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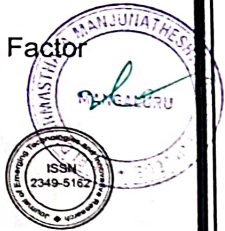
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WOMEN'S PROPERTY RIGHT AND GENDER GAPS UNDER PERSONAL LAWS: A COMPARATIVE ANALYSIS

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Abstracts In India there are no codified or consolidated legal provisions which provide property right to women. It always get determined depending on the religion or faith or religious school to which she belongs, her marital status and, her place of birth or based on the place of origin. It also depends upon whether she belongs to tribal group or not. Thus the property matter of every individual including women is regulated by the personal laws which ever is applicable to them. As per Article 15 of Indian Constitution, there should not be any discrimination between men and women in respect of legal rights. But most of these personal laws or customary practices give lesser rights to women in respect of property. In the recent years even though personal laws of Hindus provide equal inheritance rights to female, it is not clear whether it is applicable retrospectively or not. As per Muslim and Christian laws what is the position of women regarding ancestral property? There is no single body of rules which regulate property rights of Indian Women. This Article attempts to identify the different laws which provide inheritance right to female and recent development regarding succession to ancestral property among Hindus, Muslims and Christians.

Keywords: Personal Laws, Inheritance, Succession, Ancestral Property, Gender Discrimination.

1.1 Introduction

Property right refers to legal ownership over certain resources and it gives exclusive authority to decide how these resources can be used or disposed off. Property rights gives income and security to every citizen & it enables to live peacefully. But discrimination against women in the area of property distribution or inheritance was practised from the ancient period. Not only in India, but in many countries women do not enjoy equal legal rights towards property. Providing equal property rights for every woman will always raise her status in the society and it helps women to take part in decision making and gives greater autonomy & economic independence¹.

In India there are no codified or consolidated legal provisions which provide property right to women. It always gets determined depending on the religion or faith or religious school to which she

¹ Vedanta Yadav and TEAM, Empowering Women Through Property Rights, *Law Times Journal*, (Oct,3, 2020) <https://lawtimesjournal.in/empowering-women-through-property-rights/#:~:text=Some%20research%20also%20suggests%20that,in%20household%20income%2C%20healthcare%20spends%2C> (visited on 14/10/2021)



belongs, her marital status and her place of birth or from the place she comes from. It also depends on whether she belongs to tribal group or not. Thus the property matter of every individual, including woman, is regulated by the personal laws which ever is applicable to them. For Hindu, Sikh, Jain, and Buddhist women, Hindu Succession Act 1956, & for Christian & Parsi women, Indian succession Act, 1925 are applicable. The Muslim Personal Law (Shariat) Application Act 1937, provide certain property rights to Muslim Women. Apart from these members of several tribes follow their own customary laws and practices. In certain part of Punjab, among Bunts community in South Canara of Karnataka and Matriarchal families of state of Kerala, separate customary practices are followed. Thus there is no single body of rules which regulate property rights of Indian Women. This Article attempts to identify the different laws which provide inheritance right to female and recent development regarding succession to ancestral property among Hindus.

1.2. Historical Overview of women's Property right

1.2.a) Ancient/Vedic period :- During Vedic period women were respected & considered as goddess. The Vedic literature mention about inheritance right granted to the unmarried daughter & to brother-less married daughters². The widow was disabled from any right of inheritance of her husband's property and if she had brother, then no inheritance right in father's property. But childless window was entitled to succeed to husband's immovable property for her life.

1.2.b) Medieval Period: During this period the position of Indian women deteriorated and various evils like Sati system, Child Marriage, etc were practised. Women's property right was not-practised or recognised during early part of this period. The writings of various Smritis, Commentaries and Digests led to the emergence of various schools of Hindu law like- Dayabhagya, which was dominant in Bengal & Assam region, Mayukha dominant School in Bombay, Konkan and Gujarat in western part and in south India, Marmakkattayam or Nambudiri in Kerala. Remaining part and majority of Hindus follow Mithakshara School of law³. Mithakshara recognises two kinds of property viz. self-acquired and ancestral/joint family property/ coparcenary property. A coparcenary is a legal institution consisting of three generation of male heirs who acquire right over the ancestral property by birth. Mithakshara did not recognise female/ women/ daughter as coparcener and so she had no right to inherit property from her parents absolutely. But it recognised certain limited right to property by a woman.

Before passing of Hindu Succession Act 1956, there were two kinds of Property owned by Hindu women. They were- 1) Stridhana & 2) Women's estate.

Stridhana: The word Stridhana literally means 'Woman's Property'. In the entire history of Hindu law women's right to hold & dispose off property was recognised only in the form of Stridhana⁴. No doubt she had absolute ownership of own her Stridhan, but the quantum of such property was meagre and it included only movable property. According to Smritikars, the Stridhan constituted those properties which she received by way of gift from relatives and strangers at the time of marriage, property acquired by self exertion and mechanical arts, property purchased with Stridhan or obtained in lieu of Maintenance⁵, etc. Stridhan being the absolute property of women, she had full right of alienation and after her death it used to go to her own heirs.

Women's Estate: It consists of property inherited by females where she enjoys limited right-over such property. She can inherit property from males or females, but she takes only a limited interest in such property and on her death the property passes not to her heirs but to the next heir of the person from whom she inherited it. The heirs of last full owner, who would be entitled to succeed to the state of such owner on the death of the widow & other limited heir, if they be then living, are called 'Reversioners'⁶. A woman or limited heir is not a trustee for the reversioner & so she had absolute power of dispose off the income of the

² Samapika Mohapatra, Property Rights of Women in India, http://www.cusb.ac.in/images/cusb-files/2020/el/ds/MADVS2003C04_Gen_Dev_Week1.pdf (visited on 14/10/2021) p.1

³ Shrutti Panday, Property Rights of Indian Women, Available at <https://www.womenslinkworldwide.org/en/files/1240-property-rights-of-indian-women.pdf> (visited on 16/10/2021) P.3

⁴ Dr. Paras Diwan, Modern Hindu Law, 24th Ed. (Allahabad Law Agency), 2019, p.389

⁵ Id pp390-391

⁶ Dinshaw Fardunji Mulla, Hindu, 23rd Ed. (Lexisnexis publication), p.248



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property inherited by her. She was not bound to save the income also⁷. But she had no power of alienation except for legal necessity. Thus only during her life time she was able to enjoy the income from such Property.

1.3 Property Rights of women under Hindu succession Act 1956

This Act of 1956 reformed and codified personal laws relating to intestate succession to the property of Hindus. It abolished women's estate i.e. women's limited rights to property and gave absolute and full ownership of property⁸. According to sec 14(1), "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner". This section conferred absolute ownership right on the widow who acquired the property on the death of her husband. Prior to this Act she was enjoying only limited right over her deceased husband's estate under customary Hindu Law⁹.

Sec.14 has been given with retrospective effect. But it is not applicable to those who already inherited and alienated the property. In *Anandibhai v. Sundhabhai*¹⁰, Madhya Pradesh H.C had the opinion that "the expression any property possessed by a female Hindu under Sec. 14 means any property owned by a female Hindu at the time of commencement of this Act, and these words are prospective in nature but the expression any property acquired before or after the commencement of this Act, denotes that this Section (sec 14) is operative retrospectively¹¹. Thus, ownership of property and possession of the property both must vest in her to apply sec 14.

1.4 Hindu Succession (Amendment) Act -2005

Sec 6 of Hindu Succession Act 1956, recognized Mitakshara Coparcenary (Ancestral Property) where only male members are considered as coparceners and they could enjoy right over property by birth. This was criticised by the supporters of Gender Equality. In case if a Male Hindu dies intestate, his self-acquired properties are devolved through succession and daughter /widow and mother can inherit property as they are included in class I legal heirs. But daughter had no right to inherit father's ancestral property. Acknowledging this major discrepancy, with respect to Hindu women's position in every Mitakshara Coparcenary, certain states like- Kerala, Karnataka, Andra Pradesh, Tamil Nadu and Maharashtra, caused State amendments to Sec 6 of Hindu secession Act 1956 and provided that daughters are also coparceners in Mitakshara joint family & holds equal Property Right¹².

The Law Commission of India, in its 174th Report on 'Property Rights of Women, proposed reforms under the Hindu Law', it had taken up this subject "Suo- Motu" and recommended for the amendment of HSA 1956. According to justice B.P Jeevan Reddy,

"Social justice demands that a woman should be treated equally both in the economic and the social sphere. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust. The Commission has also taken into consideration the changes carried out by way of State enactments in the concept of Mitakshara coparcenary property in the five States in India, namely, Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka. The Commission feels that further reform of the Mitakshara Law of Coparcenary is needed to provide equal distribution of property both to

⁷ Id p 253.

⁸ Sec 14 of Hindu Succession Act, 1956

⁹ Prof. Dr. Nasreentaj, Right of Women under Hindu Succession Act 1956, Kanoon Review,

<http://www.kanoonreview.com/right-of-women-under-hindu-succession-act-1956.html#:~:text=force%20on%2017,h%20June%201956.&text=The%20Hindu%20Succession%20Act%2C%201956%20is%20an%20Act%20to%20amend,to%20intestate%20succession%20among%20Hindus.&text=This%20meant%20that%20Hindu%20females,family%20coparcenary%20under%20Mitakshara%20system> (visited on 16/10/2021)

¹⁰ AIR (1965)MP 85

¹¹ Keerthi S. Nair, Hindu Women and Changes Towards Property Rights, *Academike, Articles on Legal Issues*, at <https://www.lawctopus.com/academike/hindu-women-changes-towards-property-rights/>, Jan 30, 2015, (visited on 16/10/2021)

¹² Kerala govt passed Kerala joint Family system (abolition) Act 1975. The remaining states, like Andra Pradesh, T.N, Maharashtra & Karnataka made amendments to Sec.6 of Hindu Succession Act 1956 in 1986,1989,1994,1994 respectively



men and women. The recommendations contained in the Report are aimed at suggesting changes in the Hindu Succession Act, 1956 so that women get an equal share in the ancestral property¹³.

As a result HSA (Hindu Succession Act 1956) was amended & came into force from 9th Sept 2005 by incorporating the suggestions of report of Law Commission. This Amendment Act of 2005, made way for women's inheritance of agricultural land equal to that of what is received by males by repealing sec 4(2) of HSA 1956. By amending sec. 6, this amendment Act enhanced the position of every daughter in Mitakshara Coparcenary by considering them as coparceners like a Male/Son in that family. Sec 6 (1) says that "in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener¹⁴

Thus, after this Amendment, now a woman can inherit property from her parents, pre-deceased husband, father-in-law in case of widowhood, pre-deceased son & pre-deceased unmarried daughter. If a male Hindu dies intestate, his class I legal heirs includes several women like his mother, widow (wife), daughter and widowed-daughter-in-law if any. Members of class I legal heirs share the estate of the deceased equally.

1.5 Hindu Succession (Amendment) Act 2005- whether Retrospective or Retroactive?

After amendment now a woman has right over both self acquired and ancestral property of her parents. But from when these rights can be claimed by women?. In *Prakash & ors v. Phulavati & ors*¹⁵, the question before the Supreme Court was whether the right would be conferred only upon the daughters who are born after 9th Sept 2005 i.e when amendment Act came into force? In this case, the plaintiff filed a suit for partition where it was contested that plaintiff, being daughter, can claim share only in self acquired property of her deceased father. During the pendency of this proceeding, the Hindu Succession Amendment Act 2005 came into force. So plaintiff amended plaint but was not able to get share in lower court. Hence the appeal was filed before High Court where it was held that the amendment was applicable to pending proceedings even if it is taken to be prospective. On appeal, Supreme Court held that the right conferred on daughter of a coparcener is on & from the commencement of Hindu succession (Amendment) Act 2005. Thus, S.C made it clear that the rights under the amendment are applicable to living daughters of living coparceners as on 9th Sept 2005 irrespective of when such daughters are born¹⁶.

A similar case came before Supreme Court after two years of above decision was *Danamma v. Amar & Ors*¹⁷. In this case father died in 2001 leaving behind two daughters, two sons and widow. After his death the coparcenary property was in joint possession of two sons, widow & grand-son. The two married daughters also claimed share & same was denied on the ground that they were not coparceners. However during the pendency of suit, Sec 6 was amended in 2005 & lower court passed its decision in 2007. The trial court held that the daughters were not entitled to any share as they were born prior to the enactment of the Act & so were not considered as coparceners. The decision was upheld by High Court. The question that came up before the Supreme Court was whether daughters could be denied their share on the ground that they were born prior to the enactment of the Act. And whether, with the passing of Hindu Succession (Amendment) Act 2005, the daughters would become coparcener "by birth" in their own right in the same manner as the son. The S.C held that the right is inherent and can be availed of by any coparcener now even a daughter who is a coparcener.

Law Commission of India, 174th Report, (May 5 2000), (Do. No. 6(3) (59)/99-LC (LS)) at

<https://lawcommissionofindia.nic.in/kerala.htm> (visited on 17/10/2021)

¹⁴ Sec 6(1) of Hindu Succession (Amendment) Act, 2005

¹⁵ (2016) 2 SCC 36

¹⁶ *Prakash & ors v. Phulavati & ors*, Available at www.manupatra.com

¹⁷ AIR 2018, SC, 721 or MANU /SC / 0064/2018

Recently in *Vineetha Sharma v. Rakesh Sharma & ors*¹⁸, Supreme Court clarified all the doubts and held that even a daughter is also a coparcener by birth and overruled many decisions including *Prakash v. Phulavati* case. This court cleared all confusions regarding retrospective application of this Amendment Act. As per the decision, Sec 6 (after Amendment) confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights & liabilities. And the rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004. Since the right in coparcenery is by birth, it is not necessary that father's coparcener should be living as on 9th Sept 2005¹⁹.

1.6 Succession to women's Property

After passing of Hindu Succession Act, 1956, the concept of women's estate is abolished and converted it into her absolute property²⁰. Women can inherit property & earn property from different source. Such property can be disposed by women through will or testamentary disposition. Sec 15 & 16 of Hindu Succession Act deals with general rules & order of succession to the female's property. As per sec 15(2) any inherited property of an issueless (childless) woman dying intestate goes back to its original sources. After the death of a woman, her property is inherited by her son & daughter, grand son/daughter and husband. In the absence of these heirs, the property will devolve on the heirs of her husband. In the absence of these heirs or in case she is not married, then such property inherited by her from parents or legal heirs of her father & next mother's legal heirs²¹.

1.7 Women's Property Right Under Muslim Personal Law

Indian Muslims belong to two broad schools of Islamic Law:- Sunni & Shias. Among Sunnis there are 4 sub categories viz Hanafis, Shafis, Malikis & Hanbalis. The Shias are also divided into several sub-schools and important two Schools are Ismailis & Ithna Asharis. The matter of inheritance of a Muslim is determined by the School to which he/she belongs at the time of his death. There is no difference between ancestral & self-acquired property & so all properties are devolved through inheritance.

A Muslim woman has more liberal rights in terms of property and inheritance than normally believed. But Indian Muslim women always used to get fewer rights in terms of right to property in comparison to male. Muslim personal laws are not codified the rules relating to property rights till now. Historically, the practice of Mahr²² gave absolute property right to women. In other words she had absolute ownership over the Mahr property. At present a Muslim woman can inherit property from her parents as well as husband in case of his death. It is regulated under Muslim Personal Law (Shariat) Application Act 1937.

Inheritance from Parents:- If a woman is sole daughter of her parents, she inherits One Half ($\frac{1}{2}$) share in the entire property, & if there are two or more daughters only, (No sons) they all together take Two-Third ($\frac{2}{3}$) of the property²³. In case of son (having brother) she does not inherit as a sharer but as a residuary along with son and she will inherit and takes a share equal to half of her brother's share. Thus a daughter inherit as a sharer only in the absence of a son (her brother).

¹⁸ AIR 2020 sc 3717 or MANU/SC/0582/2020

¹⁹ *id*

²⁰ Sec 14 of Hindu Succession Act

²¹ Sec 15 of Hindu Succession Act

²² Mahr is called certain gift/amount which becomes due from a Muslim husband or provided from Muslim husband to his wife as a token of respect, sincerity and love for her

²³ Sumitra Parmar, & Kiran Gupta, Women's Right to Succession & Inheritance under Muslim, Christian, Jains & Parsis Law, (E- Pathshala, Right to Succession and Inheritance, Available at

http://www.lc2.du.ac.in/DATA/Women_sRighttoSuccessionandInheritanceunderMuslim,Christian,JewsandParsiLaw.pdf p. 7



Inheritance from deceased husband:- As a widow, she inherit one eighth ($\frac{1}{8}^{\text{th}}$) of her husband's property if she has children or grand children from predeceased son/daughter. A childless widow, can inherit one fourth ($\frac{1}{4}^{\text{th}}$) of the property of her deceased husband. In case of more than one widow they collectively take one share and will divide it equally among them²⁴.

Apart from these inheritance rights a Muslim women is also entitled to inherit property from her children/other relatives. She is entitle to inherit One Sixth ($\frac{1}{6}^{\text{th}}$) of her deceased child's estate. A Muslim woman acquires absolute right in the property which she inherits.

1.8 Succession to Muslim Women's Property

Muslim personal law provides a single scheme of succession irrespective of the sex of the intestate²⁵. Thus on the death of a Muslim woman her property devolve upon the five primary heirs viz Spouse (Husband), son, daughter, mother/father. Husband of the deceased woman takes one fourth ($\frac{1}{4}$) of her property in the presence of children/grand children & in their absence one half ($\frac{1}{2}$) of the total property. Sole daughter inherits one half ($\frac{1}{2}$) of the property & in the presence of son (brother)daughter can inherit half of brother/son's share.

1.9 Property Rights of Christian Women in India

Law relating to succession among Christian family is also not codified. Initially the succession matters of Christians & Jews were governed by the provision of the Indian Succession Act of 1865 passed by British India or their own customary laws. The Indian succession Act, 1865 was re-enacted in 1925 and it applies to all communities except Hindu, Muslim, Jains, Buddhists & Sikhs²⁶. Both the Indian succession Act 1865 or of 1925 is applicable for "Indian Christian" and those who came from outside India were not considered as "Indian Christians". Prior to Indian Succession Act 1925 Christians in Pondicherry used to follow French Rules & people from Goa, Daman & Diu followed Portuguese Rules²⁷. The Travancore Christian Succession Act 1092, was followed by the people of south India formerly called Travancore. But after passing of Indian Succession Act 1925, all above Acts were replaced²⁸.

A Christian woman inherits property of her parents dying intestate equal to that of son²⁹. The daughter and son equally inherit property from their parents and there is no gender discrimination. But as a widow, her share in her deceased husband's property may vary depending upon the presence or absence of lineal descendants & Kindred³⁰. According to sec 33 of ISA 1925, a Christian widow can inherit property from her deceased husband up to $\frac{1}{3}$ share of the property, remaining $\frac{2}{3}$ will be distributed among his legal heirs (children). But if she has no child/grand children, she is entitled to $\frac{1}{2}$ of the property & remaining $\frac{1}{2}$ will be distributed among his relatives (Husband's Father, Brother, Sisters, etc.). If the deceased is left with no other relatives except his widow then she can inherit entire property³¹.

As per Indian Succession Act 1925 Parsi woman and all her children including married daughters get equal share in the property of the deceased³². Both the parents of interstate will get half of the share of each child. So here gender justice is maintained.



Shreha Sharon, Mammen, All You Need to Know About Property Rights of Christian In India, January 16, 2018, <http://www.protonet.com/guide/post/all-you-need-to-know-about-property-rights-of-christians-in-india> (visited on 20/10/2021)

²⁸ *Mary Roy v. State of Kerala & others*, (AIR 1986, SC 1011)

²⁹ Sec 32 of Indian Succession Act 1925

³⁰ sec 33 of Indian Succession Act 1925

³¹ Sec 33 (b) of Indian Succession Act 1925

³² Shruithi Pandey, *Women's Property Right in India*, P. 13

1.10 Comparative Analysis

Unlike Hindu law, the Muslim personal law and Christian Law, does not recognise difference between ancestral property and self-acquired property. The two mode of succession is applicable only under Hindu Law. Apart from these the rule of survivorship was followed only among Hindus prior to Hindu Succession (Amendment) Act 2005. The share of each legal heir under Muslim law and Christian law is definite. The doctrine of *Spes-Successionis*³³ is recognised under Muslim and Christian personal laws because they do not acquire any interest in the property of a person by birth. The concept of joint family and joint property, the presumption of joint-ness of property, limited power of alienation, etc are unique feature of Mithakshara Hindu Law.

A Muslim woman has inheritance right under Muslim personal law from ancient period even though not equal as of man. Indian Succession Act 1925, also did not make any gender discrimination and woman was entitled to inherit property from her parents equal that of son. But under orthodox Hindu Law, the female was always postponed to male and she did not inherit property in joint families and even in separate families, she had a limited right³⁴. The Hindu Succession Act 1956 along with Hindu Succession (Amendment) Act, 2005, made considerable changes to give equal rights to female as that of male.

Now a woman is entitled to inherit property from her parents as well as from her deceased husband. The amount or quantity of share depends upon the personal laws to which she belongs as well as number of legal heirs in that category. As per Hindu Succession (Amendment) Act, 2005, and Indian Succession Act 1925, both male and female equally inherit property from their parents. At present as per their personal laws there is no gender discrimination regarding inheritance of property among Hindus, Christians and Parsis. But the principle of equality and Non-discrimination between the people of different sex is not accepted under Muslim Law. A male taking double the share of a female from the property left by their deceased father/mother seems an apparent inequality and discrimination against women³⁵. The justification for this disparity is economic burden which a man has to face in the form of payment of dower, maintenance of wife, aged parents, children, sisters and other dependents. Woman has no such responsibility and she has more source of income than men.

Apart from property right a woman is entitled for maintenance if she is not able to maintain herself. She can claim maintenance from her husband after divorce, during *Iddat* period. After passing of Muslim Women (Protection of Right on Divorce) Act 1986, she is entitled for maintenance even after *Iddat* period until she gets remarried. But if there is sufficient means to maintain herself in the form of *Mahr* she cannot get maintenance. A Hindu woman is also entitled to get maintenance under Sec 24 and 25 of Hindu Marriage Act, during the pendency of matrimonial dispute and after the final decision. She is also entitled to get maintenance and separate residence under Hindu Adoption and Maintenance Act, 1956 on certain grounds. A Christian woman is also entitled to claim maintenance under Indian Divorce Act at the time of Divorce. Irrespective of the religion and personal laws, every woman can claim maintenance under Sec 125 of Code of Criminal Procedure 1973, if the husband has sufficient means and still refuses or neglects to maintain his wife.

1.11. Uniform Civil Code

There is gender discrimination in respect of property under most of the personal laws. Even though attempt was made to remove some of these discriminations, the evil effect of such discrimination is continued in the society. The Constitution of India, under Article 14³⁶ and 15³⁷ prohibits inequality and discrimination on the basis of gender respectively. Many legislations and policies are passed in favour of women. But economic independence and equality in property rights at her home are essential for every woman to fight for gender justice. In India, unlike Criminal Procedure Code and Indian Penal Code there is

³³ *Spes successionis* is a Latin maxim. It refers to the chance of succeeding in a person's property after his death

³⁴ M.P Tandon, Muslim Law in Modern India, 11th Ed. 2012 (Allahabad Law Agency, Delhi), pp 371-372

³⁵ Kazi Arshadul Hoque, Mohammad Jalaluddin, et.all, Inheritance Rights of Women in Islamic Law: An Assessment, *International Journal of Islamic Thoughts*, Vol 2, 2013, pp45-58

³⁶ Art 14 of Indian Constitution says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

³⁷ Art 15, of Indian Constitution deals with Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth



no set of civil laws which regulate the personal aspects of Indian citizens. Art 44 of Indian Constitution, demands for framing of Uniform Civil Code to achieve gender justice. The discrimination based on gender starts from home/family and it is always based on religion based personal laws. It is believed that if a woman is given with share in the ancestral property (not in the form of money), she is not able to look after the same. The religion based personal laws are not considering women's property right. By removing all these barriers, passing a uniform law applicable for all religious people can be a solution for gender discrimination.

1.12 Conclusion

Regarding the claim of maintenance there is a common legislation for all women, irrespective of their religion/ Personal Laws³⁸. But with regard to women's property right there is no uniform law and provision. It is always based on their religion or customary practice where in every patriarchal family her share is limited. Most of these personal laws gives a picture that women are always dependent on male member of their family. Personal laws are closely connected to religion and also based on traditional socio-political situations of the society. Feminist organisations are also says that the existing personal laws need to be amended to achieve gender equality. As required by the Article 44 of Indian Constitution, preparation of Uniform Civil Code is the solution for such disparity.



³⁸ Sec 125 of Code of Criminal Procedure 1973