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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

BETWEEN FAITH AND FUNDAMENTAL RIGHTS: A GENDERED ANALYSIS OF MUSLIM INTESTATE SUCCESSION RIGHTS IN INDIA

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ABSTRACT

An injustice, both inherited and persisting, has been shaking the roots of existence of women belonging to Muslim community, eloping the constitutional scrutiny. Unequal shares in division of property among men and women in intestate succession is causing a tremendous social divide. The rules of Intestate succession governing Muslim community in India, through its discriminative treatment of women, curtails her right to inherit property in equal footing to their male counterparts. This practice which is argued to have its roots in Holy Quran, is, in my findings, actually rests upon several later hadiths and therefore, continuation of this practice in fact defeats the very object of gender equality propounded by Holy Quran. The religious roots of this practice, along with the legal provisions existing now are discussed in detail. Further the scope of considering personal laws under the litmus test of constitutionality is analysed. Finally, the interplay of faith and fundamental rights and the core argument of violation of fundamental rights enshrined in the constitution of India is substantiated. The conclusion chapter carries various reports from trusted news sources highlighting the ongoing historic battle of Muslim women for equal inheritance rights.

INTRODUCTION

Law is a double-edged sword, capable of both nurturing a thriving society and eroding its foundations. When maintained in a dynamic and ever-changing flow, which never flood over the precious gems of collective wisdom it acquired over time, law is the most effective of all the weapons yet discovered to make a nation powerful. However, if its stagnant with too much of

hesitation to change in terms with the new realities, law has truly no purpose to serve, but remain in books as meaningless letters.

The biggest source of strength for Indian Constitution and legal system is our eternal acceptance of change. Indian Judiciary has always embraced changing society and its fluid norms. As *Krishna Iyer J* reminded, law is meant to serve the living and does not beat its abstract wings in the jural void, its functional fulfilment as social engineering depends on its sensitised response to situation, subject matter and the complex realities which require ordered control.¹ Therefore, judges must never forget that every law has a social purpose and engineering process, without appreciating which justice to law cannot be done.²

The fundamental right jurisprudence has eventually evolved to be a touchstone of constitutional morality. Rules that pass through this litmus test maintains our constitutional position of equality and liberty across the pluralistic social structure of our nation. Hence not a single norm of this nation shall be left untouched by the question of fundamental right violation. One such arena which calls for urgent attention is the laws of intestate succession governing Muslim Community in India.

An injustice, both inherited and persisting, has been shaking the roots of existence of women belonging to Muslim community, eloping the constitutional scrutiny. Unequal shares in division of property among men and women in intestate succession is causing a tremendous social divide. Property rights is not merely limited to monetary benefits, but it carries an expanded meaning of social dignity. Surpassing the clear violation of Article 14 and 21, a norm which is not truly the essence of Holy Quran, which is already been discarded by many countries, is still persisting as a law of the land in this secular nation.

Law cannot stand upon the weeps and tears of the intended beneficiaries. Making it a tool for state sanctioned discrimination is victimising many in this country. Real life victims are revealing their

¹ Board of Mining Examination v. Ramjee, (1977) 2 SCC 256.

² *Id.* at 1.

stories and fighting battles with law and religion across the nation, especially in Kerala. Activists like PP Suhara and many organisations are in the forefront.

Covering the religious roots of intestate succession rules with Quranic references would reveal the non-Islamic roots of this rule. Detailed discussion of the same along with its perspectives of violation of equality clause and nuances of meaningful life sum up the scope of this study.

INTESTATE SUCCESSION RULES IN MUSLIM PERSONAL LAW: AN OVERVIEW

The law of succession is considered by Prophet Mohammad as ‘half of the important knowledge about Islam’.³ Muslim inheritance law is considered simpler as compared to other personal laws for three reasons- firstly, it does not distinguish between self-earned and ancestral property. Secondly, there is no distinction b/w movable and immovable property and finally, the law has remained unchanged for a long period of time.⁴ Intestate succession rules of Muslim community in India is governed by the Quranic tables and The Muslim Personal Law (Shariat) Application Act, 1937.⁵

A Muslim’s heritable property is what remains after the payment of charges including⁶:

- (a) Funeral expenses of the deceased to a reasonable amount together with death-bed charges, including fees for medical attendance and boarding and lodging for one month previous to his death;
- (b) The expenses of obtaining probate or letters of administration;
- (c) The wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant;
- (d) All debts of the deceased; and
- (e) The legacies left by the deceased provided they do not exceed the bequeathable third, unless the heirs consent thereto after the testator’s death.

³ SIR WILLIAM JONES, AL SIRAJIYYAH OR THE MOHEMMADAN LAW OF INHERITANCE: WITH A COMMENTARY (12th ed., Kissinger Publishing Co., 2009).

⁴ 2 Dr SARASU ESTHER THOMAS, BM GANDHI’S FAMILY LAW 132 (2nd ed., Eastern Book Company, 2023).

⁵ The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

⁶ SARASU ESTHER THOMAS, *supra* note 58, at 30.

On the death of a Muslim ancestor, the heir takes a 'vested interest'⁷ in the share he is entitled to even before distribution, so that if the heir dies before distribution his share would pass to his own heir at the time of his death.⁸ The share which vests in the heir at the moment of the ancestor's death is called 'vested inheritance' and may be dealt with by the heir at his pleasure.⁹ A vast majority of Muslims in India follow *Hanafi* doctrines or Sunni law and the courts also presume the same unless the contrary is proved.¹⁰

Hence, once a Muslim dies, after making payments enlisted above, the property would devolve upon the heirs. Under Muslim law, successors to intestate property are divided into three classes¹¹

- (a) Class I heirs or Koranic sharers or *Zawil-Furud*
- (b) Class II heirs or residuaries or agnates or *Asaba*
- (c) Class III heirs or distant kindred or cognates or *Dhawu'l- Arham*

Class I heirs are the Koranic heirs of a deceased, i.e. persons declared as heirs by the Koran who are primary beneficiaries of a deceased person and are his/her immediate heirs. Class II heirs are referred to as residuaries as they take up the property after Class I heirs. Class III heirs or distant kindred include heirs related through females of the family called cognates. In fact, there are some relatives in this class who are closer in relation than the ones mentioned in Class II or agnates but they are put in the last class just because they are related through females.¹²

According to the rules of inheritance, sharers receive their designated portions of the estate first. If any estate remains after the sharers have been allocated their shares, this residue is then distributed among the residuaries, who are eligible to inherit only when the sharers' portions do not exhaust the entire estate or when there are no sharers at all. In the event that there are no heirs from either the sharers or residuaries, the estate is passed on to distant kindred. It is important to note that in Sunni law, preference is given to agnates (relatives through male lineage) over cognates

⁷ The Transfer of Property Act, 1882, § 19, No. 4, Acts of Parliament, 1882 (India).

⁸ *Jawai v. Hussain Baksh*, AIR 1922 Lah 298.

⁹ SARASU ESTHER THOMAS, *supra* note 58, at 30.

¹⁰ *supra* note 30, at 24.

¹¹ SARASU ESTHER THOMAS, *supra* note 58, at 30.

¹² Raajdwip Vardhan, *A Comparative Study of the Laws of Succession for Women in India*, 4 NLUO SLJ 1-10 (2019).

(relatives through female lineage) in matters of succession, with most cognates falling into the category of distant kindred.¹³ Sunnis do not interfere with the order of Koranic sharers and follow the order that has been laid down in the Koran strictly.

Women occupy unique position in inheritance in Muslim law. An only daughter takes one-half of the property and when there is more than one daughter, they take two-thirds between themselves. However, if there is a son, he excludes the daughter as a sharer and she takes with him as a residuary, getting half the share of a son. When there is a female taking as residuary with a male, the male takes double the share. Thus, if the heirs are a son and a daughter, the son will take two-third share and the daughter, one third share. If there is no son, the sole daughter will get half the total share and the left over passes on to the residuaries like father, grandfather, full brother etc.

In simple terms, a daughter is entitled to only half the share received by the son i.e., when there is a son, daughter becomes residuary. If the deceased is not survived by son, or grandson or father or grandfather, i.e. none amongst the Asabat, then the brother, and in the absence of brother his son, and in the absence of son, his grandson will be entitled to share in the inheritance as Asaba and the female would also join them in share claiming half of the share as compared with male.

A wife is entitled to share of $\frac{1}{4}$ th of the property of the husband, if childless and $\frac{1}{8}$ th share if there are children. Whereas husband is entitled to half the share of the property of wife, if childless and $\frac{1}{4}$ th share in case there are children. A full sister has a fixed share of $\frac{1}{2}$ but in the presence of a full brother, she becomes a residuary.

Similarly, full sister takes one half share when there is one sister and two-thirds when there are two or more of them. The presence of a child or child of a son or father or true grandfather or brother leads to her exclusion. It is only with a brother that she takes as a residuary.¹⁴

¹³ D.F. MULLA, PRINCIPLES OF MAHOMEDAN LAW (20th ed., LexisNexis, 2014).

¹⁴ NJ COULSON, SUCCESSION IN THE MUSLIM FAMILY (1st ed., Cambridge University Press, 1971)

The very essence of these words are stark violation of gender equality. A man is constantly overruling the rightful claim of a woman solely on the basis of gender. Simply because of not having a son of their own, a follower of Islam is forced to leave their property to the hands of their distant relatives, with a nominal share left to their own daughter whom they raised for a lifetime. A wife has substantially half the claim over her deceased husband's property as that of the claim a man has over his deceased wife's property. A sister of blood-relation is excluded from property rights for the reason of having a brother or a distant male relative. The roots of these laws and their current implication is a matter which need in depth understanding.

RELIGIOUS ROOTS OF INTESTATE SUCCESSION RULES

The pre-Islamic social structure in Arabia was barbaric and oppressive with attributing no due respect to the feminine. Islam, in its early stages, may well have been a social movement which, among other things, sought to abolish these practices. In making men responsible for the support of their wives and children these severe pre-islamic practices ceased to exist.

Sayed Ameer Ali described the Muslim woman's legal status most succinctly: *"The social immunities she enjoys, allow the fullest exercise on her part, of the powers and privileges which the law gives to her. She acts, if sui juris, in all matters which relate to herself and to her own property; in her own individual right without intervention of husband or father. She enters into valid contracts with her husband and her male relations, on a footing of equality."*¹⁵

Mumtaz Ali, an Islamic theologian also held that men and women were of the same species and there was no necessary connection between physical strength and the ability to reason. He reinterpreted the much-quoted verse from the Quran that was considered the basis for the traditional justification of men's authority over women. According to the Quran, *"Men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they have expended of their property. Righteous women are therefore obedient"*.¹⁶

¹⁵ SYED AMEER ALI, THE SPIRIT OF ISLAM: A HISTORY OF THE EVOLUTION AND IDEALS OF ISLAM WITH A LIFE OF THE PROPHET (2nd ed., Books for All, 2010).

¹⁶ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 34.

For him, this verse only dealt with the areas of activities like business transaction where men had greater knowledge than women did, but it did not declare that women should be subordinate to men in all spheres of activities. In the case of court witnesses that the testimonies of two women were equal to that of one man, Mumtaz Ali argued that the Quran referred specifically to business matters in which women might be less experienced than men. This lack of experience, however, was the result of social conditions, and not an inherent defect in women's character. He argued that with the advance of civilization and the emergence of modern institutions of government, the ruler must have the understanding and compassion in order to gain the confidence of the ruled.¹⁷

From a material as well as spiritual point of view, Islam recognises the position of women to be the same as that of man. The Prophet himself gave several 'glowing tributes' to women, for he said: "*Paradise lies at the feet of mothers*".¹⁸ He even gave women a potential superiority over men when he said: "*the most valuable thing in the world is a virtuous wife*".¹⁹

A good deed is rewarded in the same manner whether the doer is a male or female. Revelation is granted to men as well as to women. A Muslim woman is recognised as equal to a man in the matter of earning money and owning property. She may, if she wants to, follow any profession, "*men shall have the benefit of what they earn and women shall have the benefit of what they earn*".²⁰

Furthermore, she has full control over her property and can dispose of it as she likes. In private life Koran bestows equal rights on both sexes. "*And they (women) have rights similar to those against them in a just manner*".²¹ The functions of men and women are quite distinct and each is entrusted with the functions which are best suited for his and her nature. The man is recognised as the stronger, enabling him to face the heavier struggles of life, while the women is best suited in an agrarian milieu to bring up children. Moreover, women are recognised for a preponderance of the

¹⁷ *supra* note 52, at 27.

¹⁸ 1 SUNAN AN- NUSA'I, THE BOOK OF JIHAD, 25 HADITH 3104

¹⁹ 1 RIYAD AS- SALIHIN, THE BOOK OF MISCELLANY, HADITH 280

²⁰ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 32.

²¹ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 228.

quality of love in them.²² Thus, sexual roles complement each other and are of equal status. The sexual division of labour is defined then as complementary without subordination.²³

Sanya Saleh in her study asserts that the 'surah', 'hadith' and 'sharia' do not ascribe to men a superior status. The contemporary position of women in the Muslim world is low because of extra-Islamic conditions. This low status is attributable to the abuses of Islamic law on the part of males. It is not the fault of Islam as such, but rather a failure to carry its true teachings into practice.²⁴ Hence, it is evident that gender discrimination and the subordination of women are not inherent to the ideology of Islam. In fact, Islam emerged as a revolutionary force that sought to overturn the gender injustices prevalent at the time.

Before the spread of Islam, comradeship in arms was the main ground of succession and consequently women and children who could not bear arms were excluded from inheritance.²⁵

However, this was modified later and women were also entitled to a share in property. This can be understood from a *Hadiths* wherein a woman came asking the Prophet that they (widow and daughter in the absence of son) would not get a share and remote uncles could get.²⁶ This social necessity was the reason behind introduction of new Koranic heirs and residuary heirs by the Prophet.²⁷ That is, Prophet himself set the precedence wherein customary laws may be changed in order to ensure social justice.

In Islamic legal literature, the distribution of inheritance is known as the science of *Faraidh* as in the *hadith* the Prophet said: "*Learn and teach the Al-Quran to others, also learn faraidh and teach*

²² HOLY KORAN, AR-RUM, CHAPTER 30, VERSE 21.

²³ Saneya Saleh, *Women in Islam: Their Status in Religious and Traditional Culture*, 2 International Journal of Sociology of the Family, 35-42 (1972).

²⁴ *supra* note 52, at 27.

²⁵ IMAN JAUHARI & MUHAMMAD ALI BAHAR, HUKUM WARIS ISLAM OR ISLAMIC INHERITANCE LAW (10th ed., Yogyakarta, Deepublishing, 2021).

²⁶ RONALD KNYVET WILSON, ANGLO MUHAMMADAN LAW: A DIGEST (10th ed., Kessinger Publishing, 1921)

²⁷ SYED KHALID RASHID, MUSLIM LAW (6th ed., Eastern Book Company, 2020).

it to others".²⁸ Inheritance and *Faraidh* are studies of the distribution of assets of people who have died according to the number of shares that have been determined".

The framework for the inheritance laws is primarily outlined in the Quran, particularly in *Surah An-Nisa* (Chapter 4). It can be summarized into six percentage parts, namely half (*nisf*), one quarter (*rubu*), one-eighth (*tsumun*), two-thirds (*tsulutsani*), one third (*tsulus*) and one-sixth (*sudus*).²⁹

Koran is not exhaustive as far as the rules of inheritance are concerned and where the Koran is silent, pre-Islamic customs come into play.³⁰ This is clear from the passage of the Koran which only states that when a man or a woman dies, his or her kindred should take some share of the property of the deceased. Further, who will be entitled to what share is mentioned in Koran.

Verse 11 of this *Surah* provides specific guidelines regarding the distribution of inheritance. It says:

*“Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. Be fair to your parents and children, as you do not fully know who is more beneficial to you. This is an obligation from Allah. Surely Allah is All-Knowing, All-Wise.”*³¹

This means that sons inherit twice the share of daughters. If the only children are two daughters, they inherit two-thirds of the estate. A single daughter receives half of the inheritance. If the parents are alive, they are each entitled to one-sixth of the inheritance if there are children. In the absence of children, and if the parents are the only heirs, the mother receives one-third, with the remainder

²⁸ ABU HURAIRAH, SUNAN IBN MAJAH, HADITH NO. 2719 <https://ahadith.co.uk/permalink-hadith-10091> (last visited on 10/06/2025)

²⁹ DAVID S. POWERS, *STUDIES IN QUR'AN AND HADITH: THE FORMATION OF THE ISLAMIC LAW OF INHERITANCE* (Berkeley: University of California, 1986).

³⁰ SYED KHALID RASHID, *supra* note 61, at 30.

³¹ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 11.

going to the father. If there are no children but the deceased has siblings, the mother receives one-sixth. All these distributions occur after the payment of funeral expenses and debts.

With regard to the share of spouse, the Verse 12 says:

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.”³²

Widowers inherit half of the property if there are no children, and a quarter if there are children. Widows receive a quarter of the property if there are no children, and one-eighth if there are children. In the absence of ascendants (parents) or descendants (children), siblings inherit one-sixth of the property, and if there are two or more siblings, they share one-third of the estate if there are no parents or children.

Verse 176 talks about inheritance of sisters:

“They ask you for a ruling, O Prophet. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs].” If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters [or more], they will have two-thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah is Knowing of all things.”³³

If a person passes away without ascendants or descendants (referred to as a "kalalah") and has only one sister, the sister will inherit half of the estate. If a widow dies without any children and

³² HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 12.

³³ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 176.

leaves only one brother, the brother inherits the entire estate. If a person leaves behind only two sisters, they will inherit two-thirds of the estate. In cases where there are both male and female siblings, the males will receive twice the share of the females.

Sunnas and *Ahadis* are also sources of Islam wherein what is said and done by Prophet is made a source of law. *Sahih Muslim* is a collection of sayings and deeds of Prophet Muhammad. *Abul Husain Muslim bin al-Hajjaj al-Nisapuri*, an ancient scholar lived a couple of centuries after the Prophet's death who collected *Sunnas* and *Ahadis* observed female inheritance as follows:

*“Jabir b. 'Abdullah (Allah be pleased with him) reported: Allah's Apostle (may peace be upon him) and Abi Bakr (Allah be pleased with him) visited me on foot in Banu Salama, and found me unconscious. He (the Holy Prophet) called for water and performed ablution and sprinkled out of it (the water) over me. I felt relieved. I said: Allah's Messenger, what should I do with my property? And this verse was revealed: "Allah enjoins you concerning your children: for the male is equal of the portion of two females."*³⁴

In *Sahih Bukhari*, *hadiths* collected by *Abu Abdullah Muhammad bin Ismail bin Ibrahim bin al-Mughira al-Ja'fai*, these principles were reiterated as real-life cases and calculations made by Prophet.³⁵

To sum up, the analysis of the religious roots essentially postulates the fact that, the second class treatment of women with regard to inheritance rights cannot be justified on religious grounds. It was introduced in a peculiar context of war-torn Arabia, where Prophet allocated more share to men who were bound to take care of many female dependents. This rationale has lost its relevance in the contemporary world, reform this norm is not at all contrary to the principles of Islam, rather it aligns with the very concept of social justice that Prophet Muhammad advocated.

What is inscribed in *Quran* is limited to first class heirs, and gender biases majorly comes into play when it's about class II heirs.

³⁴ ABUL HUSAIN MUSLIM BIN AL-HAJJAJ AL-NISAPURI, *SAHIH MUSLIM*, BOOK 11, CHAPTER 2, NUMBER 3932.

³⁵ ABU ABDULLAH MUHAMMAD BIN ISMAIL BIN IBRAHIM BIN AL-MUGHIRA AL-JA'FAI, *SAHIH BUKHARI*, BOOK 80 VERSE NO. 716-762.

PERSONAL LAW UNDER LITMUS TEST OF CONSTITUTIONALITY

The traditional jurisprudence wherein personal laws were held immune from test of constitutionality has changed over time.

In the case of *Sri Venkataramana Devaru v. State of Mysore*³⁶ it was held that the meaning of the phrase 'subject to the provisions of this Part' in Art. 25(1) was interpreted to conclude that the other provisions of Part III would 'prevail over' and would 'control the right conferred' by Article 25(1).

In *A S Narayana Deekshitulu v. State of AP*³⁷ it was observed that: "*Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane human activity was not intended to be protected by the Constitution under the guise of religion. Therefore, the right to religion guaranteed under Art 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity- economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State.*"

In the judgement of *State of Bombay v. Narasu Appa Mali*³⁸ it was opined that "*a sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practice run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practice must give way before the good of the people of the State as a whole.*"

Following the essential religious practice test, the court in *Shayara bano v. Union of India*³⁹, by a split verdict of 3:2 held that triple *talaq* is not an essential part of Islam, therefore

³⁶ Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895.

³⁷ A S Narayana Deekshitulu v. State of AP, (1996) 9 SCC 548.

³⁸ State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

³⁹ *supra* note 30, at 24.

unconstitutional. Again, the issue of essential religious practice came for consideration of the court in *Indian Young Lawyers Assn. v. State of Kerala*⁴⁰ in which on settling the issue of essentiality of a religious practice Chandrachud J observed: “*In determining the essentiality of a practice, it is crucial to consider whether the practice is prescribed to be of an obligatory nature within that religion. If a practice is optional, it has been held that it cannot be said to be essential to a religion. A practice claimed to be essential must be such that the nature of the religion would be altered in the absence of that practice. If there is a fundamental change in the character of the religion, only then can such a practice be claimed to be an essential part of the religion*”.

From a material as well as spiritual point of view, Islam recognises the position of women to be the same as that of man. The Prophet himself gave several ‘glowing tributes’ to women, for he said: “*Paradise lies at the feet of mothers*”.⁴¹ He even gave women a potential superiority over men when he said: “*the most valuable thing in the world is a virtuous wife*”.⁴²

A good deed is rewarded in the same manner whether the doer is a male or female. Revelation is granted to men as well as to women. A Muslim woman is recognised as equal to a man in the matter of earning money and owning property. She may, if she wants to, follow any profession, “*men shall have the benefit of what they earn and women shall have the benefit of what they earn*”.⁴³

Furthermore, she has full control over her property and can dispose of it as she likes. In private life Koran bestows equal rights on both sexes. “*And they (women) have rights similar to those against them in a just manner*”.⁴⁴ The functions of men and women are quite distinct and each is entrusted with the functions which are best suited for his and her nature. The man is recognised as the stronger, enabling him to face the heavier struggles of life, while the women is best suited in an agrarian milieu to bring up children. Moreover, women are recognised for a preponderance of the

⁴⁰ *supra* note 32, at 24.

⁴¹ 1 SUNAN AN- NASHA’I, THE BOOK OF JIHAD, 25 HADITH 3104

⁴² 1 RIYAD AS- SALIHIN, THE BOOK OF MISCELLANY, HADITH 280

⁴³ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 32.

⁴⁴ HOLY KORAN, AN-NISA, CHAPTER 4, VERSE 228.

quality of love in them.⁴⁵ Thus, sexual roles complement each other and are of equal status. The sexual division of labour is defined then as complementary without subordination.⁴⁶

That is, no law that has a religious colour, but connected intrinsically to the social fabric can be excluded from judicial scrutiny. Hence, it is high time that we initiate a question of equality and meaningful life in this matter also.

QUESTION OF FUNDAMENTAL RIGHT VIOLATION

The doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution.⁴⁷ The underlying object of Art. 14 is to secure to all persons, citizens or non-citizens, the equality of status and opportunity referred to in the Preamble of our Constitution.⁴⁸ Art. 7 of the Universal Declaration of Human Rights, 1948,⁴⁹ declares that all are equal before the law and are entitled without any discrimination to the equal protection of laws. Right to equality belongs to the basic structure of Constitution of India.⁵⁰ Equals cannot be treated unequally and the right to such equality cannot be arbitrarily denied to the equals in the absence of a valid classification.⁵¹ All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed.⁵² The concept 'equal protection of laws' stipulates the application of the same laws alike and without discrimination to all persons similarly situated.⁵³

Art. 14 is not an absolute bar to class legislation rather, it declares discriminatory that classification which has no reasonable basis.⁵⁴ In order to determine this dispute, the twin test of equality has

⁴⁵ HOLY KORAN, AR-RUM, CHAPTER 30, VERSE 21.

⁴⁶ Saneya Saleh, *Women in Islam: Their Status in Religious and Traditional Culture*, 2 International Journal of Sociology of the Family, 35-42 (1972).

⁴⁷ Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34.

⁴⁸ Natural Resources Allocations, Re Special Reference, (2012) 10 SCC 1.

⁴⁹ UNIVERSAL DECLARATION OF HUMAN RIGHTS, <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> (last visited 08/06/2025).

⁵⁰ M Nagaraj v. Union of India, (2006) 8 SCC 212.

⁵¹ Virendra Krishna Mishra v. Union of India, (2015) 2 SCC 712.

⁵² John Vallamattom v. Union of India, (2003) 6 SCC 611.

⁵³ Jagannatha Prasad v. State of UP, (1962) 1 SCR 151; Mohd Shaheb Mahboob v. Deputy Custodian, (1962) 2 SCR 371.

⁵⁴ S Seshachalam v. Bar Council of TN, (2014) 16 SCC 72.

been formulated by the Hon'ble Apex Court.⁵⁵ For a classification to be reasonable it should fulfil the following conditions:

- (a) It should not be arbitrary, artificial or evasive. It should be based on an *intelligible differentia*, some real and substantial distinction, which distinguishes persons or things grouped together in a class from others left out of it.
- (b) The differentia adopted as the basis of classification must have a reasonable or *rational nexus* with the object sought to be achieved by the statute in question.⁵⁶

The first condition is that the classification must be based on an intelligible differentia, that is, the classification must be reasonable. Here the classification in the matter of inheritance right is made solely on the basis of gender. Son outweighs daughter, brother outweighs sister and likewise women are downgraded over men in the right to inherit property.

Relying on the case of *Joseph Shine v. Union of India*⁵⁷, there can be no discrimination in general on the ground of sex. In all other personal laws, women are given equal rights in the matter of property as that of men. With regard to that reliance may be placed on the case of *Punithavalli Ammal v. Ramalingam and Anr*⁵⁸, wherein absolute right to property given to women under Sec. 14(1) of Hindu Succession Act, 1956⁵⁹ was upheld and the case of *Mary Roy v. State of Kerala*,⁶⁰ wherein gender imbalances in Travancore Christian Succession Act, 1092⁶¹ were removed by this Hon'ble Court. This implies that the discriminatory treatment of women in personal laws concerning property rights has been continually reformed and restructured by the courts, as it is neither reasonable nor logical in the modern era. Therefore, it prompts to the assumption of a potential absence of intelligible differentia.

⁵⁵ State of West Bengal v. Anwar Ali Sarkar, (1952) 1 SCC 1.

⁵⁶ Laxmi Khandsari v. State of UP, (1981) 2 SCC 600; State of Haryana v. Jai Singh, (2003) 9 SCC 114; Welfare Association ARP v. Ranjit P Gohil, (2003) 9 SCC 358; Javed v. State of Haryana, (2003) 8 SCC 369.

⁵⁷ Joseph Shine v. Union of India, 2019 (3) SCC 39.

⁵⁸ Punithavalli Ammal v. Ramalingam and Anr, 1970 AIR 1730.

⁵⁹ The Hindu Succession Act, 1956, § 14, No. 30, Acts of Parliament, 1956 (India).

⁶⁰ Mary Roy v. State of Kerala, (1986) 2 SCC 209.

⁶¹ The Travancore Christian Succession Act, 1092, No. 2, Princely State of Travancore, 1916 (India).

Second element of twin test is rational nexus. Rational nexus postulates a reasonable connection of the classification with the object sought to be achieved.⁶² The object sought to be achieved by the differential treatment of women in property rights need to be analysed in both spiritual and historic terms. The object of Quran and the inheritance laws stated therein was not at all a trivial treatment for women.⁶³ Hence, in my opinion there seems to be no rational nexus between this discriminative practice and the teachings of Prophet Muhammad, who essentially made a social call for equality.

Moreover, by depriving the Right to inherit property women belonging to Muslim religion are denied their right to lead a meaningful and dignified life which is in turn a violation of human rights.

The Hon'ble Supreme Court in *J K (Bombay) Ltd. V. Bharti Matha Mishra*⁶⁴ said that the paramount object of Art. 21 is to present the enforcement of the right of a person, with respect to his life and liberty in accordance with the procedure established by law and in conformity with the provisions thereof.

In *Kharak Singh v. State of UP*⁶⁵, relying upon the judgment in *Munn v. Illinois*⁶⁶ it was held as follows: “The term life as here (Art. 21) used something more is meant than mere animal existence.” In *Bandhura Mukti Morcha v. Union of India*⁶⁷ it was held that the Right to Life means the Right to Live with Dignity.

Further in *SR Bommai v. Union of India*⁶⁸ it was observed that equality, dignity of person and right to development are inherent rights in every human being. The Court opined “For its meaningfulness and purpose every woman is entitled to elimination of obstacles and

⁶² Jaila Singh v. State of Rajasthan, (1976) 1 SCC 682; Dilip Kumar Garg v. State of UP, (2009) 4 SCC 753.

⁶³ *supra* note 52, at 27.

⁶⁴ J K (Bombay) Ltd. v. Bharti Matha Mishra, (2001) 2 SCC 700.

⁶⁵ Kharak Singh v. State of UP, (1964) 1 SCR 332.

⁶⁶ Munn v. Illinois, (1877) 94 US 113.

⁶⁷ *supra* note 3, at 19; See also, State of Maharashtra v. Chandrabhan Tale, (1983) 3 SCC 387; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, (1983) 1 SCC 124.

⁶⁸ SR Bommai v. Union of India, (1994) 3 SCC 1.

discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on a footing of equality. Property is one of the discriminations that should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development including social and cultural rights.”

In the case of ***C Masilamani Mudaliar and Others v. Idol of Sri Swaminathaswami Swainathaswami Thirukoil and Ors***⁶⁹ it was held that “*Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms an human rights.”*

Convention on the Elimination of All Forms of Discrimination against Women⁷⁰, namely Vienna Declaration, ratified by India on 19/06/1993 reiterates that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life in their country, hampers the growth of the personality from society and family and makes more difficult for the full development of potentialities of women in the service of their countries and of humanity. Art.1 defines discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognised enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic,

⁶⁹ *supra* note 25, at 23.

⁷⁰ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited on 03/06/2025)

social, cultural, civil or any other field. Art. 2(b) enjoins the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women.

Depriving a class of women their property rights is also a matter of human right violation. Our Parliament has enacted the Protection of Human Rights Act, 1993⁷¹. Sec 2(d) defines human rights to mean '*rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India*'.⁷²

Hence, this is a matter of urgent concern. Property rights are significant to women in the context that it facilitates her to lead a life with full meaning and dignity. Inheritance and intergenerational transmission of resources, acts as an important determinant of individual's incentives for wealth creation, social mobility, and access to opportunities.⁷³ Parental bequests of material wealth and human capital investments are central to transferring wealth across generations that can affect long-term distribution of resources in the economy, patterns of asset accumulation and overall development through its impact on individuals wealth and earnings opportunities.⁷⁴ In environments where informational asymmetries and commitment problems limit the scope for raising capital against future earnings, modalities for transferring physical or human capital across generations often lead to far-reaching impacts on individual's occupational choices, their trajectory of asset accumulation, and ultimately the distribution of political power.⁷⁵

Such relationships need not be limited to contemporaneous outcomes but can include investment in human capital, health, or the wealth of future generations. In China, higher female incomes following agricultural reforms increased the survival rates for girls.⁷⁶ In India, exogenous increases

⁷¹ The Protection of Human Rights Act, 1993, No. 19, Acts of Parliament, 1994 (India).

⁷² The Protection of Human Rights Act, 1993, § 2(d), No. 19, Acts of Parliament, 1994 (India).

⁷³ Kotlikoff LJ & L. H. Summers, *The Role of Intergenerational Transfers in Aggregate Capital Accumulation*, 2 Cambridge Mass: National Bureau of Economic Research 445-470 (1980).

⁷⁴ Becker, G. S. & N. Tomes, *An Equilibrium Theory of the Distribution of Income and Intergenerational Mobility*, 87(6) *Journal of Political Economy* 1153-89 (1979).

⁷⁵ Cowell F. A., *Inheritance and the Distribution of Wealth*, 34 *London School of Economics* 85-99 (1998).

⁷⁶ Qian N, *Missing Women and the Price of Tea in China: The Effect of Sex-Specific Earnings on Sex Imbalance*, 123(3) *Quarterly Journal of Economics* 1251-85 (2008).

in female income among lower castes significantly increased investment in schooling, particularly for girl.⁷⁷

The distribution of resources within the household affect intrahousehold bargaining and associated socioeconomic outcomes of individuals.⁷⁸ Substantial evidence suggests that outcomes depend on who in the household receives certain income streams or owns the assets generating such income. This includes not only the way in which household resources are spent but also decisions on fertility and investments in the welfare of future generations such as children's education, health and nutrition. Differences in inheritance legislation have been shown to affect economic outcomes and entrepreneurial activity across countries.⁷⁹

The study of *Jensen R and R. Thornton* empirically analysed data from across the country and inferred that the Amendments made to Hindu Succession Act giving equal property rights had made a positive impact in the average age of marriage.⁸⁰ In their opinion large improvements in women's wellbeing may be achievable even with small increases in female age at marriage suggesting that the relatively modest magnitude of the impact (of half a year on average) could potentially be associated with significant improvements in women's socioeconomic status in India.⁸¹

To the extent that women who own property, for example, land, have a stronger fall-back position outside marriage (outside option) and therefore greater bargaining power within it as compared to landless women, could be reflected in greater autonomy in household choices. Ownership of land by a woman can also have indirect impact on her bargaining power via her monetary contribution

⁷⁷ Luke N & K. Munshi, *Women as Agents of Change: Female Income and Mobility in India*, 94(1) Journal of Development Economics 1-17 (2011).

⁷⁸ Anderson S & M. Eswaran, *What determines Female Autonomy? Evidence from Bangladesh*, 90(2) Journal of Development Economics 179-191 (2009).

⁷⁹ Panuzzi A. Ellul & M. Pagagno, *Inheritance Law and Investment in Family Firms*, 4 Nota di lavoro. Milano: Fondazione Eni Enrico Mattei 79-85 (2009).

⁸⁰ Jensen R & R. Thornton, *Early Female Marriage in the Developing World*, 11(2) Gender and Development 9-19 (2003).

⁸¹ *Id.* at 42.

to household expenditure, even aside from being regarded more highly by society in general and hence within her family as well.⁸²

In the absence of provisions for social welfare, like the kind prevailing in many advanced countries, inheritance is a source of security and strength for women. It can be a source of comfort and ease in cases of domestic violence and similar situations.⁸³ According to United Nations Human Rights Resolution of 2005⁸⁴, human rights are universal, indivisible, interdependent and interrelated. Furthermore, women's equal ownership, access to and control over land, and the equal right to own property and to adequate housing contribute to the full realisation of human rights.

The International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁵ also provided for elimination of all forms of discrimination against women and India has also ratified this. In Art. 2 of this covenant, it was submitted, that all State parties who ratified the above convention, condemned discrimination against women in all its forms, and agreed to eliminate discrimination against women by following the principle of equality amongst men and women, in their national Constitutions, as well as, other legislations.

On December 4, 1986, the United Nations General Assembly adopted the "Declaration on the Right to Development"⁸⁶, a declaration in which India played a pivotal role in both its adoption and ratification. The preamble of this declaration acknowledges that all human rights and fundamental freedoms are indivisible and interconnected. It expresses concern over the significant obstacles to development and the full realization of human potential, which are linked to the denial of civil, political, economic, social, and cultural rights. To foster development, it emphasizes that equal attention must be given to the implementation, promotion, and protection of civil, political,

⁸² Agarwal B, *A Field of One's Own: Gender and Land Rights in South Asia.*, 62 Cambridge University Press 23-44 (1994).

⁸³ Sona Khan, *Inheritance of Indian Women: A Perspective*, 27 India International Centre Quarterly 139-154 (2000).

⁸⁴ UNITED NATIONS HUMAN RIGHTS RESOLUTION OF 2005
https://www.un.org/en/genocideprevention/documents/atrocitycrimes/Doc.50_HR%20Commission%20Res%202005_5_62.Prevention%20of%20Genocide.pdf (last visited 05/06/2025)

⁸⁵ THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
<https://www.ohchr.org/sites/default/files/ceschr.pdf> (last visited 05/09/2024).

⁸⁶ DECLARATION ON THE RIGHT TO DEVELOPMENT <https://www.ohchr.org/sites/default/files/rtd.pdf> (last visited 05/06/2025).

economic, social, and cultural rights. Hence it is an international mandate upon India to ensure that the inheritance laws are reformed timely in order to ensure gender equality.

Therefore, it is evident from the aforementioned contentions that property rights are essential for women to secure a stable and respected position in the socio-economic framework of the contemporary world. Inherited property and assets significantly influence their status within the family and society, and they serve as a means of empowering women by fostering independence and self-sufficiency. Property is not just a matter of economic resource but a metaphor of institutional recognition of female dignity.

Hence the stark injustice in the form of gender bias in Muslim Personal Law with regard to inheritance right is challenging the notion of female identity in par with the other gender. This violates their right to live a meaningful and dignified life for the reason that by depriving a woman with her ancestral property, the state is actually lagging behind the society in achieving its goal of gender justice. Such an action is not limited to monetary loss, but has proven to be instrumental in denying the overall development of female population including education, access to healthcare, fertility choice and so on.

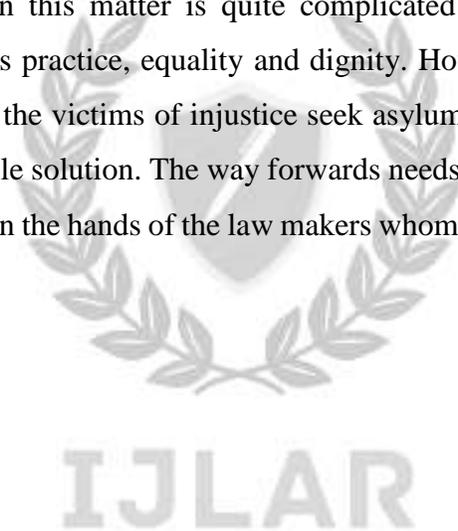
CONCLUSION

Protecting religious practice and ensuring equality and dignity are all rights which are fundamental constitutional guarantee towards the citizen of this country. However, when a religious practice is neither essentially religious nor aligned with constitutional morality, then the state is at no charge to protect it.

The discriminative practice against women in matters of intestate succession victimised many Muslim women across the nation. They are fighting a legal battle for long time. Activists like VP Zuhra and her organisation NISA, which is a forum for progressive muslim women based in Kozhikode, Kerala, has been advocating for the same and were often subjected to brutal

oppositions.⁸⁷ An actor-advocate based in Kerala, C Shukkur has remarried his own wife under Special Marriage Act in order to ensure that his property would devolve to his three daughters instead of distant male relatives. This has sparked a row of controversies.⁸⁸ Details collected under the right to information act revealed that over 277 marriages were registered under Special Marriage Act by believers of Islam in one year in two districts in Kerala, solely to avoid this issue of inheritance.⁸⁹ Another activist Safiya PM has initiated another legal battle against Shariat law as a whole.⁹⁰

These are missions the Muslim women took up, not for any juristic curiosity, rather for ensuring a secured life which is bare minimum to a citizen of India. Ignoring such issues is more of a political tactic. The legal landscape in this matter is quite complicated with significant questions on doctrines of essential religious practice, equality and dignity. However hard the question be the apex court of the land, where the victims of injustice seek asylum cannot evade from addressing the issue to suggest an amicable solution. The way forwards needs to be paved by the Judiciary to provide justice and the rest is in the hands of the law makers whom the nation trusted to implement justice.



⁸⁷ FIGHT FOR MUSLIM WOMEN'S INHERITANCE RIGHTS NOT RELATED TO UNIFORM CIVIL CODE, IT IS FOR BASIC HUMAN RIGHTS, THE HINDU ['Fight for Muslim women's inheritance rights not related to Uniform Civil Code, it is for basic human rights'](#) - The Hindu (last visited 14/06/2025)

⁸⁸ KERALA ACTOR-ADVOCATE REMARRIES WIFE UNDER SPECIAL MARRIAGE ACT, HINDUSTAN TIMES [Kerala actor-advocate remarries wife under Special Marriage Act; triggers row](#) | Latest News India - Hindustan Times (last visited 14/06/2025)

⁸⁹ MUSLIM COMMUNITY TURNS TO SPECIAL MARRIAGE ACT FOR FAIR INHERITANCE IN KERALA, THE NEW INDIAN EXPRESS [Muslim community turns to Special Marriage Act for fair inheritance in Kerala](#) (last visited 14/06/2025)

⁹⁰ KERALA MUSLIM WOMEN IS ON A MISSION AGAINST SHARIAT LAW, THE PRINT [Kerala Muslim woman is on a mission against Shariat Law. It's a do-or-die inheritance battle](#) (last visited 14/06/2025)