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# **INHERITANCE LAWS OF BAHA'I COMMUNITY: A GENDERED ANALYSIS OF INHERITANCE UNDER THE KITAB-I-AQDAS AND THE INDIAN SUCCESSION ACT**

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## **ABSTRACT**

This paper seeks to explore gender equality in inheritance laws of the Baha'i community as stated under the Holy-Book Kitab-i-Aqdas. While many argue that interstate succession favours males over females this paper attempts to establish that the Baha'i laws in fact create a symmetrical equality between sexes. This has been done by exploring the application of the Principle of Mutatis Mutandis on inheritance laws under the Kitab-i-Aqdas. Additionally, the concept of private property as understood by the Baha'is and its effect on testamentary succession is also discussed. Further, an overview on inheritance laws of the community in India has been elucidated in an attempt to showcase how inheritance under the Kitab-i-Aqdas may in fact be more progressive and gender neutral.

## INTRODUCTION

This research will investigate various aspects of inheritance laws in the Holy book, Kitab-i-Aqdas through a gendered lens. The origin of a customary law can only be comprehended in the context of its theological setting, which in this instance is exclusive to the Baha'i community. Therefore, some details pertaining to the religion will be offered in order to lay down a comprehensive understanding of its fundamental beliefs and values. While delving into the issue of gender equality, the focus and scope of research shall be limited to the purview of inheritance laws as stated under the Kitab-i-Aqdas and qualified by the guardians and a comparative analysis will be drawn with succession under the Indian Succession Act of 1925.

## THE BAHÁ'Í FAITH

While Islam is widely regarded as the newest religion, scholars are increasingly acknowledging the Baha'i Faith as the most recently established universal religion.<sup>1</sup> The Baha'i faith is a fairly young religion founded in the 19th century by Baha'u'llah and propagates that all religions have equal value and that all people are one. It initially came into being in Iran and other regions of the Middle East, where it's followers have been persecuted ever since.<sup>2</sup> This religion has three major pillars, namely, the Bab who was a herald that proclaimed that God had sent to earth a prophet like Jesus and Muhammad who had been executed by the Iranian State; Baha'u'llah who was a self-proclaimed prophet and was imprisoned for life and finally Abdul-Baha who was his progeny.

In due course of time, the community has developed annually elected local, regional and national level spiritual assemblies and five-year Universal House of Justice meets that govern its religious affairs. According to Baha'i teachings, faith is systematically unveiled through Incarnations of God, credited as the architect of religions across the globe. God is one and the founders of Buddhism, Christianity and Islam are all his incarnations. The major religions are regarded by Baha'is as having a common cause, notwithstanding differences in propagation and societal norms. The Baha'i faith emphasises universal

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<sup>1</sup> Udo Schaefer, *An Introduction to Bahá'í Law: Doctrinal Foundations, Principles and Structures*, JOURNAL OF LAW AND RELIGION, 307-72, 307 (2002). doi:10.2307/1602268. JSTOR 1602268.

<sup>2</sup> Friedrich W. Affolter, *The Specter of Ideological Genocide: The Bahá'ís of Iran*, 1 WAR CRIMES, GENOCIDE, & CRIMES AGAINST HUMANITY 75-114 (2005).

oneness and rejects racial prejudice and nationality. The idea of a global system that mandates the prosperity of all is fundamental to Baha'i teachings.<sup>3</sup> This faith functions on the fundamental belief of equality among the sexes as has been stated by the founder Baha'u'llah' and was subsequently expounded upon by Abdul-Baha.<sup>4</sup> Additionally, the faith also permits gender-based distinction in certain aspects that it deems to be 'appropriate'.

## **SOURCES OF LAW: THE KITAB-I-AQDAS AND THE UNIVERSAL HOUSE OF JUSTICE**

The Kitab-i-Aqdas or "mother-book" authored by Baha-u-llah in Palestine in 1873, is the main source of Bahai laws<sup>5</sup> and is also substantiated by other texts by Baha-u-llah, Abdul-Baha and other heads of the religion. While these sources are termed as *ius divinum positivum* i.e., divine law, they have to be formally enacted by the Universal House of Justice which is the international governing organisation of the community and has the task of progressive application, qualification and interpretation of these texts.

Three sources have however, been highlighted as being invalidated-

- a) Scriptures written by Bab himself are not applicable unless they were explicitly reiterated by Baha-u-llah.<sup>6</sup>
- b) Oral proclamations about the acts of Baha-u-lla are not treated as law and the religion heavily relies on the reformative principle of "sola scriptura" or "by script alone".<sup>7</sup>
- c) Natural laws are not considered to be necessary since the Baha'i faith believes that there exists no pre-determined sense of moral and human dignity. Laws and scriptures of the Prophets are considered to be adequate sources of law since such individuals are considered to be the manifestation of God.<sup>8</sup>

## **RIGHT TO PRIVATE PROPERTY, KITAB-I-AQDAS AND TESTATORS**

Private property has been defined in different ways over the years by various philosophers.

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<sup>3</sup> Moojan Momen, *Baha'i Encyclopedia of Global Religion*, SAGE PUBLICATIONS (2011).

<sup>4</sup> ABDU'L-BAHÁ, SELECTIONS FROM THE WRITINGS OF 'ABDU'L-BAHÁ 79-80, (World Centre ed 1978).

<sup>5</sup> SCHAEFER, *supra* note 1.

<sup>6</sup> SCHAEFER, *supra* note 1, at 317.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

While John Locke was in favour of the idea and state that “*god gave the world to all humanity in common, a person owns the fruits of ones labour*”<sup>9</sup>, Rosseau took a more righteous approach and hypothesised it as something that man must create and not merely improve upon in order to claim.<sup>10</sup> Robert Nozick further qualified this idea by elucidating that the right to private property should exist only if there is enough and as good left for others. He took the moral high ground and went on to state that the only justification for private property is that it is a result of one’s labour but its acquisition does not adversely affect common good.<sup>11</sup>

In view of the Inheritance laws prevalent in modern day society, one can say that while mostly the decision of an individual with respect to his particular resource is considered to be final to the exclusion of all others, society still tends to have some say about its use and imposes certain restrictions. This role of society in private property has been further elaborated upon by Jeremy Waldon<sup>12</sup> who stated that societal restrictions should not be understood as restrictions on property rights. General restrictions on human behaviour are societal interventions that do not take away the “private” character of property. Private property is a concept of which different conceptions are possible, every society prescribes implications of ownership according to its own customary practice. He further expounded on how legal relations exist only between two persons and not between a person and a thing.

The inheritance law of the Kitab-i-Aqdas does not give much importance to societal tendencies regarding inheritance rights and grants testators full freedom to will an unlimited share of their property as per their wishes.<sup>13</sup>

The 109<sup>th</sup> verse of the Kitab-i-Aqdas states that, “*Unto everyone hath been enjoined the writing of a will. The testator should make mention, as he may wish, of that which is praiseworthy, so that it may be a testimony for him.*”

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<sup>9</sup> Henry Moulds, *Private Property in John Locke's State of Nature*, *THE AMERICAN JOURNAL OF ECONOMICS AND SOCIOLOGY*, 179-88, (1964). <http://www.jstor.org/stable/3484403>

<sup>10</sup> Jeremy Waldron, *What Is Private Property*, *OXFORD JOURNAL OF LEGAL STUDIES* 5, 313-49, (1985). <http://www.jstor.org/stable/764513>

<sup>11</sup> *Id.*

<sup>12</sup> 5 *OXFORD JOURNAL OF LEGAL STUDIES*, WINTER 313-349, (1985).

<sup>13</sup> BAHÁ'U'LLÁH, *KITÁB-I-AQDAS*, *Bahá'í Reference Library*, K109. <https://d9263461.github.io/cl/Baha'i/Baha/KA/p258-296Index.html>

Resultantly, due importance is granted to the societal duties that come to light with the proprietorship of private property. It is considered to be obligatory to write a will under the Baha'i faith, and therefore scope of legal succession is not very wide.<sup>14</sup> Contrarily, Islamic law has the object to prevent persons from interfering and defeating claims of lawful heirs and limits testamentary succession. One can say that the inheritance law outlined in the mother-book, unlike in Islamic law, is founded based on notions of complete liberty of a testator.

### **INTESTACY: VERSES 20-29 OF THE KITAB-I-AQDAS**

In situations of intestacy i.e., on the demise of a Baha'i inter-state, the line of succession is given under the Kitab-i-Aqdas from verses 20 to 29. Furthermore, if a Baha'i dies without legal heirs and without writing a will, the Universal House of Justice is said to inherit the property.<sup>15</sup> As per verse 20 the estate or *al-mawa-ri-thi* is shared by seven classes of inheritors namely, the father, mother, children, brothers, sisters and teachers, and is divided into a total of two thousand five hundred shares. While the children are allocated nine parts i.e., five hundred and forty shares, the widow is allotted eight parts i.e., four hundred and eighty shares. The father obtains seven parts i.e., four hundred and twenty shares while the mother gets six parts which translates to three hundred and sixty shares. Brothers get five parts while sisters get four parts respectively. Finally, three parts or one hundred and eighty shares are allotted to the teacher.<sup>16</sup> Further as per verse 25, the eldest son of the deceased is entitled to inherit the residence and personal clothing of the deceased and is described as the munificent and all-bountiful.<sup>17</sup> Similar to testamentary succession, as per verses 22, 23 and 24, all property not successfully inheritable by valid legal heirs, is automatically inherited by the Universal House of Justice.<sup>18</sup>

### **GENDER RIGHTS, INTERSTATE SUCCESSION AND PRINCIPLE OF 'MUTATIS MUTANDIS'**

The equality of man and woman is considered to be an intrinsic part of the Baha'ian beliefs.<sup>19</sup> Whether it be Baha'u'llah' stating that, "*all of gods servants and handmaids were*

<sup>14</sup> SCHAEFER, *supra* note 1, at 338.

<sup>15</sup> SHOGHI EFFENDI, KITAB-I AQDAS Note 38.

<sup>16</sup> BAHÁ'U'LLÁH, *supra* note 13, at K20.

<sup>17</sup> *Id.* at K25.

<sup>18</sup> *Id.* at K22,23&24.

<sup>19</sup> Seena Fazel, *Inheritance*, BAHÁ'Í STUDIES REVIEW 76, 76–82 (1994).

*equally ranked on the same plane” or Abdul elucidating that, “Women have equal rights with men; in religion and society they are an important element. As long as women are prevented from attaining their highest possibilities, so long will men be unable to achieve the greatness.”<sup>20</sup>*

Keeping the scope of analysis of this promise limited to inheritance laws, one may argue that the Kitab-i-Aqdas places the continuance of the familial unit in the patriarchal line as it depicts the passing of the familial home to the first-born male heir. Further, the father is portrayed as the bread earner and sole property owner in the family.<sup>21</sup> This structure of interstate succession fosters a patriarchal system that centres itself around the older male figure who is all powerful and depended upon by the female member of the family unit. It can be contended that the position of females within Baha’i inheritance laws are not on the same pedestal as their male counterparts and therefore, these laws perpetuate gender inequality. However, it must also be taken into consideration that when written, the Aqdas presumed the deceased to be a man. This is where the understanding of the principle of Mutatis Mutandis and its relation with the Kitab-i-Aqdas comes into play.

The principle of Mutatis Mutandis is a medieval Latin maxim defined as per Black’s Law Dictionary as *“with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered, when necessary, as to names, offices, and the like.”<sup>22</sup>*

While law stated in the Kitab-i-Aqdas is succinct and appears to express its sole application to men, it is evident that the principle of mutatis mutandis applies between a female and a male as it applies between a male and a female. The same can be ascertained by the literature of Baha’u’llah himself who considered fairness between the sexes to be a fundamental. Further, ‘Abdu’l-Bahá’ has stated that, *“Equality of men and women, except in some negligible instances, has been fully and categorically announced.”* An example of this is that while Kitab-i-Aqdas forbids a male to wed his father’s wife (i.e., his stepmother) under K107<sup>23</sup>, Baha’u’llah specified in note 133 that a female was is prohibited from

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<sup>20</sup> ‘Abdu’l-Bahá, *The Promulgation of Universal Peace*, BAHÁ’Í PUBLISHING TRUST(1982).

<sup>21</sup> Linda and John Walbridge, *Bahá’í Laws on the Status of Men*, WORLD ORDER 25, 25-36 (1984-85).

<sup>22</sup> BLACK’S LAW DICTIONARY (4<sup>th</sup> Ed. 1968).

<sup>23</sup> BAHÁ’U’LLÁH, *supra* note 13, at K107.

marrying her husband's father.<sup>24</sup>

Therefore, on applying the principle of Mutatis Mutandis to inheritance laws under the Kitab-I-Aqdas, it appears possible that the distribution of shares among parents and siblings from a female's inheritance shall be identical to that of a male, ensuing in a "*symmetrical equality between the sexes*".<sup>25</sup>

The same can be ascertained from Baha'u'llah's explanation of the inheritance law under the Aqdas when he was asked if "*In the holy ordinances governing inheritance, the residence and personal clothing of the deceased have been allotted to the male offspring. Doth this provision refers only to the father's property, or doth it applies to the mother's as well?*"<sup>26</sup> In his response, he stated that similar to that of a male, upon death of a female her clothing shall be divided equally among her female offspring and her remaining estate should be distributed among her heirs in the same way as a man's. Further, he also clarified that if a woman dies without any female issue, her estate is divided as if she were a man.

## **GENDER RIGHTS IN INTERSTATE SUCCESSION OF THE BAHÁ'Í COMMUNITY IN INDIA**

The 212nd Law Commission report highlights how all civil marriages, barring that of Hindus, under the Special Marriage Act, 1954 (Hereinafter referred to as the "SPA") would cease the application of personal laws of succession on such persons.<sup>27</sup> Therefore, as a result of the registration of the marriage under SPA, the individuals in concern, their heirs and all future progenies would not continue to inherit property as per their personal laws of inter-state succession. An example of this would be that, if a Jain chooses to marry a Buddhist Sikh or Hindu, he is governed by the Hindu Succession Act,<sup>28</sup> however, if he chooses to marry a Baha'i, succession shall be determined by the Indian Succession Act.<sup>29</sup> Further, owing to the fact the Baha'is do not have a codified personal law in India, all marriages solemnized within the community or between a Baha'i and non-Baha'i and duly

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<sup>24</sup> *Id.* at no. 133.

<sup>25</sup> Sen McGlinn, *Some Considerations Relating to the Inheritance Laws of the Kitab-i Aqdas*, BAHÁ'Í STUDIES REVIEW (1995).

<sup>26</sup> BAHÁ'U'LLÁH, *supra* note 13, at Q37.

<sup>27</sup> The Law Commission of India, 212th Report on Laws of Civil Marriages in India –A Proposal to Resolve Certain Conflicts (2008).

<sup>28</sup> Special Marriage (Amendment) Act, 1976, § 21, No. 28, Acts of Parliament, 1976 (India).

<sup>29</sup> MOHAMMAD NASEEM AND SAMAN NASEEM, RELIGION AND LAW IN INDIA, Para 613 (Kluwer Law International 2020).

registered automatically attach succession via the Indian Succession Act, 1925 (Hereinafter referred to as the 'ISA'). In order therefore to ascertain formally, gender equality in the inheritance rights of the Bahai community in India, it is necessary to analyse sections under Part V Chapter II of ISA.

Driven by patriarchal mentality, the ISA gives females the rough end of the sword when it comes to intestate succession.<sup>30</sup> It is interesting to note that while this legislation was framed in the same century as the Kitab-i-Aqdas, it was and continues to be arguably more discriminatory than customary Bahai law. Some examples of this blatant inequality are, that the share of a widow can be ousted via a pre-nuptial agreement as per Section 32 of the act, a widowed daughter-in-law has no right in her deceased husband's father's property<sup>31</sup> and finally that, mothers are relegated to lower position than fathers and get the chance to inherit only in the absence of the father. Further even when she inherits, she contracts rights equivalent to that of her children as per Section 44 of the ISA.<sup>32</sup>

Owed to the aforesaid, the law commission report recommended the adaptation of a Uniform Civil Code. Ms. Zena Sorabjee, on behalf of one million Bahai's living in rural India further stated that the community would readily abide by such implementation.<sup>33</sup> However, such legislation is yet to come into being. By allowing gender discrimination via legislations such as the ISA, not only is the State failing in its duty to protect the fundamental rights guaranteed under Articles 14 & 15 but is also failing its duty to endeavour to establish a uniform civil code for its citizens as enshrined under Article 44.<sup>34</sup>

## CONCLUSION

Granting women equal rights to inheritance, plays a critical in providing them with socioeconomic and political empowerment, yet due to the patriarchal state, they are more often than not left with uneven rights to inheritance.<sup>35</sup> Gender division in inheritance laws under the Kitab-i-Aqdas might seemingly favour male heirs, however, on close inspection, one observes that due to the principle of Mutatis Mutandis they create

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<sup>30</sup> Indian Succession Act, 1925, No.39, Acts of Parliament, 1925 (India).

<sup>31</sup> Indian Succession Act, 1925, § 32, No.28, Acts of Parliament, 1925 (India).

<sup>32</sup> Poonam Pradhan Saxena, *Succession Laws & Gender Justice* in Archana Parasar, Amit Dhanda et.al.(eds.), *Redefining Family Law in India*, 289 (Routledge 2008).

<sup>33</sup> MOHAMMAD NASEEM AND SAMAN NASEEM, *supra* note 24, at 32.

<sup>34</sup> INDIA CONST. art.14,15&44.

<sup>35</sup> National Commission on the Status of Women, *Women's right of Inheritance* available at [www.ncsw.gov.pk/prod\\_images/pub/Right\\_of\\_Inheritance.pdf](http://www.ncsw.gov.pk/prod_images/pub/Right_of_Inheritance.pdf).



symmetrical equality based on the sex of the deceased. The ISA, however, is blatantly unfair towards female heirs and does not propagate equality among the sexes. The amalgamations of the findings in this research paper have led to a unique conclusion wherein a religious text predating a present-day codified law appears to be seemingly more progressive in its beliefs. Why is it that in today's modern society wherein we claim to have progressed from Victorian era notions of morality, archaic laws of that era continue to haunt us?

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