Upon The Other Heirs Referred To In Sub-Section (1) In The Order Specified Therein, But Upon The Heirs Of The Father; And Any Property Inherited By A Female Hindu From Her Husband Or From Her Father-In-Law Shall Devolve, In The Absence Of Any Son Or Daughter Of The Deceased (Including The Children Of Any Pre-Deceased Son Or Daughter) Not Upon The Other Heirs Referred To In Sub-Section (1) In The Order Specified Therein, But Upon The Heirs Of The Husband; And If A Female Hindu Leaves Any Self Acquired Property, In The Absence Of Husband And Any Son Or Daughter Of The Deceased (Including The Children Of Any Pre-Deceased Son Or Daughter), The Said Property Would Not Upon Heirs As Mentioned In Sub Section (1) In The Chronology, But The Heirs In Category (B)+ (C) Would Inherit Simultaneously And If She Has No Heirs In Category (C), Then Heirs In Category (B)+ (D) Would Inherit Simultaneously And So On.

Thus with this most of the confusions and inequality can be solved—like confusion with respect to the self acquired and ancestral property,\(^{38}\) the problems and confusions with regard to notional partition\(^{39}\) as well as the nature of property in the hand of daughters\(^{40}\) and distinction done between different females— who are born within the family and who have been married in the family.\(^{41}\) Furthermore it will also put rest to all the cases with regard to the when the daughter was born or when the partition was done. In this regard the Kerala Model of 1975 can be used and modified.

**Restrictions on testamentary disposition:** One issue arises with testamentary succession under the Hindu law. A Hindu male or female has the right to make a will of all or any part of his/ her property, including of a share in the undivided Mitakshara coparcenary, in favour of anyone.\(^{42}\) This power of making a will works as a double edged sword. The right to will property gives the opportunity to male members to bequeath property to his widow and daughters and other female members. However, it is this same power which also gives the male members the right to disinherit his

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38 Self Acquired Property Or Self Acquisitions Generally Include The Property That The Deceased May Have Left Earned, I.E., His Salary Or Share In Profits Or What He May Have Received Through A Gift Or Will Or Through Inheritance From Another Relative Or By Way Of Lottery Etc. It Is Still Not Clear Whether This Self Acquired Property Can Form A Part Of The Larger Ancestral Property. There Is Also No Clear Definition Of Ancestral Property Available.

39 It Was Introduced By Legislature So The Share Of Wife Mother Be Enlarged And They Get Just Share In Whole Of Joint Family Property. Certain Discrepancies Still Exist As To The Interpretation Of The Concept Of Notional Partition

40 Questions Like Whether The Property Is Coparcenary In The Hands Of Daughter And Is She Capable Of Making A Coparcenary. Also In A Childless Widow Case How The Property Shall Devolve , Whether Doctrine Of Survivorship Is Applicable In Her Case Or Not. See Chapter Iv Of The Thesis For Details,

41 “This Has Altered The Fundamental Framework Of Mitakshara Coparcenary And A Daughter Is Now Inter Alia Capable Of Acquiring An Interest In The Coparcenary Property, Demand A Partition Of The Same, And Dispose Of The Same Through Testamentary Disposition. However, A Distinction Is Still Maintained Between The Two Classes Of Females- (A) Who Are Born In The Family And (B) Who Become Members Of The Joint Family By Marriage To Coparceners. The Former Now Have The Right By Birth In Coparcenary Property But The Latter Are Still Subject To The Same Law As It Stood Before The Amendment. Their Rights Over The Joint Family Property Continue To Be The Same, Like Maintenance Out Of Its Funds, A Right Of Residence In The Family House, Etc. So Essentially, Wives Married Into The Family Are Still Deprived Of Any Share In The Coparcenary Property As A Matter Of Right. On The Other Hand The Share Of The Daughter Would Diminish The Share Of The Wife Married To A Coparcener.”

42 Subject To Provisions Of Indian Succession Act, 1925
widow, daughters and other female members from inheriting any property at all. Once a valid will\(^ {43}\) is made for the whole of the property the rules of intestate succession are not followed.\(^ {44}\) Thus in this the principle applied in Muslim law could be followed in which a person cannot will more than 1/3 of the property. This way the shares of the other beneficiaries are protected.

*Removal of confusion with Regard to Agricultural Property:* By deleting the section 4(2) of the amendment has created confusion since the legislature has failed to provide any express provision that states or confirms the application of HSA to agricultural property over and above any state law that also deals with the same. These laws, which provide for prevention of fragmentation of agricultural holdings, fixation of ceilings and devolution of tenancy rights, apply to the inhabitants of the state uniformly, irrespective of their religion. For example, the whole of the agricultural land (unless otherwise provided) would be subject to a uniform law, and the religion of the land owner or the tenant, as the case maybe, will be of no consequence.

The deletion of Section 4(2) along with an implied presumption that after amendment the HSA would apply to all kinds of property including rights in agricultural land would now mean that a diversity would exist state wise with respect to laws governing agricultural property.\(^ {45}\) Moreover, as Saxena\(^ {46}\) points out “a conflict may also arise over central or state legislations that are diverse in content. Inheritance and succession is specified in list III, entry (v) while land is a state subject. Whether the Center is competent to legislate on agricultural land is itself a matter of dispute.

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\(^ {43}\) *Ibid*

\(^ {44}\) Section 30 Hindu Succession Act, 1956

\(^ {45}\) *Supra* Note 26

\(^ {46}\) *Supra* Note 34
Normally, if there is a subject on whom both Center as well as state can legislate, in case of conflict, the central legislation prevails.” But as provided under Art 256\(^{47}\) of the Constitution, the Center should be competent to legislate on it. This confusion is bound to crop up paving way for immense litigation in this area.

**Recommendations for Muslim Women**

*So therefore before* we decide that there is a need to bring changes in the present personal law, the true spirit of Islamic law and then what exactly are the demands of Muslim women in India is to be understood. Whether by providing equal share in the property the desired result be achieved.

It is to be seen that in our present society, Indian women are not in position take responsibility as well as the maintenance of a family. Majority of the female population is still dependent on the male. First what is needed is to reduce this dependency for which equal share is one way but it cannot work until there is a change brought in the mindset as well belief of the patrilineal society.\(^{48}\)

Furthermore the laws relating to dower and maintenance need to be unified and codified. The Supreme Court recently deciding a maintenance case\(^{49}\) categorically held that a divorced wife has a right to be maintained in similar fashion as when she was a wife. This proactive approach of judiciary can go a long way in solving interpretational issues of Islamic law.

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\(^{47}\) Article 256 Of The Constitution “Obligation Of States And The Union The Executive Power Of Every State Shall Be So Exercised As To Ensure Compliance With The Laws Made By Parliament And Any Existing Laws Which Apply In That State, And The Executive Power Of The Union Shall Extend To The Giving Of Such Directions To A State As May Appear To The Government Of India To Be Necessary For That Purpose


\(^{49}\) Shamima Faruqi V Shahid Khan  AIR 2015 SC 4651.
What is most required is that the Muslim women must overcome the patriarchal infusion of Islamic law to be able to assert their rights provided under Islamic law. Although the Qur'an and subsequently the Shari'a asserts difference between men and women, we also cannot ignore the Qur'an or the life of the Muhammad in the Sunnah and his relationships with his wives. Whether women can achieve equity under Islamic law will remain a question, particularly since the definition of equity also remains a question. Islamic women seemingly do not desire equity as defined by the feminist movement in the United States. What is desired is an adherence to the Shari'a. "Human rights principles regarding women as expressed in the International Bill of Human Rights are more consistent with the fundamental tenets of Islamic law."  

In order to counter the forces of culture and religion it has become imperative to understand true Islamic law and its principles in order to start discourse to bring about amendments and change the perspective of understood Muslim law. In Indian context a sincere effort is required to codify the Islamic law.  

Too much room for interpretation is leading confusion and injustice. A combine effort is required from the side of state, learned ulemas and representations from Muslim community including women representatives so as to give them voice as what are their specificities need and requirement. In this regard contributions made by different women organisations working in the field of improving the condition of Muslim women are very important.

52 Efforts Are Been Taken In State Of Tamil Nadu To Codify Islamic Law Within The Framework Of Quran While Keeping In Mind The Changes Social And Economic Conditions By Updating The Two Important Sources Of Islamic Law Ijma And Qiyas. The Same Effort Is Required To Be Taken At National Scale.
In the city of Lucknow itself there are three women organisations\textsuperscript{53} working of the betterment and upliftment of Muslim women and are breath of fresh air and provide solutions from the point of view of women- like making of model Nikahnama, taking cue from the problems faced by Muslim women.\textsuperscript{54}

Prof Tahir Mahmood in 2009 submitted a report \textsuperscript{55}to amend the Shariat application act 1937 titled “Diversity in the Application of Muslim law: A proposal for consolidation of existing legislation” to the Law Commission of India. The report basically after considering the shortcoming and problems of the Shariat Application Act recommended it to be replaced by new Act which will bring the Muslim Community to the mainstream. It basically provided for a inclusive definition of the word “Muslim”.\textsuperscript{56} It further provided for a definition of Muslim Law which shall include all existing legislative enactments and all enactments which may be enacted in future.\textsuperscript{57} It aimed at abolition of all customs and usages in contradiction to Quran as well as those which are also not allowed under the Hindu law. It basically aimed at forming a consolidated code on the line of Hindu code.\textsuperscript{58}

For this Lessons can be taken from other Muslim countries\textsuperscript{59} which have codified and reform Islamic law providing equal rights and opportunities to women. We need to understand that Quran is a constitution on whose principles laws can be made taking into consideration the need and requirement of present times.

\textsuperscript{53} Bazm-e-Khwateen, All India Muslim personal law Board and Niswane-e Khwateen.
\textsuperscript{54} See for detail Mengia Hong Tschalaer \textit{Muslim Women Quest For Justice Gender, Law And Activist, In India} (Cambridge University Press, 2017)
\textsuperscript{55} This Report Though Considered Wasnot Adopted Citingmuslim Sensitivities As Reason . It Was Regarded By Muslim Personal Law Board As A Way Forward For Implementing Uniform Civil,Code.
\textsuperscript{56} Tahir Mahmood, \textit{Muslim Law In India And Abroad} (Universal Law Publication, New Delhi, 2016).
\textsuperscript{57} Ibid
\textsuperscript{58} Ibid
\textsuperscript{59} Philippines, Sudan, Egypt, Turkey, Iraq, Iran, Syria And Many More. For Detail See Chapter VI Of The Thesis.
At last in regard to position of women in India, we have to see that India is a secular state not a theocratic state and she is not bound by philosophy of any, we have enshrined under our constitution the principle of equality as well as freedom of religion and conscience. However, religious freedom is at times incompatible with equal rights because religion does not always support rights like right to employment or the property rights. But it is to be noted that equality rights are greater rights than religious freedoms. You cannot take away basic human right of equality in the name of religion. It is against both the international and national obligation of the state. The call has to be from the legislature as well as judiciary if there can be amendments in Hindu Law, same can be made in Muslim Law.

To quote Justice Sujata V. Manohar of Supreme Court of India

"...It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society."