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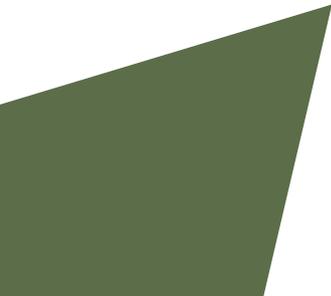
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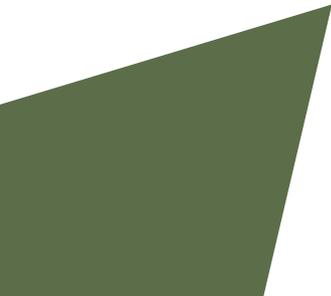
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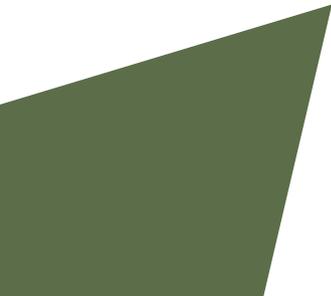
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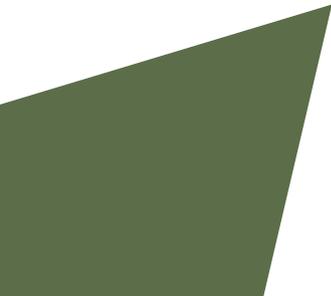
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Comparison of Hindu and Muslim Law of Succession

Gayathri.V

COMPARISON OF HINDU AND MUSLIM SUCCESSION LAW (I.E.) DIFFERENCES
BETWEEN THESE TWO LAWS UNDER THE LAW OF SUCCESSION.

The inheritance and division of property which is also considered as succession over the property of Hindus and Muslims are governed by their respective laws. The above said are considered to be the parts of succession. It has some similarities and some differences.

The differences are widely explained here.

- The first main difference deals with the acts framed by the makers used for their respective religion.

It the Hindu succession act of 1956 helps to govern the personal laws of Hindu.

In the similar way the Muslims are governed by Muslim shariat act of 1937.

- The subsequent difference is nothing but about the divisions in their respective religions.

In Hindus there will be divisions based on the schools. These practices are observed only in the previous years. The two major schools are dayabagha and mitakshara. They followed their respective principles and laws of their own. The principles which are accepted by one group is rejected by the other. The amendment has been introduced in the parliament and it came into effect from the year 1956 and they all together are governed by the Hindu succession act 1956.

In Muslims there are many branches which involves Hanafi or Shia, Sunni, Malik's, shafi, Hannibalic. Out of those schools Sunni and Shia are considered to be the most important schools. The Sunni school is followed by 90% of Muslims. They are governed by the Muslim shariat act 1937.

- The next difference is based on the codification of laws.

Codification: The things are arranged in a particular or stated manner according to law is known as codification.

The Hindu law is considered to be codified. It has codified rules and procedures that are need to be followed by all the people.

The Muslim law is considered to be uncodified. It does not involve any codified procedure or rules.

- Another difference is regarding the adoption.

In Hindu law adoption is not valid before the suggestions and amendments come into existence. Before the amendment process the adoption is considered to be invalid. That is the adopted son has no right over the property after the deceased person. It makes him incapable to enter into succession of that property. If any succession is made it is not accepted by others and is not valid at all. After some time, they started to accept the adopted heir to be a valid heir. They gave equal treatment to the originally born child and adopted child. After the proper amendment came into effect the adopted son is treated in the same manner of the born son to that family. He has the right over the property and he is considered to be an eligible person for inheritance. It is nothing but if the deceased left the property without the legal heir, the adopted heir will replace his place and entitled to succession and the property will be further devolved accordingly.

Illustration:

‘A’ the deceased left the adopted son and a widow. Whether he can claim the right over the property.

Prior to the amendment the adopted son has no right over the property.

After the amendment the adopted son is treated equally to the biological son and he has entire right and can claim the property.

In Muslims adoption is not considered as a valid one. None of the school has mentioned that the adopted son can inherit over the property. Some schools considered adoption as valid but does not give them to claim over the property.

In simple words, adopted son can inherit the property under Hindus and considered to be valid.

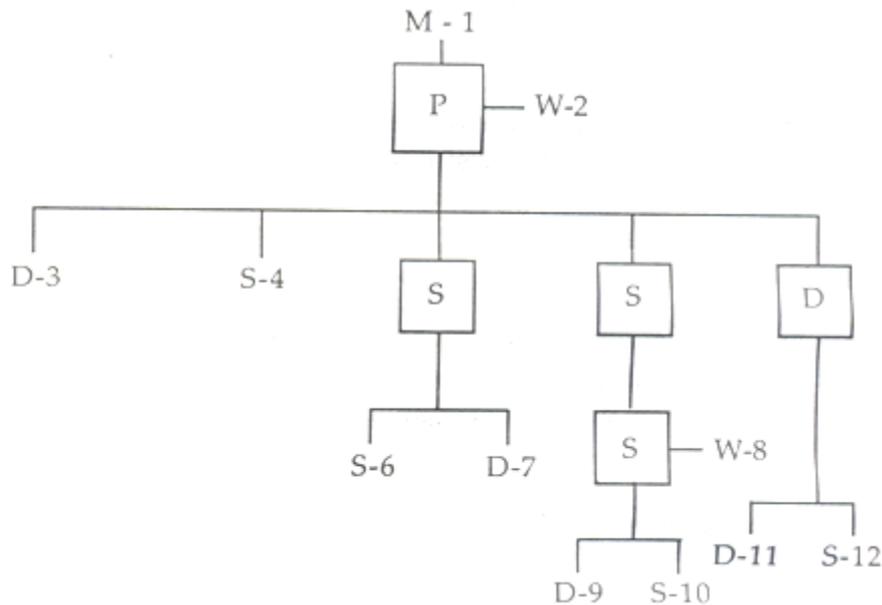
In Muslim law the adopted person has no right for the inheritance over the property.

- The difference arises in case of distribution of property there are different categorisation of people who can be eligible for claiming the inheritance over the property.

Under Hindu law the categorisation is made and it involves the following.

- a) Class I heirs
- b) Class II heirs
- c) Agnates
- d) Cognates

The property will devolve based on this order subsequently. Class I heirs has 12 members and after the amendment it has been raised to 16 members. As of now, the importance is given to members of this class.



Class II heirs starts from the father and involves sister and main aimed at distant relatives.

- I. Father
- II. Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister
 - (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter' daughter's son, (4) daughter's daughter's daughter.
- III. Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
 - (1) Father's father; father's mother.
 - (2) Father's widow; brother's widow.
 - (3) Father's brother; father's sister.
 - (4) Mother's father; mother's mother
 - (5) Mother's brother; mother's sister.

Agnates are the members of the family from the male line of descendant and it involves the father, grandfather and great grandfather.

Cognates are the members of the family from the female line of descendant and it involves the mother, mother's sister and involves some other people.

Section 10 of Hindu succession act deals with the general rules of succession of male heirs deals with the above categorization of members for the inheritance over the property.

Under Muslim law the categorization is made as follows

- i. Sharers
- ii. Residuary
- iii. Distant kindred

Out of the two major schools Shia school does not recognise the category of distant kindred and under Sunni law it is accepted as most of the people follow this Sunni Muslim.

The sharers or Ashabul-faraiz are altogether twelve in number - four males and eight females.

1. Husband 2. Wife 3. Daughter 4. Daughter of a son (or a son's son or a son's son's son's)
5. Father 6. Paternal grandfather 7. Mother 8. Grandmother on the side of the males 9. Full sister 10. Consanguine sister 11. Uterine sister 12. Uterine brother

The next category of persons is called as Asabah or Residuary because they take the residue after such of the sharers as are not excluded have been satisfied. They are divided into three classes:

(1) Residuary in their own right: It includes all the male relations and does not include any female relations. It is further divided into four classes.

- (1) Parts of the deceased, i.e. his sons and grandsons howsoever low.
- (2) His roots i.e. the ascendants, his father and true grandfather, how high so ever.
- (3) The offspring of his father viz. full brothers and consanguine brothers and their lineal male descendants.
- (4) Parts or offspring of the true grandfather, how high so ever, i.e., lineal male descendants, however remote, of lineal male ascendants, however remote.

(2) Residuary in another's right: They are those females who as sharers are entitled to one-half or two-thirds and who are eligible to inherit the property if they co-exist with others at the time of inheritance.

(3) Residuary together with another: It is a female heir who becomes residuary because of her co-existing with another female heir at the time of inheritance.

The final category of people involves the following persons as follows,

Distant kindred: The next class of heirs are known as Dhauil-arham or distant kindred. They include the relations who are neither sharers nor residuary; they inherit only if there are no sharers or

residuary. Shafi and Maliki's do not treat them as heirs at all. They are further classified and involves four classes of people.

- a) The offspring of the deceased
- b) The roots of the deceased or his ascents
- c) The off springs of his parents
- d) The offspring of his grandparents. Even if they are remote, they are considered.

In the above said manner the categorisation of peoples for inheritance over the property is made under their respective laws.

➤ Another notable difference is the classification of properties in the respective laws.

Under Hindu law, the property involved for the inheritance includes ancestral property. It is also known as co parcenary property. The right to claim inheritance is vested with the ascendants and descendants of male line. **Section 6** of Hindu succession act explains about the devolution of property among the all-male co heirs. This is the position prior to amendment. After amendment has made female are treated equally with that of males. It explains as follows,

The female got the right by the birth as that of son. She is also having the same rights and liabilities over the property in the similar manner as that of the son.

Under Hindu law another kind of property involves self-acquired property by the members of the family. The self-acquired property need not be governed by this Hindu succession act.

The right of inheritance can be claimed by the person if the right over the property is not based on will which is also known as 'intestate succession'. If any will have been written by the person or the deceased the property should devolve based on the priorities and the instructions given as per the will. They can not claim right over the Hindu succession act.

In Muslim law they will not consider about the ancestral property. They will have single or joint property. The right of inheritance over those properties are governed by this law. The property will be devolved as per capita and per stripes.

Per Stripe's distribution: Per stripes distribution of property is followed by the Shia branch of Islam. Under per stripes distribution, a property is distributed among the heirs of a branch (strip) of the family. Accordingly, the family branch and the number of people that exist in that particular branch of the family will determine the amount of share in the property of the family members.

Per capita distribution: Per capita distribution of property is mainly followed by the Sunni Muslims. In per capita distribution, the property is divided equally among all the heirs. This means that the number of heirs of the deceased determines the amount of share for each heir in the property of the deceased. The branch of the family to which the heir belongs to does not influence the inheritance that he or she is subjected to receive.

- Another notable difference is inheritance through females.

Under the Hindu succession act, the inheritance of property devolves only upon the males prior to the amendment.

The position prior to amendment:

In this law the females were not treated equally and the property devolves only on the male heirs of both ascendants and descendants' line. Even the widow or the mothers are not given right to inherit over the property.

The position after the amendment:

Section 6 of Hindu succession act is amended and it gives the same right as that of the male for the right of inheritance over the coparcenary property. After this change the women are treated equally with that of men. The widow got the first priority and righter than all the female members. She has the complete right to inherit over the deceased husband's property.

This amendment made in the year 2005 and it is considered to be the turning point which make others to treat women also as a human being and they were in no way lesser than the men. Section 15 of Hindu succession act deals with the devolution of property over female heirs with some priorities. It explains the procedure or the manner in which the property should be dissolved.

Under Muslim law, the female was given the rights of shares over the property from the enactment of their own law. The share given to them is considered to be low than that of the Muslim males. But it is not considered to be worse than that of Hindu law before the amendment. Under Shia law, women usually receive half of the share amount that the males get. This is reasoned so because Muslim women receive maintenance and also mere at the time of married whereas Muslim men are entitled only to ancestral property.

Right of the widow: Widows are also entitled to property in a succession as per Muslim law.

If the widow does not have any children, then she will be entitled to one-fourth of the property that her deceased would receive. The amount that she will actually receive would be calculated after paying off the debts and legal and funeral expenses of her husband.

If the widow does have children or grandchildren, then she will be entitled to one-eighth of the share of her husband's property.

But a widow has no right to inheritance if she had married her husband while the husband was ill and died at a later point of time, provided that sickness was continuous with no period of recovery or if such a couple had not consummated the marriage till the time of the death of the husband. On the other hand, if the husband who is ill divorces his wife and thereafter passes away from that illness, the widow will be entitled to gain a right to inherit till the time that she does not marry again.

In this way after the amendment has been made Hindu law treated to be equal as that of Muslim law in giving importance to women.

➤ The next difference is the child under womb

Under Hindu law, if any child is in the womb of the mother it is considered to be alive and a share will be allotted to it over the coparcenary property.

Under Muslim law, a child in the womb of his mother can only be entitled to inherit property if the child is born alive. This means that even in its embryonic stage, a child is considered to be a living person and it is immediately entitled to the inheritance of property, so long as the child is born alive. If the child is not born alive, then its interest in the property is immediately cancelled and shares in the property will be distributed in such a manner as if the child/ embryo had not existed at all.

➤ The subsequent difference is on succession by government.

Under Hindu law, **Section 29** of Hindu succession act deals that if there is no legal heirs or heirs as common to the deceased the property will be automatically controlled and enjoyed by the government under this act.

Escheat under Muslim Law: Escheat is the process by which the government can take over the rights and possession of the property of a deceased. The state can only take over a deceased's property if the deceased has no living legal heirs at all. This is because the state enjoys the status of being the ultimate heir to every deceased person.

In this way the name by which each property is governed makes as a difference.

The most important difference is the treating of women priority over the property among the other members for inheritance is summarised as follows,

Hindu Law: The Hindu law has come a long way from complete depravation of succession rights for women before the passing of the Hindu Succession Act, 1956 to allowing a Hindu daughter to act as Karta vide a latest Delhi High Court judgment. The Act brought about a revolutionary change in the Hindu law even as a Hindu mother, wife or daughter got a share equal to that of the son on the death of a Hindu male. In fact, a Hindu mother has been given preference over her male counterpart under the modern law. While a Hindu mother is a Class I heir and entitled to receive share in the property of her deceased son, a Hindu father is a Class II heir who will be entitled to his son's property only if none of the Class I heir are alive. The law has been further liberalized after the passing of the 2005 Amendment whereby and now a daughter is also coparcener just like a Hindu son in the Hindu undivided family entitling her to similar rights in the Joint Hindu family property like a Hindu son including the right to ask for a partition of the family and by extension the joint property.

Muslim law: The Muslim law of succession has shockingly not been a subject of criticism unlike Talaq ul Biddat. Even though the old Muslim law vested inheritance rights in the Muslim female the succession law is highly biased in the favour of the Muslim men and prejudiced against the women. Thus, a son gets twice a daughter's share in the deceased father's property and the share of a Muslim woman is even lower in other cases. This seems archaic and barbarous compared to the Hindu law where the personal law has become egalitarian, even slightly favourable towards women.

The widely discussed difference are tabulated below:

¹ Hindu laws	² Muslim laws
Hindu Law is governed by the Hindu Succession Act, 1956	Muslim law is governed by the Muslim Shariat Law Act of 1937.
Division is under mitakshara and dayabagha schools.	The major schools are Shia and Sunni schools.

¹ Hindu succession act 1956

² Muslim personal laws

Hindu law is a codified law.	Muslim law is not a codified law.
Adoption is there under the Hindu law.	Adoption is not there under the Muslim law.
Categorization involves class I, class II, heirs, agnates and cognates.	Categorization involves sharers, residuary and distant kindred.
³ Under the Hindu law, there is concept of separate and ancestral property.	Under the Muslim Law, there is concept of only joint and single property.
Female has got the right only after the amendment.	Female has the right from the beginning.
Child under womb has the right over the property.	Child under the womb does not have the right over the property.
Absence of heirs the devolution of property occurs by Section 29 of Hindu succession act.	Absence of heirs the devolution of property occurs by escheat.

This table summarises the difference between Hindu and Muslim succession laws.

³ <https://blog.ipleaders.in/hindu-law>