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Rights of Muslim Women in Ancestral Property: Legal Challenges and Reforms

Dr. Neelam S. Dighe
Asst. Professor, Modern Law College Pune, India

Abstract: ***This article examines the evolving legal framework governing the property rights of Muslim women in India, focusing on ancestral property, inheritance, and economic security. Despite constitutional guarantees of equality under Articles 14 and 15, personal laws rooted in patriarchal traditions continue to restrict Muslim women to a lesser share of property, justified by gendered roles of financial responsibility. Through an analysis of statutory provisions, including the (Shariat) Application Act, 1937, and landmark judicial pronouncements. The article argues for reforms including a gender-just Uniform Civil Code, harmonization of inheritance laws, recognition of marital property rights, and enhanced legal literacy. By combining constitutional mandates, judicial activism, and legislative intervention, a pathway emerges to secure Muslim women's rightful economic and proprietary entitlements.***

Keywords: Hindu Succession Act, Muslim Personal Law, Ancestral Property, Married Women's Rights, Gender Justice, (UCC)

I. INTRODUCTION

Women's status in any society is a litmus test of its progress. In India, despite constitutional mandates of equality, women—particularly married women—continue to face barriers in claiming ancestral property. Historically, patriarchal structures entrenched in laws have limited women's inheritance rights. While reforms such as the *Hindu Succession (Amendment) Act,2005* sought to remove gender bias by making daughters coparceners, implementing the laws and awareness of the same remain uneven. Muslim personal law, though recognizing women as heirs, still accords women fifty percent share of men under Quranic injunctions, justified by traditional gender roles. "Women represent fifty percent of the global population, undertake two-thirds of the world's labor hours, earn ten percent of global income, and hold less than one-hundredth of the world's assets, as per the United Nations report on women (1980)"[1] Heritage rights are particularly important in granting and retaining ownership of family resources that affect the future generation's living opportunities.[2]Property law is one such grey area in which formal equality is still to be granted.[3]In India, the laws of succession are a strong patriarchal imprint until today and can be discriminatory, crossing personal laws. A prevalent image that arises in discussions over the women's rights is that of an uneducated, veiled, subjugated, and uninformed woman, accompanied by several children. A woman devoid of agency, subjugated to the caprices of her father, brother, spouse, or any other male relative. This reductionism and generalization primarily stem from Western conceptions of modernity and empowerment: a woman clad in a burqa is presumed to be oppressed and uninformed, regarded as property by her male counterparts, devoid of individuality or autonomy, in contrast to a modernly attired woman who is expected to be educated and cognizant of her rights and freedoms. Muslim women were definitely not meant to play a docile role in society. Rather, Islam established equality and dignity for both men and women. And, the personal laws, practices are against the very notions, injunctions and principles of Islamic law. Therefore, most Islamic feminists argue that women's rights under Islam cannOt be made parallel to the Western movement for women's rights. " Many Muslim women devoted to their faith would not attain freedom if international organizations or autocratic regimes impose a secular paradigm onto them externally or hierarchically."[4]

A. Muslim Personal Law: Equal Recognition, Unequal Shares

Women's right to inheritance under Muslim law, which is governed by the Muslim Personal Law (Shariat) Application Act, 1937.However, the Quranic principle generally grants women half the share of similarly placed male heirs (e.g., brothers receive double share of sisters).

[1]Basu, Srimati, She Comes to Take her Rights: Indian Women, Property and Propriety, State University of New York Press, 1999, p.7
[2]Mukhopadhyay, Maitrayee, Legally Dispossessed: Gender, Identity and the Process of Law, Calcutta:Stree, 1998, p.97
[3]Kapur, Ratna and Cossman, Brenda, Subversive Sites: feminist engagements with law in India, Sage Publications, 1995, p.133
[4] Leila P. Sayeh and Adriaen M. Morse. Jr. ," Islam and the Treatment of Women: An Incomplete Understanding of Gradualism," 30 Tex. IntI L.j. 311 (1995).

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This disparity is defended on the grounds of men's financial responsibility for the family, but critics argue it contravenes Articles 14 and 15 of the Constitution. Muslim women have more freedom over property they acquire on their own because there is no joint family concept, unlike Hindu law. However, social pressures often force them to give up their shares.

B. Inheritance of Women - Quran

Islam recognized her human attributes in any circumstance, whether as a wife, mother, sister, or daughter. She inherits some portion of the deceased relative's estate, a portion determined by her degree of kinship to the deceased. This is her rightful share, which cannot be appropriated or revoked; even if the decedent intended to disinherit her through a will favoring other relatives or causes, the law prohibits such actions. It is permissible for any proprietor to leave up to one-third of their estate in their will.

Thus, he may not impinge upon the rights of heirs, regardless of gender.

Mother: She is the all-time inheritor of the deceased's property, as her place falls under the Quranic heirs.[5]

II. CONSTITUTIONAL MANDATE AND JUDICIAL ACTIVISM

The Constitution of India enshrines equality through Articles 14, 15, and 21, empowering the State to enact special measures for women. Courts have progressively interpreted these provisions to bridge gaps in personal laws. In Joseph Shine v. Union of India (2019) 3 SCC 39, though unrelated to inheritance, the Supreme Court underscored the constitutional vision of gender equality, which should equally inform property rights. Judicial activism remains crucial in harmonizing personal laws with fundamental rights.

Judicial interpretations have often expanded Muslim women's economic rights, even if not directly in inheritance:

1) Mohd. Ahmed Khan v. Shah Bano Begum ((1985) 2 SCC 556) – The Supreme Court upheld a divorced Muslim woman's right to maintenance under Section 125 CrPC, despite personal law, emphasizing constitutional supremacy.
2) Daniel Latifi v. Union of India ((2001) 7 SCC 740) – Interpreted the Muslim Women (Protection of Rights on Divorce) Act, 1986, requiring husbands to make a "reasonable and fair provision" for the wife's future within the iddat period.
3) Shamim Ara v. State of U.P. ((2002) 7 SCC 518) – Invalidated arbitrary triple talaq, strengthening women's rights to maintenance and dower (mahr).
4) Bai Tahira v. Ali Hussain Fissalli Chothia ((1979) 2 SCC 316) – Held that payment of mahr does not absolve a husband from ongoing maintenance obligations under Section 125 CrPC.
5) Fazlunbi v. K. Khader Vali ((1980) 4 SCC 125) – Recognized a Muslim woman's right to retain property gifted or settled by her husband post-divorce.
6) Shabana Bano v. Imran Khan ((2010) 1 SCC 666) – Clarified that a divorced Muslim woman can claim maintenance beyond iddat under Section 125 CrPC.
7) Mohd Abdul Samad v. State of Telangana (2024) 2024 INSC 506 – The Supreme Court reaffirmed that even after the Muslim Women (Protection of Rights on Divorce) Act, 1986, a divorced Muslim woman may seek maintenance under Section 125 CrPC. This pivotal ruling established that secular law supersedes personal law and that maintenance beyond iddat is entirely attainable.[6]
8) Mansoor Saheb v. Salima (2024) 2024 INSC 1006 – The Supreme Court made it clear that under Mohammedan Law, a living owner cannot divide their property among successors for the rest of their lives as was thought.

The judgment stressed the conditions for valid gifts (hiba) and lifetime transfers, drawing important lines governing inter-vivos property redistribution in Muslim families.[7]

Though many of these cases center on maintenance and financial security rather than direct inheritance**,** they collectively reinforce constitutional protections for Muslim women's economic rights, laying the foundation for more equitable property entitlements.

III. RECOMMENDATIONS FOR REFORM

1) Uniform Civil Code (UCC): Implement a gender-just UCC, ensuring equal inheritance rights across religions.
2) Amend Sec.15 of Hindu Succession Act: Provide equal succession schemes for men and women and allow property devolved upon a woman to pass to her natal family if she dies intestate.

[5] Under the Islamic law{Hanafi system) there are three rypes of heirs: Quranic heirs o r Dhawul-Furud (Sharers), they are 12 in number out of which 7 are females. Agnatic Heir or Asabar (Residuar ies);
[6] Mohd Abdul Samad v. State of Telangana & Anr, *Criminal Appeal No. 2842 of 2024, Neutral Citation 2024 INSC 506 (India).*
[7] Mansoor Saheb v. Salima, *2024 INSC 1006 (India).*

3) Awareness and Legal Assistance: Implement legal literacy initiatives for women in both rural and urban areas to empower them in asserting their rights.
4) Judicial Sensitization: Specialized training for judges to handle property disputes involving women with a rights-oriented approach.
5) Secured Maintenance and Marital Property Regime: Recognize marital property rights and treat maintenance as a secured debt.

IV. CONCLUSION

Islam should be perceived as a social reform initiative by Muhammad aimed at educating the savage Arabs on the principle of humanity & the importance of respecting all individuals, including women and the defenseless. The Prophet of Islam facilitated the liberation of women and was a comprehensive social reformer. What he initiated marked the commencement of reform rather than its conclusion; the Prophet of Islam championed the concept of equality throughout his life. During the final sermon during Hajj, he explicitly articulated " All human beings come from Adam and Eve, and no Arab holds superiority over a non-Arab, nor does a non-Arab hold superiority over an Arab. Similarly, no White person is superior to a Black person, nor is a Black person superior to a White person, except on the basis of piety and righteous deeds. Every Muslim is regarded as a brother to another Muslim, and together, they form a single community of brotherhood. Nothing that belongs to a fellow Muslim is lawful for another unless it is given willingly and without coercion."[8]

In India, it is unfortunate that married and separated women dont have same ownership rights as men when it comes to their property and assets acquired during their marriage. Although there are personal laws in place to protect Indian women, they dont ensure that married women have right to claim marital property. It refers to the property that is acquired by one or both spouses while they are married. Unfortunately, even after seventy years of independence, the law still does not recognize the contributions that women make to the household or their conduct within the home.

Islamic inheritance laws are more complex than the pre-Islamic system of intestate succession. Therefore, implementing secular principles in inheritance matters will facilitate the process. It is essential to ensure gender equality in inheritance, and discriminatory practices under the sharers and residuary systems should be eliminated.

To empower women, it is imperative to enhance awareness of laws through educational institutions, public awareness initiatives, and legal education programs; additionally, it is essential to sensitize the judiciary, administrators, and legislators on the implementation of laws in both letter and spirit.

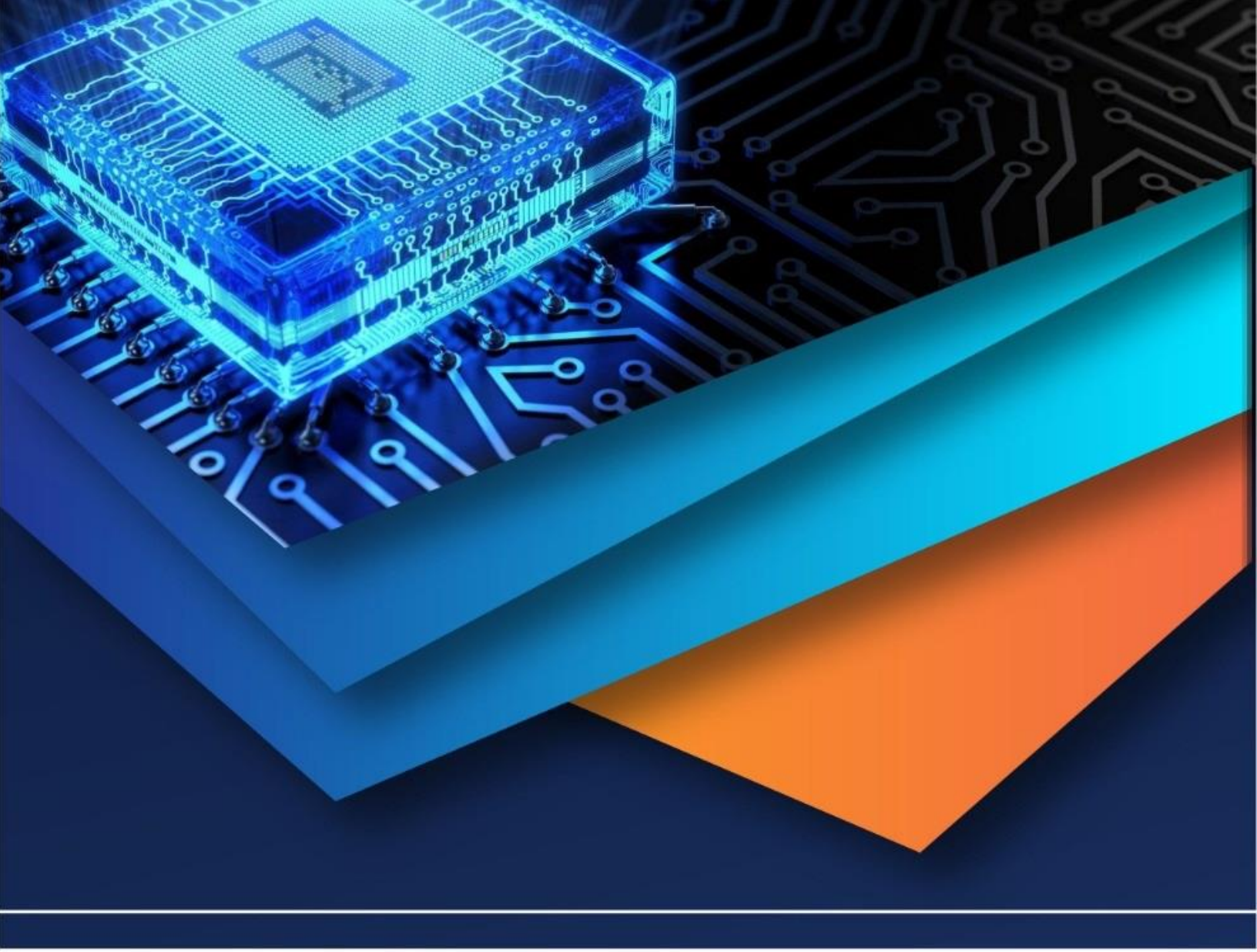
The challenges are substantial, originating from societal factors and necessitating political will; yet, a beginning must be established, and despite the fear of obstacles, women's dignity cannot be compromised.

Despite legal reforms, patriarchal practices continue to undermine married women's rights in ancestral property. Constitutional principles, progressive judicial interpretations, and legislative reforms must converge to ensure substantive equality. Only with a combination of legal enforcement, societal awareness, and uniform laws can gender justice in property rights be achieved.

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