

Socio- legal position of the Hindu women's right to property: Challenges and way ahead.

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Abstract: Legislation changes over time and the law cannot remain unchanged at all intervals. The law had to change according to the will, needs and expectations of the people of the state in the future. Changes in the law are observed in terms of social development and reflect the level of social growth in any particular culture. There are various conditions for assessing the validity and legitimacy of any law with respect to gender, religion, class and place of birth and the Indian constitution stipulates no discrimination on the basis of gender, age and religion. In India, age may be a significant indicator of prejudice. Age segregation and classification were performed to conduct research and to address various problems and impacts. Systems and rules of inequality based on age are reflected in a variety of services from time immemorial. The United Nations Department of Economic and Social Affairs has while preparing economic and social infrastructure to achieve the goal of “no one should be left behind” as a critical requirement for sustainable development, regarded aging as inevitable. Rubrics of Right to Equality comprising the five Articles of the Constitution of India, 14 to 18 are the essence of the Constitution of India. These articles prevent discrimination based on religious beliefs, race, gender, sexual orientation, and place of birth or any of these. Today, Constitutionalism has surpassed the importance of effective government in evolving women rights in contemporary times. In the Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles, the concept of gender equality is entrenched. The Constitution not only guarantees women's equality, but also allows the government to take affirmative discrimination measures in their favor. Our laws, development strategies, plans, and programmers have all sought to promote women in many areas within the framework of a democratic democracy. The inheritance laws are major contributor to the weaker economic position of Hindu women in India. Though governed majorly by customary classical uncoded laws, the dent in these principles through legislation had been seen as a big relief to the Indian females, thereby strengthening her financial position¹.

INTRODUCTION.

Women are legal citizens of India, according to the Indian constitution. In comparison to males, they enjoy equal rights. . Even though the Indian constitution guarantees women the right to education, only roughly 39% of all women in India attend basic schools. Our laws, development strategies, plans, and programs have all attempted to provide headway to women in many

¹<https://dalithistorymonth.medium.com/the-hindu-code-bill-babasaheb-ambekar-and-his-contribution-to-womens-rights-in-india-872387c53758>

domains within the framework of a democratic democracy. The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 is one of the most important. "In the case of India, however, this difference is not very pronounced: 66% (46%) of married men report owning housing (land) on their own, compared to 22% (17%) of married women, which amounts to a gender gap of 43 (29) percentage points"². The stereotype notion of choosing a male child over female is contradicted by present family health survey indication change in mindset of people towards daughters³.

LEGAL STATUS OF WOMANS IN INDIA.

Afore the 1956 passage of the Hindu Succession enacted laws, Hindus were subject to Shastric and customary rules that varied by area, resulting in many rules of the varying character followed by several Hindu law schools. In Indian circumstances, women may experience distinguishable treatment reflected in their social treatment, cultural behaviors and expectations. **The Married Female's Right to Property Act of 1874** was the first change. The Act broadened the definition of *stridhana* by stating that any married woman's salary, earnings, property, savings, and investments are her distinct property. The Act accomplished nothing for Hindu women since it only applied to Indian Christian women until 1923 when it was amended. Because of the British's non-interference attitude, the Act's advantages did not accrue to Hindu and Muslim women. **Hindu Law of Inheritance Act, 1929** was enacted to deal exclusively with succession in separate property possessed by a Hindu man who died intestate. The Act was a watershed moment in boosting the sister's standing as an heir. **Hindu Women's Right to Property Act, 1937** significantly happening as the statute gave the intestate's widow, his son's widow, and his grandson's widow rights. The widow's rights were restricted since she could not detach, sell, or dispose of the property.

In the **post-independence era**, the makers of the Constitution of India recognized the discrimination against women which violated social and economic justice and gender equality, as enshrined in the preamble to the Indian Constitution, Fundamental Rights, universal Principles of National Policy, and Fundamental Jobs. Following the first dent in the classical Hindu law, Hindu Women's Right to Property Act, 1937, the government established the Rau Committee to recommend modifications to women's property privileges. Despite opposition and reaction from orthodox Hindus, the Act was passed in 1956 and went into effect on June 17, 1956. **The Hindu Succession Act, 1956**, The Act establishes a standard and complete system of inheritance for all Hindus, including Buddhists, Jains, and Sikhs. It covers all Hindu legal schools, including Mitakshara, Dayabhaga, Murumakkattayam, Aliyasntana, and Nambudri. As evidenced by Section 14 (1) of the Act, which states that any land owned by a Hindu woman, whether acquired

²https://www.google.com/search?q=women+ownership+of+property+percentage&rlz=1C1CHBD_enIN918IN918&sxsrf=AOaemvIlcOreTFdz1G61GNhb5qvJPUJfXg%3A1640254018287&ei=QkrEYcX9EK2X4-EPkPW3wAU&ved=0a

³Child sex ratio in India: There are 1,020 females per 1,000 males in India, as per the latest findings of the National Family Health Survey. <https://www.timesnownews.com/mirror-now/in-focus/article/child-sex-ratio-in-india-therere-1020-females-per-1000-males-in-india-says-mos-health/841608>.

before or after the commencement of this Act, shall be treated by her as a full owner and not as a limited holder or limited accessory. By removing the disparities between the Mitakshara and Dayabhaga rules of inheritance, the Act created a unified and complete system of inheritance. It repealed the previous rule of a woman's 'limited estate' and established that a woman is the sole owner of the property she inherits. The right of the daughter to her father's residence is governed by Section 23. The law gives a widow the right to inherit not only various intestate properties, but also her small share of coparcenary property equal to that of son.

The non-advantageous provisions of Hindu Succession Act, 1956 to Hindu women.

The gender biased arrangement under the Act, which maintained exclusively males as coparceners under the institution of "Joint family Mitakshara coparcenary", drew vehement condemnation from proponents of gender equality⁴. The Act prohibited class I female heirs from claiming division of a Hindu intestate's dwelling place that was inhabited by family members before the male heirs agreed to split their respective portions. Female heirs, on the other hand, had a right of residency in the event of their being unmarried, deserted, separated, or widowed daughter. If the intestate's widow of a predeceased son or the widow of a brother had remarried on the day the succession opened, Section 24 barred her from inheriting the intestate's property. The Act did not cover agricultural land succession since it was subject to state-level tenure regulations that were particularly discriminatory towards women. **The Kerala Joint Hindu Family Structure (Abolition) Act of 1975** abolished the integrated Hindu family system and completely removed the special male birthright from the family property. According to this law, all regardless of gender may seek interest in ancestral property because they were born in the family. The states of Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka proclaimed daughters to be coparceners in joint family property by amending section 6 of the Hindu Succession Act, 1956, in 1986, 1989, 1994, and 1994, respectively. **The commission's 174th report, titled "Property Rights of Women: Proposed Reforms within Hindu Law,"** was presented in 2000 accepting these hurdles to women in conceding property ownership.

Non-advantageous provisions of The Hindu Succession (Amendment) Act, 2005 to Hindu women.

The Act addressed some of the gender inequities in the Hindu Succession Act 1956, such as inheritance of agricultural land, Mitakshara joint family property modified survivorship rules, dwelling home right, and widow's rights. The 2005 amendment law aided in the removal of certain surviving traces of the Mitakshara coparcenary system, which granted males property rights that girls did not. Separate property is not covered by the Hindu Succession (Amendment) Act, 2005⁵. On the other hand, Daughters are coparceners in the Mitakshara joint family

⁴Sathiyabama, R. (2010). Gender equality and succession right: A case study of Hindu women's right of property in Tamil Nadu 1956-1990. Doctoral Thesis.

⁵Deininger, K., Goyal, A. and Nagarajan, H. (2010). 'Inheritance Law Reform and Women's Access to Capital: Evidence from India's Hindu Succession Act'. Policy Research Working Paper 5338. Washington, DC: World Bank

property, with the same birthrights to shares and (by inference) to become Karta (Manager) and share the liabilities. Section 4(2) is one of the most important modifications. Substantial interests in agricultural land, the inheritance of which was subject to the fulfillment of devolution requirements outlined in State-level tenure legislation, were exempted under Section 4(2). The Hindu Succession Act Amendment Act, 2005, addresses an important issue concerning the rights of daughters in the Mitakshara coparcenary⁶ and consequently elevated the position of daughters by amending section 6 of the Hindu Succession Act, 2005. The inclusion of interest to daughter in coparcenary property is dealt with in revised Section 6. On and from the day of commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a coparcener⁷ in a joint family governed by Mitakshara law will, by birth, become a coparcener in her ownright in the same way as the son. The providing exclusion in Section 6(1) Proviso⁸ does not impact or invalidate any disposition or alienation of property made before December 20, 2004, including any division or testamentary disposition. Apex Court while considering the daughter's right in ancestral property approved her right irrespective of date of birth and father being alive on the date of amendment⁹.

The Amendment Act of 2005 **deleted Section 23 of the Hindu Succession Act, 1956**. Whether single and married, all females have the same rights as sons to remain in and claim division of the family dwelling house. Daughters, even married daughters, have the same birth right as boys to participate, claim division, and (by assumption) become karta (managers) in joint family property and share the responsibilities. The changes repealed Section 24 of HSA 1956, which had banned some widows, such as those of predeceased sons, from inheriting the interstate property if they had remarried. The amendment removed the discriminatory laws of the state, which benefited many women who depended on agriculture for their livelihood. It has added several new heirs to the list of Class I heirs, including a daughter's daughter's daughter, a daughter's son's daughter, a son's daughter's daughter, and a son's daughter's daughter, as well as a daughter's daughter's son. Despite the revisions made in 2005, there is still some gender prejudice in the HSAA. The National Commission for Women (NCW) expressed several observations and suggestions on Sections 3, 4, 8, 15, 23, and 30 of the Hindu Succession (amendment) Act, 2005 during its evaluation¹⁰.

Hindu Succession(Amendment) Bill, 2015.

⁶Mrs Sujata Sharma vs Shri Manu Gupta & Ors [CS (OS) 2011/2006].

⁷ The expression 'Coparcenary property is wider than the expression 'ancestral property'. It includes the following:

- Ancestral property i.e. the property inherited from father, grandfather or great grandfather; share allotted on partition; Property acquired by the coparceners with joint efforts. In Madanlal-v- Yogabai AIR 2003 SC 1880, Property obtained with the help of or on account of coparcenary property; and property of the coparcener poured into the common hotchpot of family money have all been declared to be joint family property. As a result, a female family member could not toss her self-acquired property into the communal pot. Pushpadevi-vs-CIT 109 ITR 730 SC.

⁸Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

⁹Prakash & Ors. v. Phulavati & Ors., (2016) 2 SCC 36 and Danamma @Suman Surpur & Anr. v. Amar & Ors., (2018) 3 SCC 343

¹⁰<https://wcd.nic.in/sites/default/files/ncwact.pdf>

Recognizing the principle of propinquity which is fundamental to the granting of land rights under the Hindu Succession Act, 1956, the 2015 Bill proposes changes to the provisions of section 15 where the father and mother of an intestate woman are placed with her husband on the list of heirs in dealing with the succession of women¹¹. A husband who abandons his wife¹² in his life even though he is not divorced from her has no right to her property¹³. The husband who deserted his wife¹⁴ in her life though not divorced by her too is not entitled to her property¹⁵. The father who was in Class-II heirs will be promoted to Class-I in the event of a succession of male intestate as the father is also as close to the son as the mother is closer¹⁶. The original provision as a section 23 repealed in 2005 is proposed to be part of the Hindu Succession Act¹⁷.

SOCIOLOGICAL PERSPECTIVES

The Hindu religious rituals and social conventions, all of which sprang from one issue, the status of women's fundamental rights, were the most serious socio-legal difficulty colonial rulers in India confronted with their Hindu subjects. The custom of seeking stridhan as part of "DOWRY" was established. The slaying of women, the marriage of too young girls and boys, and the vicious act of burning the bride was all encouraged as a result¹⁸.

According to studies on the magnitudes of Hindu personal law amendments on inheritance, the execution of these laws is insufficient and sparse due to several hurdles. Despite the inheritance Act's formal provisions protecting women's property rights, customary rules and traditions still regulate inheritance in certain areas. Unless otherwise specified, customary laws normally take priority over national or state laws. Even though the laws provide women land rights, such rights must be acknowledged both legally and socially in order to be enforced and valuable¹⁹. Women's

¹¹ "15. (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,— (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter); (b) secondly, upon the mother, father and husband;

¹² "(c) any property self-acquired by a female Hindu during the time of desertion shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father and the mother".

¹³ c) any property self-acquired by a female Hindu during the time of desertion shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father and the mother".

¹⁴ "(c) any property self-acquired by a female Hindu during the time of desertion shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father and the mother".

¹⁵ **Omprakash & Ors vs Radhacharan & Ors on 5 May, 2009.**

¹⁶ In the Schedule to the principal Act— (i) under the sub-heading "Class I", for the words "mother; son of a pre-deceased son; daughter of a pre-deceased son;", the words "mother; father; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased son of a pre-deceased daughter; son of a pre-deceased daughter of a pre-deceased son;" shall be substituted.

¹⁷ "23. Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has remarried."

¹⁸ Gill, K. (1989). Hindu Women's Right to Property in India. Allahabad.

¹⁹ Pallavi, A. (2007). Land Titles Don't Come Easy for Farm Widows. Available from <http://indiatogether.org/widowland-women>

property rights were greatly fragmented since they were determined based on their family position, marital status, and whether she was a daughter, married or single, as well as the kind of property sought, whether it was self-acquired, land, dwelling place, or marital property. Inheritance disabilities are no longer based on remarriage, conversion, or unchastity. The excuse of paying dowry at the time of the daughter's marriage permits Hindu social practice to exonerate the parents from respecting the daughter's inheritance on par with their sons for many reasons, such as the fear of disrupting family relationships; women are typically obliged to give up their portion of their parents' property in favor of their brothers. Even when women get land in their names via inheritance, dowry, or purchase by their married family in their name (typically done to take advantage of lower stamp duty on property acquired in a woman's name), women's ownership is only symbolic. Women are seldom in possession of the land, title, or Record of Rights (ROR), all of which are necessary for a stable tenure. Men father, brother, spouse, or father-in-law – continue to have the decision-making authority over land usage

On August 31, 2018, the Law Commission of India²⁰ suggested various reforms to achieve true gender parity at the ground level by implementing changes in family law, and these recommendations should be adopted. The ideas for giving women an equal share of marital property and removing the framework in which males have centralized control over family assets should also be examined. In 1990, the National Commission on Women was established to protect women's rights and legal entitlements. The 73rd and 74th Amendments to the Indian Constitution (1993) allowed for women's reservation of seats in Panchayats and Municipalities, creating a firm basis for their involvement in decision-making at lower levels as well. India has also ratified a number of international agreements and human rights treaties that pledge to ensuring women's equality. Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 was one of the important stages. The Convention on the Elimination of Discrimination against Women (CEDAW)²¹ is an international resolution enacted by States as part of the UN framework of universal human rights legislation.

Contemporary Female Jurisprudence.

Feminist legal theory, also known as feminist jurisprudence, is founded on the premise that the law has played a vital role in women's historical enslavement. Feminist legal theory has a two-fold goal. First, feminist jurisprudence aims to demonstrate how the law contributed to women's past position as second-class citizens. Second, feminist legal theory is committed to improving women's situation by reworking the law and its gender orientation. Women's rights activists have highlighted the legitimacy of the laws and their clear and impartial conduct through a variety of means. Employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment laws have benefited from research and understanding of women's laws. **Liberal feminism** is based on the concept that both men and women are independent human beings with

²⁰https://www.google.com/search?q=August+31%2C+2018%2C+the+Law+Commission+of+India&rlz=1C1CHBD_enIN918IN918&oq=August+31%2C+2018%2

²¹The Convention on the Elimination of Discrimination against Women (CEDAW) 1993.

rights. Liberal feminism contends that women are just as rational as men. They should have the same chance as men to exercise their freedom to make logical, self-interested decisions. Liberal feminists believe that such inadequacies in autonomy are caused by the “gender system or the patriarchal character of inherited traditions and institutions”. The women's movement should endeavor to detect and fix the obstacles. Liberal feminists believe that the state can and should be the women's movement's partner in increasing women's autonomy since the state's proper function is to preserve and promote citizens' autonomy. **Radical feminism** is a worldview that emphasizes the patriarchal foundations of male-female inequality or, more particularly, men's societal dominance over women. According to radical feminism, patriarchy divides society rights, advantages, and power largely along sex lines, oppressing women and favoring males. Radical feminists are wary of political action inside the present system, preferring to concentrate on cultural reform that weakens patriarchy and its attendant hierarchical institutions. **Cultural feminism** is a subset of feminism that emphasizes biological diversity in reproductive capacity as a source of fundamental differences between men and women. The special and superior qualities of women are due to such diversity by cultural feminism. The disparities are not chosen but are part of the nature of woman or man is referred to as 'essential differences. Land and property rights have become more crucial for women in the struggle to reduce severe poverty in some of the world's poorest countries, by ensuring equal ownership and access to land, notably via inheritance rights²².

In December 2013, Landesa Rural Development Institute and UN Women, India, a member of the International Land Coalition (ILC), published a report on the formal and informal barriers to the Hindu Succession (Amendment) Act, 2005, in the context of women agricultural producers in Andhra Pradesh, Bihar, and Madhya Pradesh²³. “The data presented above clearly points out that while inheritance is the dominant way by which land is transferred through generations, women’s inheritance of agricultural land has not changed much in one generation or in other words very few women have inherited agricultural land. It also points out that objection from brothers is even higher compared to that of parents. There is relatively larger occurrence of the widows getting husband’s land in inheritance in comparison to daughters getting land from the parents. Women’s knowledge of provisions of law is quite rudimentary, and perhaps the most startling evidence is that even when women have received land, it is far less than an equal share”.

Present day position property rights position of women in India.

Women's property rights were greatly fragmented since they were determined based on their family position, marital status, and whether she was a daughter, married or single, as well as the kind of property sought, whether it was self-acquired, land, dwelling place, or marital property. In the case of V. Tulasamma & Ors. versus V. Sessa Reddi²⁴ The Supreme Court of India explicitly defined the magnitude and domain of Sections 14(1) and (2) of the HSA, with the court making a

²²Team@ law Times Journal, ‘Empowering women through Property Rights’, available at: <https://lawtimesjournal.in/empowering-women-through-property-rights/>

²³<http://natural-justice.blogspot.com/2014/03/indian-womens-rights-to-property.html>.

²⁴ (1977) 3 SCC 99

sharp difference between the woman's right to property and her pre-existing right to be maintained. Considering and treating daughters equal to sons is one thing and giving her share in property is another aspect of the problem. Though there is change in mindset of people but still people consider the denial of property rights to women as integral character of patriarchal society. Either there is change of mindset or is persuaded by family members, reasons could be diverse. Due to cultural dominance, even educated women too don't want to claim their share as they are not aware of their legal rights or they don't want to lose their relations with matrimonial family and it's not necessary that only educated women are asking for share but uneducated women too want to have their share. The level of awareness regarding Hindu Succession (Amendment) Act, 2005 is also not appreciable as only very few are aware of the technicalities of the Act and effect of the amendment on the status of women of conferment.

CONCLUSSION and SUGGESTIONS.

It is well acknowledged fact that Women's property rights are the crucial to economic progress of any nation as a whole. In a general survey conducted on 500 people regarding the Hindu Succession (Amendment) Act, 2005, on the Reasons for not giving share in property, it was observed .From the table shared below, that 84(16.8%) respondents said daughters are given dowry, so there is no need to give them share in property , 26(5.2%) respondents said daughters are not able to manage to property as they are not aware of legal rights and on their behalf either father, brother, husband or sons manage the property and the rest 390(78%) respondents said sons are preferred than daughters in matter of property distribution , as daughters have to join other family after marriage and thus property will also go to other family.

		No of Persons	Percent	Valid Percent	Cumulative Percent
Valid	Daughters are given dowry, so there is no need to give them share	84	16.8	16.8	16.8
	Daughters are not able to manage to property	26	5.2	5.2	22.0
	Sons are preferred than daughters as daughters have to join other family after marriage.	390	78.0	78.0	100.0
	Total	500	100.0	100.0	

Table: Does Offences against women have a direct relation with the control over the material resources?

		No Of Persons	Percent	Valid Percent	Cumulative Percent
Valid	Yes	201	40.2	40.2	40.2
	No	77	15.4	15.4	55.6
	Maybe	222	44.4	44.4	100.0
	Total	500	100.0	100.0	

From the research conducted, it was observed that 201(40.2%) respondents said offences against women have a direct relation with the control over the material resources, 77(15.4%) respondents said offences against women does not have a direct relation with the control over the material resources and the rest 222(44.4%) respondents are not sure. The role of the Indian Law Commission is commendable in exposing the difficulties encountered by women and providing practical ideas and recommendations for resolving these issues by enacting suitable reforms after extensive research and analysis. A Hindu female was not regarded as a coparcener entitled to a part in the joint family property with her brothers until 2005, with the exception of Maharashtra, Andhra Pradesh, and Tamil Nadu, where a daughter was admitted to the coparcenary on a restricted basis, subject to certain conditions. The Act should include a charge for marriage costs, including any dowry given to the daughter, on the shares of both sons and daughters. On the basis of equality, the costs of a son's wedding must likewise be subtracted. Apart from that, since both sons and daughters are to get equal shares, the previous discrimination based on marriage costs on their account must be abandoned. Gender justice may be realized via the process of sensitizing different departments of government and, more importantly, members of society to the rights and concerns of women. A positive attitude among society members fighting for women's rights is required to bring about good improvements in the position of women in society.