

Paper presentation on the topic of
MUSLIM LAW OF INHERITANCE

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INTRODUCTION:

Unlike all other personal laws being practiced in our society, Muslim personal law is unique and peculiar in the sense that it is not codified and it draws its origin directly from the Holy book of the religion i.e, “The QURAN”. Section 2 of The Muslim Personal Law (*Shariat*) Act, 1937 deals with the application of personal law to all Muslims. It reads as: *“Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law. marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).”*

It once again reiterates the applicability of Muslim personal law to all the Muslims, with respect to marriage, dissolution of marriage, and succession etc. However the act does not codify the Principles of such personal law. And in order to understand the concepts of Muslim personal law, it is necessary to understand the sources from which it draws its authority. They are:

SOURCES:

Primary sources are those which the Prophet himself directed to be the sources of Muslim law. They are:

- (1) The Quran (Holy Book)
- (2) Sunna or Ahadis (Traditions of the Prophet)
- (3) Ijma (Unanimous Decisions of Jurists):
- (4) Qiyas (Analogical Deduction):

Primary Sources under Shia Law are:

- (1) Quran.
- (2) Traditions (only those which have come from the Prophet's family).
- (3) Ijma (only those which were confirmed by Imams).
- (4) Reason (Aql).

CONCEPTS OF MUSLIM LAW OF INHERITANCE

HEIRS:

Muslim law recognizes two types of heirs, firstly, sharers, the ones who are entitled to certain share in the deceased's property and secondly, Residuaries, the ones who would take up the share in the property that is left over after the sharers have taken their part.

Eg: Husband, Son, Daughter of Son, Father, Mother, Full Sister, uterine sister etc., are sharers and Wife, Daughter, Paternal Grand father, Grand mothers on the male line, Consanguine Sister, Uterine brother etc., are Residuaries.

ANCESTRAL AND SELF ACQUIRED PROPERTY:

Unlike Hindu law, there is no provision of distinction between individual i.e. self acquired or ancestral property. Each and every property that remains within the ownership of an individual can be inherited by his successors. Whenever a Muslim dies, all his property whether acquired by him during his lifetime or inherited from his ancestors can be inherited by his legal heirs.

NO RIGHT BY BIRTH:

The principle of Hindu law of inheritance of Right by birth does not find place in the Muslim law of inheritance. The question of inheritance of property in Muslim law comes only after the death of a person. Any child born into a Muslim family does not get his right to property on his birth. In fact no such person holds becomes a legal heir and therefore holds no right till the time of death of the ancestor.

TESTAMENTARY SUCCESSION:

A Muslim can execute a will only to the extent of 1/3rd share of his/her property. Rest (2/3rd) has to be distributed as per the rules of succession to the heirs.

DOCTRINE OF REPRESENTATION:

The doctrine of representation does not find its place in the Muslim law of inheritance.

For example, A has two sons B and C. B has 2 children i.e. D and E and C also has two children F and G. During the lifetime of A if B dies, then on the event of death of

A only C shall be entitled to inherit A's property. B's children D and E shall not be entitled to any share in A's property. Between C and B's children D and E, C would totally exclude D and E from inheriting the property. That means the heirs of the predeceased son or daughter cannot claim a share.

Eg:



RIGHTS OF WOMEN IN PROPERTY:

Muslim law does not create any distinction between the rights of men and women. However, the quantum of share of female heir is half of that of the male heirs. The justification available to this distinction under Muslim law is that the female shall upon marriage receive *mehr* and maintenance from her husband whereas men will have only the property of the ancestors for inheritance. Also, men have the duty of maintaining their wife and children.

SHARES:

A **Husband** is entitled to a share of **1/2** share in the property of the wife, if they are child less. And **1/4th** share in case there are children.

A **Wife** is entitled to a share of **1/4th** share in the property of the husband, if they are child less. And **1/8th** share in case there are children.

Mother and **Father** are entitled to **1/6th** of share each.

Daughter is entitled to a share **half** of that of the Son.

Where there is a son, daughter becomes residuary.

The heirs of a predeceased son or daughter are excluded.

Eg:

Preponderance

Preponderance						
Father	Mother	Wife	Son	Son	Daughter	Daughter
1/6th	1/6th	1/8th	2/6	2/6	1/6	1/6

For example, the Deceased had a property of 1000 sq.yards. Mother and father get a share of 166.66 sq. yards (1000X 1/6) each. and the wife gets a share of 125 sq. yards (1000X1/8). The sons gets two shares in the rest of the property, and the daughter gets only one share. The Widow gets her share out of property remaining after meeting the Funeral expenses.

MARRIAGE UNDER THE SPECIAL MARRIAGE ACT, 1954:

Where a Muslim contracts his marriage under the Special Marriage Act, 1954, he ceases to be a Muslim for purposes of inheritance. Accordingly, after the death of such a Muslim his/her properties do not devolve under Muslim law of inheritance. The inheritance of the properties of such Muslims will be governed by the provisions of the Indian Succession Act, 1925.