

Comparative Study of Women's Succession Laws Under Christian and Parsi Law

Laksh Verma*

Symbiosis Law School, Hyderabad, Telangana, India

ARTICLE INFO

*Correspondence:

Laksh Verma
lakshverma2800@
gmail.com
Symbiosis Law School,
Hyderabad, Telangana,
India

Keywords:

Christian,
Intestate,
Parsi,
Succession,
Women.

How to Cite:

Verma, L. (2021)
*Comparative Study of
Women's Succession
Laws Under Christian
and Parsi Law. DME
Journal of Law, 2(1), 66-73.*
doi: 10.53361/DMEJL.
v2i01.0008

Abstract

In India various subjects such as division of property is governed by law of religion because of which the laws for people of different might differ and in this research paper our aim is to compare and analyse the position of Parsi and Christian women with respect to inheritance under the Indian Succession Act. Throughout the course of the paper, we understood various provisions for distribution of property among Christians upon the death of intestate by studying the section 32 to section 49 of Indian Succession Act and a few major findings were these laws are not even uniform in nature, there exists an unequal division of property between the widow and lineal descendants of the intestate. We also studied the section 51 to section 56 of Indian Succession Act to find out the position of women with regard to inheritance of property and it seemed satisfactory because the distribution was uniform, the widow and her legal descendants had an equal share in the property of the intestate, apart from that even the father and mother are given an equal share that can be fair till an extend but they both receive an equal share it is not like the case of Christian succession in which the entire share of father and mother is given to father. Following were some of the major findings that make us ponder whether these laws are discriminatory or not. The author is of a strong opinion that the Christian succession laws are discriminatory that is reflected in the end of the paper along with some recommendation aiming towards getting women equal status as to that of men when it comes to inheritance.

Background of the Study

India is a land of various religions, there is a lot diversity in beliefs, traditions and customs. Often the laws governing family matters are ruled by religion, there are separate laws for people following different religion. People belonging to different religion are governed by the specific religious laws and in this paper we shall be studying about the laws governing Christian and Parsi Succession and comparing the place for women under both the laws.

INTRODUCTION

Succession laws in India deal with the distribution of assets after an individual has deceased, there can be two types of situations that can arise, where the person dies after signing a will or without signing a will. Intestate refers to a person who does not sign any will before dying and in this research paper we shall be discussing and comparing the women's succession rights in case of

death of an intestate. Since laws of succession are personal laws and every religion has different laws, we shall be focusing upon India Succession Act 1925 because this act deals with laws of succession of Christians and Parsis.

Before getting into the topic, it is essential to understand the Indian Succession act briefly because it will further simplify the information. The act governs inheritance in Christian, Parsi and Jews when the person dies without making a will and Hindus, Jains, Sikhs, Buddhists, Christians, Parsi and Jews after a person dies after making a will however in this paper our scope shall only be limited to the cases where the Christian or Parsi dies without making a will, in such circumstances what shall be the difference between the rights of women who is a Christian as well as a Parsi.

Rights of succession in Christians is governed under section 31 to section 49 of the Indian succession act and these laws shall also apply to Indian Christians and their descendants as per section 2(d) of India succession act¹ and may also include were Hindus but have converted to Christianity as it was held in the case of Radhika V. Shri Gajapati Nalini² and the rights are defined by acknowledgement of three heirs that are the spouse, lineal descendants and kindred. When the intestate is a male and he is deceased, his wife is termed as a widow and has certain provisions to claim the property. The act also does not discriminate upon the gender of the lineal descendants and kindreds so we can also say that women enjoy equal right to that of other family members of the same degree of heredity e.g. brothers and sisters. There are several rules involved when it comes to distribution of property such as a widow is entitled to get 1/3rd property of the intestate while the remaining 2/3rd goes to the lineal descendant³. Also a daughter in law has no right in her intestate father's property and in case the intestate has left a widow with no lineal descendants then the widow may be given 1/2 of the total property as mentioned under Section 33(b) of Indian Succession Act⁴. We shall be discussing

these sections in further detail in the later part of the research paper.

Right to succession among Parsis are quite different from that of Christians, among parsis if a widow of an intestate has married again in the lifetime of intestate, she shall not be liable to receive any share of property or shall be considered as non-existent during the distribution of property⁵ as per the general principles. Another feature of the Parsi succession laws is that in case of the death of an intestate the widow/widower, children shall receive an equal share of property. In case where the intestate has no widow, then all his children shall be entitled to the same amount of property distributed equally. When the parents, children and widow are alive then each parent shall be entitled to half of the share as given to each child and widow⁶

The act also has provisions in case the intestate leaves no lineal descendants but a widow and cases where the property has to be distributed between the widow of the intestate and the widow of the son if there is any and also for cases where the widow of intestate is not there but widow of the widow of the son is there.⁷ Widow of an intestate shall also be entitled to get the full property if any of the relatives are not found under section 54 (e)⁸

As it is understood that the procedure and ratio of distribution of property is very different, we shall be understanding and analysing these laws while focussing upon the succession rights of women. For the sake of simplifying the research we shall be discussing the rights of widows and other female relatives that may include lineal descendants and analysing them.

Methodology and Research In order to make this project, doctrinal method of research was used as various scholarly articles were referred to and provisions were studied from the bare act while various commentaries by various authors was also taken into account, online law school library was used in order to access most of these resources.

Some of the questions that will be answered in this article are as follows

1 Indian Succession Act, 1925, § 2(d).

2 Radhika V. Shri Gajapati Nalini 1870 (14) WRPC 33.

3 Indian Succession Act, 1925, § 33(a).

4 Indian Succession Act, 1925, § 33(b).

5 Indian Succession Act, 1925, § 50.

6 Indian Succession Act, 1925, § 51.

7 Indian Succession Act, 1925, § 54.

8 Indian Succession Act, 1925, § 54 (e).

What are the succession rights of women under Christian and Parsi law and how are the portions of distribution different while examining how even handed and fair this distribution of shares are in order to compare and analyse the provisions given for distribution

INDIAN SUCCESSION ACT AND PROVISIONS DEALING WITH CHRISTIAN AND PARSI SUCCESSION

The Indian Succession act talks about how the property shall be divided if a person dies. There can be 2 instances, the person can die after making a will or he can die without making a will and in that case he said to have passed away intestate. The act deals with Hindu, Jain, Sikh, Buddhist, Christian, Parsi and Jews after they die after making a will. The act also deals with Christian, Parsi and Jews after they die without making a will. In this act the succession rights of Indian Christians have been discussed under section 32 and section 49 of the act while the rights for Parsi succession in case where the Parsi dies intestate have been defined within between Section 51 and Section 56 of the act⁹. The section 32 of the Indian Succession Acts states that in the case where a Christian dies intestate, his property will devolve and get divided among the widow or the widower depending upon the gender of the intestate and the children and hence establishes a procedure that has to be followed.¹⁰

The section 50 of the Indian Succession Act states that if the lineal descendant of an intestate passes away during the lifetime of intestate without leaving any widower or widow or lineal descendants then they shall not be given any property as per Section 50(b) or in cases where the widow remarried during the lifetime of the intestate then she shall not be entitled to inherit any property of the intestate as per section 50(c) and it will be considered as if she does not exist because her share wont be taken into consideration¹¹

9 J. N. Saxena, *Widow's Right of Succession in India*, 11 AM. J. COMP. L. 574 (1962).

10 Indian Succession Act, 1925, § 32.

11 Indian Succession Act, 1925, § 50.

We shall be understanding in detail how is the property exactly divided according to the above mentioned sections and understand the rights of women in the property of the intestate so we can analyse them better.

SUCCESSION RIGHTS OF CHRISTIAN WOMEN IN INDIA

The laws dealing with Christian Succession have been mentioned between section 32 and section 49 of the Indian Succession Act and the section 32 talks about how the property is going to be distributed, who will be entitled to receive a share and establishes the procedure to distribute property among the relatives of the intestate¹². The following applies to Indian Christians and when no laws for Christian succession existed, Travancore Christian Regulations Act governed Christian succession in Travancore region however it was that Indian Succession Act would be applicable instead after it was passed since the provisions were discriminatory against women as we can see in the case of Mary Roy V. State of Kerala¹³ where Mary was forced to vacate her fathers cottage after being humiliated by her brother because as per the laws she had unequal rights. It was also held in the judgement of J. Ramayyan V. Palayyan and ors¹⁴ that the date of death of intestate is important to understand which of the act shall be applicable.

Rights of Widow

Section 33 talks about 3 situations that might arise, the first one being where the intestate has left widow and lineal descendants, the second one being where the intestate has left widow and kindred only and the third one being where he has left a widow and no kindred¹⁵. As per section 33(a) where the intestate has left a widow and lineal descendants, in such case the widow shall be entitled to claim 1/3rd of the property and the remaining 2/3rd shall be given to the lineal descendants¹⁶ and now the question arises

12 Indian Succession Act, 1925, § 32.

13 Mary Roy V. State of Kerala AIR 1986 SC 1011.

14 J. Ramayyan V. Palayyan and ors 1998 SCC OnLine Mad 303.

15 Indian Succession Act, 1925, § 33.

16 Indian Succession Act, 1925, § 33(a).

that how will this $\frac{2}{3}$ rd property be distributed? As per section 36 of the act the rules of division among descendants are mention in sections 37 to section 40 that we will be discussing.

Under the second condition where the intestate has left no lineal descendants but only a widow, then $\frac{1}{2}$ of the property shall be given to the widow and the remaining $\frac{1}{2}$ shall be distributed to the kindred but section¹⁷ 33(c) says that in case there are no lineal descendants nor kindred then the whole property shall go to the widow¹⁸.

Rights of Women in Kindred

As per section 33 we learned that after deduction of $\frac{1}{3}$ rd share of the widow, the remaining $\frac{2}{3}$ rd shall be distributed among his lineal descendants but we did not focus on how this $\frac{2}{3}$ rd will be divided among his lineal descendants, the provisions for division of this $\frac{2}{3}$ rd property of the intestate has been mention in section 37 to section 40 of the act. If there is only 1 child it can be son or daughter, the $\frac{2}{3}$ rd share left after deducting $\frac{1}{3}$ rd share of the widow goes to them but if there is no widow of the intestate then the lineal descendant shall get the whole property of the intestate¹⁹ and if there are multiple children then the whole property shall be divided equally among them for example if there are 3 children and no widow of the intestate then each of the 3 children will be entitled to $\frac{1}{3}$ rd of the property of the intestate and if there is also a widow alone with more than 1 children then after deduction of $\frac{1}{3}$ rd share of the widow $\frac{2}{3}$ rd of the property will be distributed equally among the children²⁰ for example if the intestate dies with 100 units of property then 33.33 shall be given to widow and the rest 66.66 shall be distributed among his children equally for example if he has 3 lineal descendants then they all will be entitled to 22.22 units each.

There can also be a case where the intestate has no children but grandchildren, as per section 38 of Indian Succession Act the property shall be given to the grandchild²¹ if there is one and in case the widow of the intestate is alive then also she shall be entitled

to $\frac{1}{3}$ rd share of the property and the grandson will get the property after deduction of share of the widow or if he has more than 1 grandchildren then it will be equally distributed amongst them.

Section 41 of the Indian Succession Act talks about the rules of distribution of property after deducting the widows share if there are no legal descendants²² and states that section 42 to section 47 shall talks about the same. Section 42 of the act states that if the intestate dies and he leaves behind a widow and no lineal descendants and his parents are still alive, then in such case $\frac{1}{2}$ share will be given to the widow and remaining $\frac{1}{2}$ will be given to the father²³, it is not be noted here the under this section the mother of the intestate gets no share and in cases where there is no widow of the intestate and no lineal descendants then the father gets the whole property and the mother still does not get any share. There can be a situations where even the father is dead and for such situations there is a section 43 according to which the property shall be distributed among the mother and each living brother and sister equally, it is to be noted here that if the widow of the intestate was still living then the share of mother, brother and sister would've been distributed after deduction of the widow's $\frac{1}{2}$ share.²⁴

The only case where the mother shall be entitled to the entire property of the intestate will be when he has no widow, his father is dead but his mother is living and there are no brothers, sisters, niece or nephews.²⁵

An Analysis of Christian Succession Laws Under Indian Succession Act

Christian succession laws under Indian Succession Act in the opinion of the author are quite discriminatory against women because there are several cases where the conditions for men and women are not same when it comes to distribution of property. The author would like to mainly talks about 2 instances, as per section 33 of the act $\frac{1}{3}$ rd of the property shall be given to the widow and the remaining $\frac{2}{3}$ rd of the property shall be given

17 Indian Succession Act, 1925, § 33 (b).

18 Indian Succession Act, 1925, § 33 (C) .

19 Indian Succession Act, 1925, § 37.

20 Indian Succession Act, 1925, § 37.

21 Indian Succession Act, 1925, § 38.

22 Indian Succession Act, 1925, § 41.

23 Indian Succession Act, 1925, § 42.

24 Indian Succession Act, 1925, § 43.

25 *Economic and Property Rights of Women*, 18 ANN. REV. POPULATION L. 111 (1991).



to the lineal descendants²⁶, the law may not look discriminatory on the face on it but the distribution should be done such that everyone is entitled to an equal share because such situations and arise when the intestate has left behind 1 son and widow and under such instances $1/3^{\text{rd}}$ of the share will be given to the son and $2/3^{\text{rd}}$ will be given to the widow, such should not be a case as it is unfair.

Another instance that is discriminatory in the opinion of the author is that mother and father are not given the same priority in distance from kindred when it comes to distribution of property and this is as per section 42 of the act²⁷ according to which if the intestate leaves no lineal descendants, then after giving away the $1/2$ share of widow the other half goes to the father and mother gets no share. Section 43 of the act places the mother at the same distance with respect to kindred as that of his brother and sister²⁸ and this is wrong because mother comes directly in blood relation with the intestate and should be given equal share like the father, in the opinion of the author such laws are patriarchal in nature.

SUCCESSION RIGHTS OF PARSI WOMEN IN INDIA

Succession rights of Parsi are given between section 51 and 56 of the Indian Succession Act and helps us in understanding the division of the property among Parsi in case the property holder dies intestate. We shall understand the succession rights of Parsi women by dividing these sections into three parts so we can understand the rights of widows and rights of women in kindred separately and then analyse these laws.

Rights of Parsi Widows Under Indian Succession Act

Under the Indian Succession Act the very first provision is that if the widow marries during the lifetime of the intestate then she shall not be eligible to get any share in her property and her share will

not be considered²⁹ as per section 50(c) of Indian Succession Act. If the husband of the women dies intestate then the widow and the children shall be entitled to have an equal share each³⁰ as per section 51(a) that means if the intestate leaves 3 sons for example and a widow then all of them should be entitled to $1/4^{\text{th}}$ of the total property of the intestate.

There is also a provision for division of property of predeceased child of intestate under section 53 of the act. If the predeceased child is a son then in that case under section 53(a) of the act his share his distributed equally among his widow and his children such that they all get an equal share³¹, we shall be studying in detail along with an example under the next subtopic. Also the section 53(b) talks the case when where the predeceased child is a daughter and states that in such condition where the share of the predeceased daughter has to be divided then all her children are entitled to get an equal division of property from the share of the predeceased daughter³², it is to be noted here that unlike section 53(a) there is no provision of granting the share to the widower like in section 53(a) the widow was also entitled to get the same share as her children, example the predeceased daughter is entitled to get $1/2$ share after $1/2$ is taken by the widow of the intestate then the widower of the predeceased daughter wont be entitled to get any share and if she has 2 sons then the property will be distributed between them equally that means they both will be getting $1/4^{\text{th}}$ of the share each.

Section 54 of Indian Succession Act talks about how a property shall be distributed when the intestate leaves no lineal descendants but leaves a widow or widower or a widow or widower from lineal descendants³³. As per section 54(a) in cases where the intestate leaves a widow or widower but no widow or widower of the lineal descendant, the widow of the intestate shall be entitled to $1/2$ of the property of the intestate³⁴ but if the scenario is that there is also a widow or widower of a lineal descendant as well as the intestate then both of

29 Indian Succession Act, 1925, § 50 (c).

30 Indian Succession Act, 1925, § 51 (a).

31 Indian Succession Act, 1925, § 53 (a).

32 Indian Succession Act, 1925, § 53 (b).

33 Indian Succession Act, 1925, § 54.

34 Indian Succession Act, 1925, § 54 (a).

26 Indian Succession Act, 1925, § 33.

27 Indian Succession Act, 1925, § 42.

28 Indian Succession Act, 1925, § 43.

them shall be granted $\frac{1}{3}$ rd of the property of the intestate³⁵ each as per section 54(b) and also if there are more widows of the lineal descendants then that $\frac{1}{3}$ rd shall also get divided amongst them so for example if there are 2 widows of the lineal descendants then both of them will be entitled to $\frac{1}{6}$ th of the property of the intestate³⁶

however as per section 54(c) if the intestate has no widows and only his lineal descendants have widows then in case where his only 1 of his lineal descendant has a widow she will be entitled to $\frac{1}{3}$ rd of the property but if the number of widows of lineal descendants are more than 1 then $\frac{2}{3}$ rd of the property shall be divided equally amongst them³⁷ for example if the intestate has no widow but his lineal descendants have 2 widows then $\frac{2}{3}$ rd will be divided between both of them and both of them will be entitled to get $\frac{1}{3}$ rd of the property.

Rights of women in Kindred Under Indian Succession Act

As discussed in the chapter 3.1 that in case the Parsi dies intestate then the children widow, widower and children receive an equal share and since there are no specific provisions for allocating property based on gender, all the women in kindred are liable to receive an equal share of property as received by the widow or any son³⁸ as per section 51(a) of Indian Succession Act. There might be a case where the widow has remarried during the lifetime of the intestate and hence is not liable to receive any share in property³⁹ as per section 50(c) or she has also died then in such cases the property shall be distributed among the children equally and all the women will have equal share as to that of any other children⁴⁰ for example if a person dies intestate only leaving behind 2 sons and 2 daughters then each daughter shall be entitled to receive $\frac{1}{4}$ th of the property. Now we should discuss how the property is divided among parents along with widow and children, as per section 51 of Indian Succession Act the parents will be entitled to receive half of the share given to

each child⁴¹, meaning for example if the women and children is entitled to 10 units of property then the mother and father of the intestate shall be entitled to 5 units of property each.

The act also has provisions for predeceased children, that means widow and children of the intestate, section 53 of the act states that the children of the predeceased son will be entitled to an equal share of property as that of his widow⁴² so for example if the intestate has a widow and a son that is predeceased, then the widow and the son will be entitled to $\frac{1}{2}$ of the property of the intestate and his $\frac{1}{2}$ share will be equally divided among his children irrespective of gender and widow, it is to be noted here that this section is gender specific and only applies to sons in the context of being predeceased⁴³. If the predeceased son has 1 daughter and 1 son and has left behind a widow, then all of them will be entitled to $\frac{1}{6}$ th of the share of intestate. As per section 53(c) of the same section the section 53(a) and 53(b) shall also apply to the next generation if the son or sons of predeceased children are also predeceased.⁴⁴

As per section 54 as we understood in chapter 3.1 of this paper about distribution of property to widows of lineal descendant and widow of intestate, a question was unanswered, who will get the remaining property? Section 54 also states that after distribution of the property to the widows, the $\frac{1}{2}$ of the property will be given to the father and mother combined in case there is no legal descendant and prescribes the procedure of allocation of share among other distant relatives.⁴⁵

An analysis of Parsi women succession laws and the position of women

After thoroughly researching and studying the inheritance rights of women the author believes that the provisions in the Indian Succession Act that deal with distribution of property are not discriminatory towards women because in all instances equal share has been given to the daughters and sons, if

35 Indian Succession Act, 1925, § 54 (b).

36 *Ibid*

37 Indian Succession Act, 1925, § 54 (c).

38 Indian Succession Act, 1925, § 52 (a).

39 Indian Succession Act, 1925, § 50 (C).

40 *Ibid*

41 Indian Succession Act, 1925, § 51.

42 Indian Succession Act, 1925, § 53.

43 *Ibid*

44 *Ibid*

45 Indian Succession Act, 1925, § 54.

any discrimination has been made then it is against men because as per section 53(a) and section 53(b) the widower of the daughter of the intestate is not entitled to get a share in the property of the intestate while the widow of the son of the intestate is entitled to get equal share as to that of her sons⁴⁶, hence in the opinion of the author the succession laws for Parsi under Indian Succession Act are not at all biased and ensure no discrimination takes place against women.

A CRITICAL ANALYSIS OF POSITION OF PARSİ WOMEN AND CHRISTIAN WOMEN IN INDIAN SUCCESSION ACT

After studying the provisions that the Indian Succession Act has that talks about the position of Christian women and Parsi women we have understood that firstly both the acts make no discrimination among the descendants in terms of gender and hence women and men are given equal rights and the author does not see any kind of flaw regarding that. Parsi women enjoy equal rights under the Indian Succession Act and if not equal then superior rights as that of men however it is the personal opinion of the author that women enjoy superior rights than that of men because it is a subject of ones interpretation because as per section 53(a)⁴⁷ the widow if the deceased son of the intestate is entitled to get a share from the property that was supposed to be given to the son if he was alive⁴⁸ and section 53(b) the widower of daughter of the intestate is not entitled to get any share in the intestate's property. Other than this provision there is difference in distribution of property among men and women and because of this provision the laws seem to be pro women⁴⁹. Contrary to Parsi succession laws the Christian law for succession under Indian Succession Act seem discriminatory against women it is also a subject of interpretation but the improper allocation is the reason why these laws can be discriminatory, for example under

46 Indian Succession Act, 1925, § 53.

47 Indian Succession Act, 1925, § 53 (a).

48 Indian Succession Act, 1925, § 53 (b).

49 *Ibid*

section 33 of Indian Succession Act 2/3rd property goes to the descendants while 1/3rd property goes to the women and the author believes that such non uniform and unequal distribution of property can be discriminatory because in situations where the intestate only has one son then less property will be given to his wife that is 1/3rd and hence it is a recommendation to make the division uniform and equal and not to distinguish between the amount of share given to the widow and her descendants like under Parsi laws. The author believes since both the father and mother are equally close to their son in terms of kindred relations, Equal property should be given to both of them but under the Christian laws the mother is not entitled to a share like husbands⁵⁰ as per section 42 of Indian Succession Act, rather they are in the category of the brother and sisters when it comes to distance in terms of kindred and hence it a recommendation from the author to change the following laws and make the father and mother entitled to an equal share instead of giving the entire share of them to the father. Family laws should be fair for everyone even the Supreme Court in the judgement of Mary Roy V. State of Kerala⁵¹ held that gender equality should exist in Indian law especially in the context of family law because Indian family laws are influenced by ancient uncodified laws.

CONCLUSION AND RECOMMENDATIONS

In this research paper we compared the inheritance rights of Parsi and Christian women as per the provisions of the Indian Succession Act by studying in detail the various sections that were concerned with it. We briefly learnt a few things about the Indian Succession Act as well and its extent of applicability. After studying the various provisions of succession among Parsi we came to a conclusion that the system and laws for division of property after the death of and intestate are ideal and that is how they should be with respect to position of women in inheritance because we observed an equal distribution of property however the author

50 Indian Succession Act, 1925, § 42.

51 Mary Roy V. State of Kerala AIR 1986 SC 1011.

would like to recommend that even the widower of the daughter of intestate should also get a share in the property of the intestate. We also learnt about distribution of property among Christian women and learnt various provisions associated with it and concluded that these laws are quite discriminatory and should be changed, the author is not satisfied with non-uniformity in division of shared between the widow and kindred and father being entitled to get a share and it being prioritised over mother by placing the mother as distant as the brother and sisters of the intestate and hence it is a recommendation that just like in Parsi Laws even

in Christian laws the mother and father should be entitled to an equal share.

SOURCES

Indian Succession Act, 1925
Dr. Sebastian Christian Law of Succession in India
Parashar Archana Women and Family Law Reform in India
Saxena Poonam Pradhan Family Law Lectures – Family Law ii

Online Databases

SCC Online
Manupatra
LexisNexis

