INTRODUCTION

The position of women in society is shaped and moulded by multiple social, cultural, political and legal factors. One such closely intertwined relationship exists between the kind of property rights granted to women in a social set-up and their resulting position in that society. The women globally have an inferior financial position than men and suffer human rights abuses.1

Women constitute about half of the population of world but everywhere around globe is governed by men, and not just the political administration but also in their homes and society.2 It is generally the man who has the final authority in all matters. The position and status of women in society has always been a contested issue. Women’s ubiquitous presence at the centre of politics is unprecedented and phenomenal.3 Yet the history as we know it begins with indifference to women.4 In the earliest of societies, as in most originally myths, men and women seem to be more or less equal. A group of social scientists have claimed that female deities were pre-dominant in the religions of the ancient world.5

It is with the maturity of religion that the position of women changed and she acquired an inferior position. She was seen as threat to male celibacy and a source of dangerous temptation.6 In most of the worlds religion women were believed to be of lower acumen and aptitude and to be dependent and in protection of men. “Christian wives were instructed to be obedient to their husbands. Muslim women were veiled

3 Ibid
4 Ibid.
from the eyes of strangers. Jewish women were denied the opportunity to study the Torah. Chinese and Hindu women were not to study the Confucian and the Vedas, respectively.”

Thus as the society changed, the attitude towards women also changed. Women gradually lose their equal place in the communal project of procurement and defence. Many lines of argument—biological, environmental, bioenvironmental, or sociological—have been offered to explain, to condemn, or to justify this phenomenon.

The women around the globe in the name of culture, values and religion as well as state, are denied basic social, economic and political rights. A women’s right over major decisions about her children’s future, place of residence, marriage, inheritance, employment and like have been severely curtailed in the most of the world during most of human history.

India as a whole is characterized by sharp gender disparities, although women’s status varies considerably by region and religion. On virtually all frontiers of human societal pursuits-economic, educational, scientific, legal, political, official, political and religious sphere Indian women suffer profoundly. For all time there are socio-cultural factors, which validate for the status of women in particular society. It is always culture (a set of collective experiences of ideas, norms, values and beliefs associated with a people) with its gender role inequalities and religion with its inherent patriarchy.

“*The family structure in India is patriarchal, patrilocal and patrilineal. Patriarchy denotes a culture of power relationship that promotes man’s supremacy and women’s subordination.*

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7 *Ibid*
8 *Supra* note 2.
10 *Ibid*
11 Flavia Agnes *Family Law and constitutional Claims* 2 (Oxford University Press, 2011)
subjugation.” It encompasses institutional endorsement of man’s ascendancy within
the family and other social structures. It is a justification of the normative process
pertaining to the recognition and sustainability of men dominance in society.

The family law or personal law as we understood in today’s world shapes virtually
every aspect of a woman's life. It determines her status from birth to marriage to
divorce and to own, inherit, and manage property. Unfortunately, family laws in most
of the world tend to maximize men's power over women and limit women's ability to
make decisions and take independent action.

General Overview

India is no exception; women are routinely denied basic human rights and face
indignities, humiliation and discrimination in every aspect of her life. Despite
modernization, women still are bereft of the advances in education, health,
employment, and economic participation, etc. A woman is always stuck in the
traditional and stereotypical role of nurturer and care-taker. The root cause of
women’s subjection is their economic dependence on men and, as long as women will
be denied for or deprived of economic independence, there cannot be equality
between sexes. Justice Krishna Iyer has aptly said “The fight is not for women
Status but for human worth. The claim is not to end inequality but to restore universal
justice.”

12 Ibid.
14 “A personal status system can be defined as a system in which members of various ethno-religious
communities, which are judicially recognized as such by central authorities, are subject to jurisdiction
of communal (rather than national or territorial) norms regarding matters such as marriage, divorce,
spousal maintenance, and inheritance.” See Yuzgel Sezkin “Women’s Rights In The Triangle Of State,
Law, And Religion: A Comparison Of Egypt And India” 25 Emory Int’l Review 1088 (2011)
15 Mala Htun and S. Laurel Weldon “State Power, Religion, and Women's Rights: A Comparative
16 Zoya Hasan and Ritu Menon, Unequal Citizens : A Study of Muslim Women in India,(Oxford
University Press, New Delhi 2006)
In the matter of property the Indian women still get less right both in quantity as well as quality than the men. The rights of women have evolved out of a constant struggle between the religionist and the secular forces. India is a home to diverse religion and all are governed by their own Religious personal Law\textsuperscript{17}, in family matters. As Plucknett observes: "the law of succession is an attempt to express the family in terms of property."\textsuperscript{18}

Therefore every religious community continues to be governed by its respective personal laws in property matters. In fact even within the different religious groups, there are sub-groups and local customs and norms with their respective property rights. Thus Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights,\textsuperscript{19} while Christians are governed by another code\textsuperscript{20} and the Muslims have not codified their property rights, the tribal women of various religions and states continue to be governed for their property rights by the customs and norms of their tribes. To complicate it further, under the Indian Constitution, both the central and the state governments are competent to enact laws on matters of succession\textsuperscript{21} and hence the states can, and some have, enacted their own variations of property laws within each personal law.\textsuperscript{22}

Despite having so much variety, what consolidate them, is that the cutting across all religion and region, women rights in property are unfair and unequal. In India the Constitution guarantees to all citizens have been guaranteed Equality and freedom all kind of discrimination\textsuperscript{23}; in spite of this the family law discriminate women in every

\textsuperscript{17} Supra note 14
\textsuperscript{19} Hindu Succession Act, 1956
\textsuperscript{20} Indian Succession Act, 1925
\textsuperscript{21} Succession falls in the concurrent list and land is the matter of state list.
\textsuperscript{22} Supra note 10
\textsuperscript{23} Article 14 of the Indian Constitution states; “Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
aspect. The Indian state follows the policy of non-interference within the personal sphere of individuals and communities, which has resulted further marginalization and interest of women.\textsuperscript{24}

The personal law are regarded as by-product of religion and thus there is a popular misconception about them that these laws are based on the religious text and are of divine origin, and hence are infallible, static and sanctimonious.\textsuperscript{25} But this is not true as it is not possible to have divine law, religious text most can only be regarded as source of law and not the actual law itself. The law as understood needs human intervention by way of interpretation, application and experience in order to be transformed in what constitutes as law.

Hence most of the laws regulating the familial and property relationship has its origin in either customary practices or are interpretation of the scholars of different text. Also there is a strong tendency of projecting all customary law as anti-women and all state enactments as pro-women. As Flavia Agnes\textsuperscript{26} observes “contrary to popular belief, the history of women right is not linear, with scriptures and customary law forming one end and statutory reforms slowly and steadily progressing towards the other. Women rights are not only constrained by patriarchal norms, but also shaped and moulded by several social, economic and political underpinnings.”

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\textsuperscript{24} Supra note 20

\textsuperscript{25} Supra note 12.

\textsuperscript{26} Ibid
Thus this exploration of property rights within the personal law regime is not only investigation of religious text but of colonial legislation and subsequent enactments. Property rights is itself a human right as without property rights women can never effectively exercise other human rights.\textsuperscript{27} Inequality in property rights is a major hindrance to correcting internationally recognized human rights violation faced by women. Without property rights, it is difficult for women to be individual economic actors.\textsuperscript{28} In order to survive, people who are not economic actors must attach themselves to people who are. In that situation, it is difficult, if not impossible, for a woman to exercise any right in a way that risks estranging her from that economic actor. This reality keeps women in an inferior position within marriages, families, and society.\textsuperscript{29}

The main purpose of the study is to understand that whether the centuries of deliberations, discussions and experimentation has resulted in what can be termed as women empowerment in the area of economic rights. Further an attempt has been made in this paper to demonstrate that the discriminatory laws are actually not result of any religious revelation but relates to distinction between the faith and the various manifestations of its practice which though very subtle but are extremely important. When a woman acquires financial freedom, she is able to unshackle constraints on her pre-existing legal rights, whether those rights are based in international human rights or Islamic fundamental rights of women or codified Hindu Law.

In India, even in the twenty first century the modern society has refused to give up traditional ideologies and continues to emulate and perpetuate the ancient


\textsuperscript{28} \textit{Ibid.}

\textsuperscript{29} \textit{Supra} note1.
understanding of roles and ownership pattern of material assets. A man continues to be the owner and provider and women dependent on him. 30 According to Saxena 31 despite granting inheritance rights to women of their husbands and fathers, the belief that men are the natural inheritor and women as share snatcher even when she demands her rightful share in the family is portrayed and accepted.

When it comes to giving women her rightful share in the property, is denied irrespective of her religion, region, caste or community. The Family law system whether in ancient, colonial or post colonial era has always been a project dominated by men both at the centre and on the periphery. 32 The women voices were predominantly missing and in their name men advanced his rights according to his needs and requirements.

The evolution of family law vis-à-vis property rights is situated within the patriarchal social structure, where discrimination against women is forgone conclusion. Sexual control is used to maintain the caste, clan and class purity. Punitive deterrent measure and denial of economic rights are means through which this is control is exercise. 33 The literature demonstrates that though the condition and position of women has changed and improved, the process is very slow and long-drawn. The fact remains that many cultures inheritance regulations provides little or very restricted rights to women. 34 In regard to the property rights of Hindu women, different ancient text has provided different dictates as to the property right of the women. While some gave her specific share, most of the authors restricted her right severely. However,

30 Ponam Pradhan Saxena, “Succession Laws and Gender Justice” in Archana Parashar &Amita Dhanda Redefining Family Law In India (Routledge, 2008).
31 Ibid
33 Supra note 13
34 Supra note 31
whatever might have been the recommendations of the Dharmashastras,\textsuperscript{35} there is no dispute about the fact that the interpretations and selective pickings of its provisions and the influence of customs placed severe impediments on the women’s property rights.\textsuperscript{36} The Hindu law of which succession laws forms an integral part is a combination of principles of shastras as applied and administered by the colonial courts in India.\textsuperscript{37} It includes pre and post independence statutes as well as judicial decisions.\textsuperscript{38} As till the middle of nineteenth century that traditional laws of succession according to the Mitakshara and Dayabhaga were applied throughout the country.\textsuperscript{39} Many scholars have studied that interaction between the gender, society and property rights and has irrefutable established that the position of women is determined both by the material as well as ideological structure within the society.\textsuperscript{40} Bina Aggarwal has by giving bargaining approach has highlighted the position of women in relation to succession and ownership. This approach allows for the “evaluation of economic and cultural factors as they determine the economic positioning.”\textsuperscript{41} Bina Aggarwal in her article while applying the bargaining approach had provided a base for understanding of why gender progressive laws even after their enactment remain obscure or a limitedly applied.\textsuperscript{42} According to her analysis despite the enactment of HSA,1956 , the struggle with regard to reforming inheritance laws continues as most of the women organisations which are concerned about the economic situation of women,

\textsuperscript{35} P.V. Kane, History of Dharamshastars: Ancient, Medieval Religious and civil Law, (Bhandarkar Oriental Research Institute, Poona 1941)\hfill
\textsuperscript{36} Poonam Pradhan Saxena \textit{Family Law lectures Family law II 3} (Lexis Nexsis, 2016).\hfill
\textsuperscript{37} DF Mulla \textit{Hindu Law}\hfill
\textsuperscript{38} Ibid.\hfill
\textsuperscript{39} Reena Patel \textit{Hindu Women Property Rights In Rural India}, (Ashgate, 2007)\hfill
\textsuperscript{40} Bina Aggarwal 1994 And 2002, Reena Patel 2007\hfill
\textsuperscript{41} Supra note 36 at 66.\hfill
are more interested in the employment, wages and small income generating schemes and the promoting individual property rights is relegated.  

Scholars had acknowledged that a root cause of problem with the Hindu Law is the concept of birth right and joint family system. Birthright by definition is a conservative institution, belonging to the era of feudalism, coupled as it was with the rule of primogeniture and the inalienability of land. When property becomes disposable and self-acquired, different rules of succession have to apply. It is in the making of those rules that gender justice has to be located.

According to Eleanor Newbigin the reform brought by the HSA, 1956 was in essence a shaped by competition between different groups of men, seen from their perspective. It was never concerned with the improvement of women rights within the property regime but was an attempt to improve and reconfigure the legal rights of Indian men. And according to her this is the reason that despite the guarantees and efforts of the state the inherent patriarchy present in the succession act makes gender justice an elusive concept.

Most of the studies regard the major reason for huge disparities in property rights are deeply rooted in tradition and week implementation of progressive laws. Most of the time women are denied their inheritance in name of society, honour and family. Provision of more equitable property rights to women has a concomitant effect of keeping in check various discriminatory practices prevalent in society. The law

43 Ibid.
44 Flavis Agnes, Law, Gender And Inequality, 20-21 (Oxford University Press, New Delhi, 2004). And supra note 36.
45 Eleanor Newbigin The Hindu Family and Emergence of Modern India (Cambridge University Press, Cambridge, 2013)
46 Ibid.
47 A 2011 FAO report highlights “the issue of existing gender asset gap. The report states that rural women in most developing countries are less likely to own land and control its produce. If women do have access to land, it is often of poorer quality and in smaller plots” (Food and Agriculture Organization [FAO], 2011).
commission in its 174th report released in the year 2004 has iterated the significant role played by gender neutral laws in curbing the menace of dowry. Gender neutral laws also have the potential to lead to decreased levels of domestic violence, while more equitable property rights help in strengthening a woman's position within a family unit, in particular, and the wider community, in general. The existing gender gap in the ownership of property is to a large extent responsible for perpetuating a culture of subservience for women and thus, resulting in their diminished status in social terms. This completely goes against the logic, proved time and again by multiple legal reports, that better economic rights for women lead to an improvement not just through increased confidence of the women concerned, but also through rising status of the entire family.

It is also crucial to acknowledge the direct relationship that exists between property rights and education. More equitable property rights guarantee better education opportunities for children and girls. This can be attributed to some extent to the fact that women with a command over property tend to have a greater decision making power within a family, and consequently, have a greater say on most major issues: from education of the children to marriages.

Equipping women with fair property rights also goes a long way in bringing down the burden imposed by dowry, which in turn has a positive effect on reducing the rate of


female infanticide.\textsuperscript{53} Promotion of female entrepreneurship is another positive side effect of granting women an equal share in ownership of property.\textsuperscript{54}

Perhaps the greatest personal capital that a woman gains along with equitable property rights is the promise of stability and security that comes with being financially independent in an inherently patriarchal society, which makes gender neutral property laws an important milestone in the path towards women empowerment in the long run.

Despite the constitutional guarantees and reforms in the succession law, the Hindu women condition remains deplorable, her quality of life keeps on deteriorating,\textsuperscript{55} crime against women are high.\textsuperscript{56} It is true that only economic rights cannot bring change in the condition of women, but researches had proved that better economic entitlements result in significant decrease in the crime against women.\textsuperscript{57}

The condition of Muslim women is worse than their counterparts, a Muslim women faces double discrimination of being a woman as well as of minority. The research on women rights under Islam is neither novel nor an easy task. In India itself there are several studies\textsuperscript{58} which have directly or indirectly touched upon the condition and status of women in Islam with respect to society, polity and familial relationship. But still there is dearth of data in understanding the nuances of property rights of Muslim

\textsuperscript{53}“The imbalance in sex ratios since independence has perhaps been the most well publicised aspect of gender inequality in India.” See Barbara Haniss-White, 'Gender-cleansing: the paradox of development and deteriorating female life chances in Tamil Nadu' 125-154 in R. Sundar Rajan & U. Butalia (eds.), Signposts: gender issues in post-independence India (New Delhi, 1998); R. Sundar Rajan & S. Irudaya, 'Persistent daughter disadvantage: what do estimated sex ratios at birth and sex ratios of child mortality risk reveal?’ 38(42)Economic and Political Weekly 4361-69 (2003); Law And Son Preference In India : A Reality Check (United Nation Fund Population 2013)

\textsuperscript{54}Supra note 51; Mapping Women’s Gains in Inheritance and Property Rights under the Hindu Succession Act, 1956” Lawyers Collective Initiative 2009;

\textsuperscript{55}Supra note 51

\textsuperscript{56}Crime in India 133-169 (NCRB, 2016).

\textsuperscript{57} Law And Son Preference In India : A Reality Check (United Nation Fund Population 2013); Sofia Amral “Do improved property rights decrease violence against women in India?” University of Birmingham (2012)

\textsuperscript{58}Zoya hasan, flavia agnes, tahir mahmood, kannibiran Cyra akira chodhary
women. Whenever there discussions and debate about the economic rights of Muslim women the debates are primarily around the maintenance and dower rights. The property rights of Muslim women are governed by the uncodified Muslim Personal Law in accordance to the Shariat Application Act, 1937. The Muslim personal law like the Hindu Law has its origin in the Islamic law and religion. To appreciate the development of these laws, a brief condition of Islamic Arabia is required. After the advent of Islam, Prophet of Islam bought numerous changes and reforms in the life of pagan Arabs with regard to their political as well as personal life. Prophet introduced Islamic Law through the Quran. The overall spirit of the law was embodied in reforms in the then existing practices, such as introduction of females heirs, prohibition of usury and abolition of female infanticide and forced marriages.

Islam has been criticized by most as having created a "male-dominated" society. But before venturing into the debate inequalities in Islam as well as in the inheritance laws, there is a need to understand the Islamic Society. The society of the pre-Islamic Arabia was based on the tribe system and was predominantly a male society, where women play minimum or no role in the political, religious, social or economic life of the tribe. Women had no status or place in the society and were used and abused like any other property.\(^{59}\) There was very limited concept of marriage as understood in the modern societies. Women were bought and sold and the consent of women were immaterial. Men were treated as masters and owned the body and soul of women.

The power structure was completely skewed; Men had all the power to either divorce or keep the wife. They used to divorce the wife and then call her back according to

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their whims and fancies. The concept of maintenance or upkeep was novel and in
gen general what was there was bride price- price paid to the women male relatives. The
birth of daughter was frowned upon as perceived as an incumbent and making female
infanticide a common practice. Women had no right to inherit and could only dream
of owning or disposing of property.\textsuperscript{60}

Islam brought revolutionary change in the condition of women. Qur'an through its
injection provided equal rights to women in each and every aspect of human life and
iterated that men and women were made from one soul and are equal in each and
every aspect.\textsuperscript{61} Prophet of Islam regarded marriage as sacrament union of two equal
partners who have rights and obligation towards each other. It was a contractual
obligation where consent, majority and dower were mandatory essentials.\textsuperscript{62}

The earlier practice of polygamy though allowed became restrictive and conditional
and Monogamy was made as a rule. The participation of women in divorce
proceeding became mandatory and maintenance was made obligatory on husband in
cases of divorce.\textsuperscript{63} the Women for the first time were given power to divorce on their
own terms.\textsuperscript{64} The prophet abrogated the practice of female infanticide and highlighted
the importance of daughters in his sermons. With rules of marriage and inheritance
the practice of inheriting a deceased widow was abolished and the women were given
the right to inherit as well as manage their own properties. Women were given share

\textsuperscript{60} Lamya Al Faruqi, \textit{Women, Muslim Society}, and Islam, 4 (New York University Press, New York
1988)
\textsuperscript{61} Ibid.
\textsuperscript{62} Id at 6.
\textsuperscript{63} Mary F. Radford “The Inheritance Rights of Women Under Jewish and Islamic Law” 23 B.C. Int'l &
Comp. L. Rev. 135 (2000).
\textsuperscript{64} Apart from right of Talaq provided to husband, women were given divorce rights in the form of
khula and talaq-e-tafweed. A mutual consent divorce was also introduced in the name of Mubaraat.
in their relative’s property and were treated as absolute owners.\textsuperscript{65} The women from being property became property owners.

In addition to a history of male interpretation and legislation, “the resurgence of Muslim fundamentalism in recent decades has had a profound impact on the status of women in affected societies. In general, countries in which fundamentalist rule has taken hold have adopted that severely restrict the rights of women to work outside the home to appear unveiled in public, and to protect their rights in the context of marriage and divorce.”\textsuperscript{66} Thus, in these male dominated cultures women rights are virtually non-existent. Yet, ironically, even these fundamentalist regimes illustrate a grudging recognition of women's innate power, as their motivating theory seems to be “that women harbour the seeds of destruction of all society and that to avoid this they and their sexuality must be carefully controlled.”\textsuperscript{67}

Islam made education an essential and mandatory obligation on every Muslim, this resulted in women becoming leaders in many fields, “including the intellectual pursuit of religious scholarship.”\textsuperscript{68}

Religion need to be understood in its own paradigm. Thus anyone wishing to understand Islam must first separate the religion from the cultural norms and style of a society. As according to Uzoamaka N. Okoye “Female genital mutilation is still practiced in certain pockets of Africa and Egypt, but viewed as an inconceivable horror by the vast majority of Muslims. Forced marriages may still take place in

\textsuperscript{65} Supra note 61
\textsuperscript{67} Id at 313.
certain Indian, Pakistani and Bangladeshi communities, but would be anathema to Muslim women from other backgrounds.\textsuperscript{69}

Therefore most Islamic feminists argue that women's rights under Islam cannot be made parallel the western movement for women's rights. "The majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments."\textsuperscript{70} These feminists have argued that the “Qur'an advances the rights of women and that Prophet Muhammad surrounded himself with independent self sufficient women. They argue that fatwas of jurists are in many ways diametrically opposed to Islamic teachings, the Qur'an and the Sahih Hadith of the Prophet Muhammad. Islamic feminists point to the many parts of the Qur'an that speak of the relations between the man and the woman as being that of mutuality and reciprocity.”\textsuperscript{71}

The verdict of Islamic jurisprudence is just the practical expression of the dictates of the faith. Women, according to Sharia, are counterparts of men.\textsuperscript{72} And in Islamic jurisprudence, there is no separate order of regulations for them. There are, however, few limited secondary regulations where a distinction is drawn between the two sexes.\textsuperscript{73} But these are intended purely to enable both of them to give a genuine


\textsuperscript{70} Supra note 61.

\textsuperscript{71} Id.at 313

\textsuperscript{72} “O mankind! Fear your Lord Who (initiated) your creation from a single soul, then from it created its mate, and from these two spread (the creation of) countless men and women.” (al-Qur'an, 4:1) “This Verse clearly expounds that man or women are created from a single entity and are basically equal genders. As a gender, one is not superior to the other. Further in another verse it is stated”. “And according to usage, women too have rights over men similar to the rights of men over women.” (al-Qur'an, 2:228) “This Verse denotes that rights enjoyed by men are the duties of the women and the duties of men are the rights of women. This implies a similitude between both the genders. There is no right conferred on man that woman may be deprived of because she is a woman.” For details see Abdur Rab Rediscovering Genuine Islam: The Case for a Quran-Only Understanding, (CreateSpace Independent Publishing Platform, 2014.)

\textsuperscript{73} This statement is in reference to following verses of the Quran “Men, however, have an advantage over them.”(al-Qur’an, 2:228) “Here the Qur'an refers to man’s superiority by virtue of his
expression of their faith in accordance with their respective human nature. Islamic feminists such as Azizah al-Hibri argue that “there must be a separation of Islamic law from that of Islamic culture to understand that women's rights can exist under Shari'a”. 74

Another problem faced with Muslim women is that Muslims are often wrongly perceived as a homogeneous block of people with uniform religious laws governing them. However, it is ignored that Muslims around the world have different practices, and have a large number of variations in laws governing them within different Islamic countries and regions. 75

In India Muslim personal law is not a divine law but a man- made law and is result of the colonial administration. Muslim personal law was applied to Muslim during the british regime as a matter of policy and not as matter of religion 76 As Patel points outs there are many diversions from the original Islamic law accepted in India like judges may not necessarily be Muslim or the punishment of adultery or apostasy is not death penalty. Further a Muslim as well as non-Muslim can marry without changing religion and their off-springs shall be legitimate. Thus it can be said that in India MPL

responsibility of protection and maintenance of woman and fulfilment of their rights. Nature has made him stronger, more responsible and tolerant with reference to mundane matters of life. So man is held superior to woman in the grade of responsibility.” The second verse is :“Men are guardians and managers over women.” al-Qur’an, 4:34) “Social and societal structure of Islam is based on family system which can be secure if made subservient to natural discipline. this Verse denotes support, protection and supervision according to the Arabic usage of the word Qawawam. The relation between rights and duties in Islam is reciprocal and cannot be compartmentalized. However, man has been made more responsible in connection with the performance of social and economic obligations. Maintenance of woman is the basic responsibility of man in the Islamic Law. At no place has this responsibility been placed on woman.” Thus the Quran do not really discriminate against women and that the verses that assign greater rights to men reflect a patriarchal context in which men were dominant and solely responsible for supporting women.” Supra note 73

75 Razia Patel “Indian Muslim Women, Politics of Muslim Personal Law and struggle for life with Dignity and Justice”, 44 Economic Political Weekly, 45 (2009)
76 Supra note 59
is not “non-negotiable” and there can be positive reforms to ameliorate the condition of women.77

Research Questions

The first question which comes to the mind is that whether the Hindu Succession (Amendment) Act, 2005 has achieved equality or is a contradiction to equality?
How far are we in true sense from achieving this goal of equal opportunity and equal freedom to women with respect to property?
Another important question to be looked upon is whether Islamic law provides equal economic and property rights to women under the Shariat, and whether the accusation made that it undermines the equality principle raised in the Constitution hold any water or there is deficiency in understanding a greater truth beyond what has been portrayed. Secondly whether there it is true that Islamic law and its derivative in Indian MPL are divine and un-amendable?
It is accepted fact that all religions are patriarchal in nature and promotes to an extent patriarchy, it need to be find out that whether the law is influenced by patriarchy and religion?
Another important question need to be delved on is the position of women in the Religious personal law. Whether women are treated as individual identity in the realms of personal laws?

Statement of Problem

Contemporary Indian society is a multicultural society with different groups of people having different personal laws. In India there laws have generated long debates with regard to gender equality as most of the Personal Laws gives women much fewer and restricted right to women than men, despite the constitutional guarantee of equality.

77 Supra note 76
The existence of RPLs is to allow religious inclusiveness, but the history of these laws in India shows that they have been used selectively as a tool of governance and often to the disadvantage of women. A lot of feminists had argued that various differences of identity—such as race, ethnicity, and sexuality—should be recognized and accounted for in the law for providing women better access to law. But in the case of India’s cultural pluralism, religious difference comes into conflict with gender equality.

Hindu code bill was enacted with the object of improving the condition of Hindu women and providing them with some rights. With the enactment of Hindu Succession Act 1956, and that 2005 amendment, it is common belief that a Hindu women is been given equal rights like men and that Hindus, being progressive in nature and amendable to social change with ease, place their women in a better position in comparison with their sisters under other personal laws. The question which plagues the mind are whether this proposition is true, whether giving birthright to women, daughter in particular without working out its consequences for all women bring gender equity. Is only giving daughters’ coparceners’ right bring the required change in the property rights of the Indian women?

The Muslim women are governed by the uncodified and outdated shariat application Act. The Islamic inheritance law is certainly not simple. As one Muslim saying goes, "knowledge of the laws of inheritance and its various shares constitutes one-half of all knowledge." Also in accordance with the certain local customs and traditions,

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Muslim women from the lower sections of society hardly get any inheritance, whereas the case of the upper class Muslim women is entirely different.79

Muslim women continue to struggle for their rights at the crossroads and margins of Indian and Indian-Muslim society. Though there could be said to some progress in Islamic law, Muslim women are still governed by separate code of religious family law that, which is neither codified and is outdated. Under this code, Muslim women continue to suffer the humiliations and disadvantages. Another feature of this code is that it is regarded to be God-made and divine and thus immutable and forever.

Inheritance has many complicated rules that are well defined within the Quran. Unfortunately in the past fourteen centuries of Islamic thought, most of the passages have been interpreted throughout by men.80 Also, prominent Muslim women have agreed to these interpretations. For instance, Islamist Nagwa Kamal Farid, (who was Sudan's first woman Islamic legal judge) believed that "inequities in inheritance are not detrimental to women since women never have to support themselves, this being the burden of men, and, therefore, it is right that men receive a larger share of inheritance." 81

Today, however, women do provide more familial support. Thus, the basic inheritance framework needs some adjustment. It can be argued that these traditional rules of inheritance create a biased and problematic scenario in the modern societies. And yet for the past several decades these have been defended by people on one or the other grounds. But truth is that all these defences are fundamentally flawed in its

79 Sona Khan :Indian Inheritance : A Perspective from India 27(2) India International Centre Quarterly, 140 (2000).
80 Supra note 6; Amina Wadud in her book Quran And Women : Rereading The Scared Text From A Women Perspective (OUP, USA, 1999).
81 Supra note 9
application to the modern realities as well as are far removed from the logical point of view. The view of male getting twice of female needs change and updating.

The rule of the Qur'an should not be interpreted as an eternally binding rule of law, but instead should be viewed in the context of numerous reforms that the Qur'an made improving the overall social status of women. ⁸²

On this reading of Qur'anic legislation, the aim of the Qur'an with respect to social relations was one of equality, but its specific rules represented the practical limit of how far such reforms could be taken in light of the circumstances of seventh-century Arabia ⁸³

**Objective**

The main objectives of the thesis are:

- To analyse the position of Hindu Women with regard to economic and property right after the Amendment of 2005 in the Hindu Succession Act 1956.

- To analyse the position of Muslim women with regard to economic and property rights in the Shariat law / Islamic legal system

- To present a feminist comparative review of property rights of Hindu, and Muslim women

Methodology

The research would be based on the Doctrinal method of research, confining to the library. It would involve study of books and commentaries particularly on the Hindu and Muslim Law, translations of Quran. The methodology adopted for the research is systemic review and Discursive. Though the research is doctrinal in nature, the researcher has done small empirical study to understand as to why even after so many reforms the concept of equity is elusive. For this purpose I gave questionnaire to 100 women from middle and upper middle class Lucknow, to understand the realities and application of the law. Though we see there are lot of descriptive study on the topic of gender, equality and property, there is dearth of empirical data. Furthermore there have been studies with regard to poor women and access to property; it is presumed that condition on the other side must be better. By this questionnaire I wanted to find some answers. This survey is no sense is conclusive, but a mere supplement to existing studies.

For the purpose of convenience and better understanding of the thesis it is important to conceptualize the research into two basic facets. Firstly, a descriptive study of existing legal framework in both Hindu as well as Muslim Law is taken and then going in to the suggestive reforms required for the better understanding.

Sources- The research would mainly focus on the primary sources like Statutes and Research Committee Reports and secondary sources like books, articles, journals, pending/decided cases, case controversies and news in magazines/web portals/news papers.
Overview of the chapters

This thesis has been divided into four parts and seven chapters. In the first part the position of Hindu women has been analysed from ancient to the modern India. In chapter I of the thesis a feminist analysis of socio-economic condition of Hindu women from ancient philosophy along with the analysis of concept of Stridhanam to colonial period is attempted. Its looks at the development of woman property right from ancient to the colonial India. Taking into context, different debates and social-political conditions which had resulted in number of social reform movements, and codification of Hindu personal Law in the last three decades preceding the partition and independence.

It looks at how colonial rule and partition served to shape the course Code Bill and women property rights in India. This chapter traces the ways in which colonial rule, inter-war debates and Indian legislators shaped the place of women in Hindi personal law by making them central focus of reform legislation. However the primary aim when looked closely in the name of women empowerment was to improve the rights and independence of individual Hindu men. The ultimate aim of all the reform was to protect the structure of male dominance in the family. This could be very well seen in the both the Hindu succession act 1929 as well as women property right act 1937. This chapter argues that the Hindu Law Reform as a medium was used not for the reform of Hindu women legal right but was an attempt to change from colonial patriarchy to North Indian Hindu Male Patriarchy. The second chapter traces how the partition and internal shifts within the political power of India affected the Hindu code bill debates and congress a Hindu majority party came to power which had remain ambivalent to Hindu code bill and was not even present during the debates. Thus
as a result the act which was enacted was more of symbol than the substance. It argues that the hsa1956 has created a network of property rights within which more abstract ideals of equality had to be mediated. Further it has analysed the Hindu succession amendment 2005 which had tried to tackle the issue of gender equality by making daughters coparcenary. This chapter in the light of recent judgements and reports tries to locate the problem within the property regime. Also a socio-legal analysis of the Act is done to understand the problem with regard to implementation and otherwise.

The second part of the chapter analyse the evolution of property rights of Muslim women in the Islamic law and its growth and development in the India. Chapter III traces the history of development of property rights within the Shariat. The intention of the study is to carry out a comprehensive analysis using the tools of critical scholarship to unravel the strength and weakness of Islamic Law in the treatment of women with respect to economic and property rights. Most of the Islamic scholars have argued that under Islam Men and women are equal and men have no superiority over the men. They have differentiated what they call as difference between equal and same. They contend that Islam has given women equal right and not same right. The chapter III includes an overview of the Qur’anic verses on inheritance, traditional rules of inheritance derived from those verses. It argues that Islam is not monolithic faith and there are varied interpretations of law dependent upon the school of law a person belongs to and the mode of interpretation used. The chapter further explores that growth and development of Muslim Personal in the Indian Sub-continent and how the formulation of different personal laws was result of the colonial conception of the Hindu and Muslim communities as oppositional, distinct and homogenous, and by the presumption that the primary source of law was the Koran for Muslims and the

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Shastras for Hindus. It argues that the Shariat application Act is neither divine nor amendable but just a derivative of colonial perception of understanding of Islamic Law and a man need to establish his supremacy within his familial relationship- most importantly with regard to property.

Chapter IV provides for a detailed discussion on the share of women in property under the Islamic law and how there is difference of understanding within the major school of laws under Islam and the examples of how those rules affect women, a sample of standard defences of those traditional rules and explanations of why the defences are problematic, potential prospects for reform, and examples of reform efforts from various Muslim countries around the world. Also a detailed study of Shariat Application Act and its fallacies is taken and what can be done and how it is possible to reform Islamic law as well as Muslim personal law.

In the last part of the chapter a comparison of the two laws are done in order to assess the position of women under both the schemes of succession. Chapter VI critically compares the two laws of inheritances and how the two laws treat women with respect to property and individuality. Whereas in the chapter VIII, a study of decision of different HC and SC are taken to highlight the inherent patriarchy within the judicial system, and that the requirement for improvement the rights of women is not just to have gender equal law but also unbiased judiciary and society.

In the final part of the thesis, recommendations have been given to bring about positive change in the women property rights in India.