

# **PROPERTY RIGHTS OF HINDU WOMEN IN INDIA- A STUDY**

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## **CERTIFICATE**

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## **DECLARATION**

I, Puja Devnath, currently pursuing a Master of Law (LL.M.) degree from National Law University and Judicial Academy, hereby declare that the dissertation entitled “PROPERTY RIGHTS OF HINDU WOMEN IN INDIA – A STUDY” is the result of my original research and has not been submitted, either partially or in its entirety, elsewhere for any purpose, whether academic or otherwise, to the best of my knowledge.

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The Dowry and Bridal Gifts (restriction) Act, 1976.

The Dowry Prohibition Act, 1980.

The Hindu Succession (Amendment) Act, 2005

## TABLE OF ABBREVIATIONS

1.	AIHC	All India High Court Cases
2.	Art.	Article
3.	AIR	All India Reporter
4.	All. L. J	Allahabad Law Journal
5.	CEDAW	Convention on All Forms of Discrimination against Women
6.	Cr. L. J	Criminal Law Journal
7.	Cr,P.C.	Criminal Procedure Code
8.	e.g.	Exempli gratia (for example)
9.	H.C	High Court
10.	HUF	Hindu Undivided Family
10.	ibid.	Ib idem
11.	id	Idem
12.	ILR	Indian Law Reporter
13.	JHF	Joint Hindu Family
14.	JT	Judgment Today
15.	MH. L.J.	Maharashtra Law Journal
16.	Mad. L.J.	Madras Law Journal

17.	SC	Supreme Court
18.	SCC	Supreme Court Cases
19.	SCJ	Supreme Court Journal
20.	Viz.	Namely
21.	Vol.	Volume

# CHAPTER 1

## INTRODUCTION

### 1.1. Introduction

In India, there exists a significant disparity in ownership rights between men and women, particularly concerning the inheritance of parental property. The enforcement of laws safeguarding women's rights has been inadequate, resulting in restricted access to land and property for women, and in some cases, discriminatory laws exacerbate the issue.

During the implementation of Hindu personal laws in the mid-1950s, women were granted the right to inherit property. However, the extent of daughters' inheritance was contingent upon their father's share, which allowed fathers to effectively disinherit them. Even when daughters were married, they had no entitlement to residential rights in the family home. Amendments were introduced in 2005 to establish equal status for women under Hindu law.<sup>1</sup>

Despite certain advancements in recent decades, women in India continue to face lower property rights compared to men. Discrimination against women remains pervasive, and a sense of urgency in addressing and rectifying these injustices is lacking. It is imperative to foster a just and equitable social structure where individuals are not subjected to unequal treatment based on their gender.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 and acknowledged by India<sup>2</sup>, serves as a fundamental pillar for promoting women's rights globally. However, property laws in India continue to be intricate and biased against women, despite on-going reform efforts. It is essential to address the socioeconomic factors that contribute to this disparity, promote equitable

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<sup>1</sup> Mulla, *Principles of Hindu Law* (LexisNexis Butterworth, New Delhi, 20<sup>th</sup> Edn, 1982)

<sup>2</sup> United Nations Human Rights, 'Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979' (UN General Assembly) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=On%2018%20December%201979%2C%20the,twentieth%20country%20had%20ratified%20it.>> accessed on 3 April 2023

distribution of inheritance, and expand women's property rights to foster a more inclusive society. The Indian Constitution already includes provisions for gender equality and the empowerment of women through fundamental rights and directive principles.

The Mitakshara law, which governs Hindu joint family property rights, is interpreted by the Supreme Court and High Courts as upholding a static relation grounded in customs. According to this law, only sons possess the right to ancestral property, while daughters are excluded from such inheritance. The Mitakshara system adheres to a patrilineal structure, wherein sons inherit and transmit family property, while daughters do not enjoy the same privileges.<sup>3</sup>

There was a clarification on the mitakshara law was provided by the Honorable Supreme Court in the case of *State Bank of India v. Ghamandi Ram*.<sup>4</sup> According to which Mitakshara law, ancestral property is considered coparcenary rights that are acquired by birth. Sons are granted birthright ownership of ancestral properties, and the property remains undivided until a partition is requested. The property cannot be sold without the consent of the coparceners, and when a member passes away, their interest is transferred to the surviving members.

The state of Kerala in India is characterised by the presence of a matriarchal social structure, wherein the inheritance of property is primarily directed towards daughters rather than sons. The joint family system in Kerala was abolished in the year 1976.<sup>5</sup> The Law Commission of India initiated a process of taking into the public opinions about the retention of Joint family arrangement in Mitakshara. The recommendations provided by the Commission served as the foundation for the subsequent amendments made to the HSA in 2005. The aforementioned revisions were implemented with the objective of eradicating gender-based discrimination within the Mitakshara coparcenary system, by incorporating women into the framework of rights and entitlements.<sup>6</sup>

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<sup>3</sup> Law Commission of India, *Property Rights of Women* (Law Com No. 174, 2000)

<sup>4</sup> *State Bank of India v. Ghamandi Ram*, AIR 1969 SC 1330

<sup>5</sup> *Sundaranam Maistri v. Harasimbhula Maistri*, ILR 25 Mad 149.

<sup>6</sup> Mulla *Principles of Hindu Law* (LexisNexis Butterworth, New Delhi, 20<sup>th</sup> edn, 1982)

The Dayabhaga system of Hindu Law differs from the Mitakshara law in its principles. Under the Dayabhaga system, neither daughters nor sons have rights in coparcenary ancestral property while the father is alive. However, after the father's demise, both sons and daughters have rights over his property. In contrast, the Mitakshara system grants birthright ownership of joint family property exclusively to sons.

In the Dayabhaga system, partition is defined as the act of specifying ownership rather than dividing joint family property among coparceners as in the Mitakshara system. The Dayabhaga system focuses on individual ownership rather than the process of setting different ownerships on specific portions of assets. This distinction reflects the different principles and approaches of the two systems in dealing with property rights and partition.

The enactment of the Hindu Succession Act (HSA) aim was for the amendment and codification of the legal provisions concerning intestate succession within the Hindu community. The objective of this initiative was to establish a standardised framework for inheritance and to guarantee equal inheritance rights for both male and female offspring. The legislation encompasses individuals who identify as Hindus, including adherents of Buddhism, Jainism, and Sikhism. The enactment of this legislation resulted in substantial reforms to Hindu personal law, as it granted women unrestricted ownership rights in property, replacing the previously imposed limitations on their rights. In addition, it should be noted that including daughters in the granting of the right for inheriting the property from their father's estate.<sup>7</sup>

The legislation establishes broad criteria for the transfer of assets belonging to a deceased Hindu male who has not left behind a valid will. The standards pertaining to the subject matter are delineated in sections 8 through 13, while sections 15 and 16 explicate the prerequisites for the succession of a female individual who has died without leaving a valid will. The Act effectively eliminated the categories established by the Dayabhaga and Mitakshara laws and instead introduced four distinct categories of heirs: those falling under Class I of the Schedule, those falling under Class II of the Schedule, Agnates, and Cognates.<sup>8</sup>

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<sup>7</sup> Law Commission of India, Property Rights of Women (Law Com No. 174, 2000)

<sup>8</sup> Mulla *Principles of Hindu Law* (LexisNexis Butterworth, New Delhi, 20<sup>th</sup> edn, 1982)



Certain provisions of the Act were subject to criticism due to their perpetuation of gender inequality, specifically the perpetuation of the Mitakshara coparcenary which exclusively encompassed male coparceners. The system of governance for ancestral property persisted as a patrilineal regime, wherein property was exclusively passed down through the male lineage. Consequently, women were excluded from becoming coparceners and were not able to inherit any property of the ancestral on an equal footing. The introduction of an exemption to the devolution rule through survivorship out of the coparcenary members was implemented in Section 6 of the Act.

The HSA of 2005 was legislated keeping in mind the objective of addressing the discriminatory provisions that is present in the Act. The amendment was implemented with the aim of promoting gender equality in the distribution of ancestral property, while also offering guidelines to protect the right of the widow's to have resident right in the family home. The amendment's crucial contribution to the elimination of female subordination and the promotion of social and economic equality was achieved by establishing legal equality between women and men. The legislative measure was officially enacted and enforced as the Hindu Succession (Amendment) Act of 2005.

The HSA of 1956 was introduced for the amendment and codification of the legal framework governing intestate succession within the Hindu community. This legislation brought about substantial modifications to the property rights of women. The legislation implemented a standardised framework for inheritance that encompassed Hindus, Buddhists, Jains, Sikhs, and adherents of other religious traditions, with the exception of Muslims, Christians, Parsis, and Jews. The Act has not impeded upon the distinct privileges of Hindu Mitakshara coparcenary members; rather, it established guidelines for the succession of a deceased male's stake in specific circumstances.<sup>9</sup>

From the aforementioned Act's section 6 which acknowledges the legal principle of survivorship's devolution within the coparcenary, specifically pertaining to the entitlement of a Hindu male to coparcenary property. Nevertheless, the Mitakshara coparcenary system systematically excluded women from inheriting ancestral property, thereby perpetuating

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<sup>9</sup> *Commissioner of Wealth Tax v. Mukundgiji* [1983] 144 ITR 18 (AP).

gender-based discrimination and infringing upon their constitutional entitlement to equality. Several states in India, namely Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, have implemented amendments to ensure equitable rights for daughters within the framework of Hindu law.

The Act also implemented limitations on female heirs, specifically in their capacity to seek partition for a joint family residence until male heirs had reached a decision regarding the division of their individual interests in the property. The proposal to remove Section 23 of the Act, which enforced the aforementioned restriction, sought to eradicate constraints placed on female heirs. The aforementioned recommendations were derived from the Law Commission of India on its 174<sup>th</sup> report, titled "Property Rights of Women: Proposed Reform under the Hindu Law. The proposed reforms were designed with the objective of eliminating gender-based discrimination, promoting equal property rights for women, and upholding the fundamental right to equality as enshrined in the Indian Constitution.<sup>10</sup>

## **1.2. Statement of Problem**

Hence, the researcher has under taken the present research titled as The property rights of Hindu women in India, have been a subject of concern and debate for a long time. Despite several legal reforms aimed at addressing gender inequalities, women continue to face challenges in asserting their rights to property. The problem lies in the existence of discriminatory practices, traditional beliefs, and legal loopholes that hinder Hindu women from enjoying equal ownership, control, and inheritance of property. This situation perpetuates gender-based disparities, limiting women's economic empowerment, financial security, and overall social progress. Therefore, it is essential to examine the existing legal framework, societal attitudes, and cultural norms surrounding property rights of Hindu women in India to identify the barriers and propose effective measures for ensuring their equal and equitable access to and control over property.

## **1.3. Literature Review**

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<sup>10</sup> Law Commission of India, Property Rights of Women (Law Com No. 174, 2000)

Buzarbaruah specifically delves into the ancient aspects of Hindu Law pertaining to the inheritance rights of daughters. Buzarbaruah takes a historical perspective, analyzing the principles of Hindu Jurisprudence in relation to daughters' entitlement to property. By exploring the evolution of these principles, the author sheds light on the traditional practices and norms that have shaped daughters' inheritance rights in Hindu society. This work contributes valuable insights into the historical and cultural context of daughter's inheritance under Hindu Law, providing a foundation for understanding the current legal framework and potential areas for reform in this domain.

Chowdhry's book titled "Understanding Women's Land Rights Gender Discrimination in Ownership"<sup>11</sup> focuses on providing a comprehensive understanding of the overall position of women within Hindu society and their specific property rights. Chowdhry extensively explores various aspects related to this topic, including women's power of alienation, their rights to surrender property, women's estate, and the rights of reversioners. This work contributes valuable insights into the complex landscape of Hindu women's property rights, shedding light on key legal and social dimensions that need to be considered in discussions and reforms concerning women's property rights.

Mishra's work<sup>12</sup> provides an in-depth exploration of the Mitakshara School of law, delving into its various concepts and principles. However, it is important to note that this work only briefly touches upon the topic of women's rights to property. The focus of Mishra's work primarily lies on the broader aspects of the Mitakshara School, such as its legal framework, inheritance principles, and property ownership. While this work contributes valuable insights into the Mitakshara School, researchers seeking comprehensive information specifically related to women's property rights within this legal framework may need to refer to additional sources.

In the book titled "The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community,"<sup>13</sup> Eleanor Newbigin delves into the historical backdrop and

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<sup>11</sup> Prem Chowdhry, *Understanding Women's Land Rights Gender Discrimination in Ownership* (Sage Publication, ebook 2017)

<sup>12</sup> R.K. Mishra, *A Spot Light on Mitakshara School* (Law House, 2008)

<sup>13</sup> Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India* (Cambridge University Press, 2013)

ramifications surrounding the Hindu Law Acts enacted by the Government of India during the period of 1955 to 1956. The conventional interpretation of these actions has typically associated them with addressing issues pertaining to women's rights. However, Newbigin presents a novel viewpoint by attributing their inception to transformations within the political and economic milieu during the latter stages of colonial governance. The book undertakes an examination of the significant influence exerted by family structure, property rights, and gender relations on the formation and development of representative politics in the specified time frame. The book sheds light on the intricate interplay between India's secular and state power structures and Hindu law through its exploration of these complex inquiries. Newbigin's scholarly contribution extends beyond a superficial examination of legal reforms.

The study titled “Examining the Property Rights of Hindu Women in India”<sup>14</sup> is expected to delve into the matter of property rights pertaining to Hindu women, specifically within the legal context of India. The book may explore the customary practises and cultural conventions that have historically marginalised Hindu women, preventing them from acquiring or possessing property. Additionally, an examination can be conducted on the diverse array of legislative reforms, court rulings, and legal provisions that have been implemented with the objective of mitigating gender disparity in property rights and enhancing the agency of Hindu women. This study aims to analyse the various challenges and obstacles that impede the successful implementation of women's property rights. The book the transition from “stridhan” to “women’s estate” and highlight the significance of succession rights for Hindu women. The author also discusses key legislations that have shaped property rights for Hindu women, including the Hindu Women's Right to Property Act of 1937, the Hindu Succession Act of 1956, the Dowry Prohibition Act of 1961, and the Hindu Succession (Amendment) Act of 2005. Notably, the work emphasizes the equal rights of wives over their husband’s property.

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<sup>14</sup> Kulwant Gill, *Hindu Women's Right to Property in India* (Deep Deep Publication, 2009)

In his work<sup>15</sup>, Mukund focuses on the concept of “Stridhana” in South India, emphasizing that it should not be confused with dowry. The author emphasizes that under the Dowry Prohibition Act the husband and his family members do not have control over or share in the property designated as “Stridhana”. By conducting a comprehensive review, Mukund sheds light on the intricate nuances of women's property rights in South India, dispelling misconceptions and clarifying the legal position of “Stridhana” in relation to dowry. This work contributes to the understanding of gendered property rights and challenges prevalent societal norms that may undermine women's property ownership and control. Researchers interested in exploring the complexities of women’s property rights in South India will find Mukund’s work to be a valuable resource.

#### **1.4. Aims**

The scope of this study extends to the conceptual analysis of property right of women within the Hindu Personal law, the extent of reforms in the property rights of women brought into by the legislations and through interpretations made by the Judiciary.

#### **1.5. Research Objectives**

1. To discuss the international perspective on women’s rights of property.
2. To analyze the legal provision pertaining to property rights of women in India.
3. To study the judicial approach on rights of women to property in India.

#### **1.6. Research Questions**

1. What international treaties or agreement exist to promote and uphold women’s property rights? How do different countries around the world approach and protect women’s property rights?
2. Are there any specific laws or regulations in India that aim to promote gender equality in property ownership?

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<sup>15</sup> K. Mukund, ‘Turmeric Land: Women's Property Rights in Tamil Society since Early Medieval Times’ (1992) JSTOR < [www.jstor.org/stable/4397793](http://www.jstor.org/stable/4397793)> accessed on 21 June 2013

3. How have the courts in India interpreted and applied the legal provisions concerning women's right to property?

### **1.7. Research Methodology**

The legal research approach is limited to Doctrinal Legal Research, Analytical and Descriptive Methodology. Primary and secondary sources of data have been used. Primary sources such as Legislations, official documents, reports have been referred to relating to the topic of research. Secondary sources such as books, journals, articles, online database have been relied upon relating to the research topic. The citation style being adhered to in this paper is The Oxford University Standard for Citation of Legal Authorities (OSCOLA) 4<sup>th</sup> edition.

### **1.8. Chapterisation**

Chapter 1- The first chapter includes a brief introduction to the board area of consideration. A clear statement of the problem, literature review, aims and objectives of the study, research questions and research methodology has been presented with the organization of the study. The scope and limitation of the study has been specified. The first chapter is entitled 'Introduction'.

Chapter 2 - The second chapter deals with the study of international perspective on women's right to property and is entitled as 'International Perspective on Women's Property Rights'.

Chapter 3 - In the third chapter entitled 'Legal Framework on Property Rights of Hindu Women in India' the researcher has discussed on the historical background behind Hindu women's property rights in India. Provisions under Hindu Succession Act have been analysed.

Chapter 4 - The fourth chapter entitled as 'Judicial Approach on Hindu Women's Property Rights India' comprehensively deliberates upon the role of judiciary in dealing with property rights of Hindu women in India

Chapter 5 - The last chapter entitled as 'Conclusion and Suggestions' deals with the conclusions arrived at as a result of the study. The researcher has suggested some constructive measures for proper implementation of the law on property rights of Hindu women in India

## CHAPTER 2

### INTERNATIONAL PERSPECTIVE ON WOMEN'S PROPERTY RIGHTS

Within the paternal family, girls are often discriminated against in terms of asset sharing, particularly in regards to land and buildings, upon the death of their father. Customary laws and cultural norms play a significant role in regulating property ownership, use, and inheritance, often disadvantaging women. In some cases, girls are completely excluded from inheriting any property, while in others; they may receive a smaller share compared to their male counterparts.

In the matrimonial family, women face various forms of property rights violations. They are often treated as the property of their husbands and are economically dependent on them. Even if a woman contributes financially to the household or jointly owns property with her husband, she may not have any legal claim to it in the event of divorce or separation. Widows, in particular, face discrimination and may be deprived of their deceased husband's property by their in-laws.

It also highlights the negative effects of these property rights violations on women and society as a whole. Discrimination against girl children in the family can lead to low self-esteem and hinder their career aspirations. Lack of property rights for married women increases their vulnerability to domestic violence, and it perpetuates their economic dependence on their husbands. The violation of widows' property rights further exacerbates their poverty and exposes them to various hardships.<sup>16</sup>

#### 2.1. International Property Rights of Women

Property rights are fundamental human rights that contribute to individual autonomy, economic empowerment, and social well-being. However, historically, women have faced

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<sup>16</sup> World Bank, “Women in Half the World Still Denied Land Property Rights Despite Laws” (Press Release, 25 March 2019) <<https://www.worldbank.org/en/news/press-release/2019/03/25/women-in-half-the-world-still-denied-land-property-rights-despite-laws>> accessed 29 Jan 2023.

significant challenges in accessing and controlling property, including land, housing, and other assets. The significance of women's property rights lies in the following aspects:

1. **Gender Equality:** Women's property rights are an essential component of achieving gender equality. When women have secure and equal access to property, they are empowered to make decisions, exercise control over resources, and participate more actively in economic and social spheres. Property ownership can help challenge gender norms and promote women's agency and autonomy.
2. **Economic Empowerment:** Property ownership provides economic stability and opportunities for women. It enables them to generate income, access credit, and invest in education, health, and entrepreneurship. When women have control over property, they can break free from poverty cycles and contribute to their families' well-being and community development.
3. **Social Justice:** Ensuring women's property rights is a matter of social justice and human rights. Denying women access to property reinforces gender inequalities, perpetuates discrimination, and hampers their overall well-being. Recognizing and protecting women's property rights contributes to a more just and equitable society.
4. **Sustainable Development:** Women's property rights are crucial for achieving sustainable development goals. Secure land tenure and property ownership for women promote sustainable agricultural practices, environmental conservation, and community resilience. Inclusive land and resource governance that recognizes women's rights can lead to more sustainable and equitable development outcomes.
5. **Violence Prevention:** Property rights play a vital role in preventing and addressing gender-based violence. When women have legal ownership or access to property, they gain a measure of protection against domestic violence, forced evictions, and property-related disputes. Property rights can act as a deterrent to abusive behaviors and provide a pathway for seeking legal remedies.
6. **Intersections with Other Rights:** Women's property rights intersect with various other rights, including the right to housing, education, health, and inheritance. Recognizing and safeguarding women's property rights contributes to the realization of a broad range of human rights and promotes social justice and equality.



Women's property rights vary significantly across different countries and regions around the world. While progress has been made in many places to enhance women's property rights, there are still numerous challenges and disparities that exist.<sup>17</sup>

In some countries, women have achieved substantial legal rights regarding property ownership and inheritance. These nations often have legislation in place that guarantees women equal rights to own, inherit, buy, sell, and manage property. Additionally, efforts have been made to raise awareness about these rights and promote gender equality in property ownership.

However, in numerous parts of the world, women face substantial obstacles when it comes to property rights. Discriminatory social norms, cultural practices, and legal frameworks can restrict women's access to and control over property. These restrictions can manifest in various ways, including limited inheritance rights, preference for male heirs, forced evictions, and unequal access to land and housing.

In many developing countries, women often encounter challenges due to customary or traditional laws that prioritize male inheritance rights. These laws can marginalize women and contribute to their economic vulnerability. Lack of awareness about legal protections and limited access to justice further exacerbate the situation for women seeking to assert their property rights.

Addressing these disparities requires comprehensive efforts at multiple levels. It involves legal reforms to eliminate discriminatory laws and ensure gender equality in property rights. Moreover, raising awareness and promoting education about women's property rights are crucial to empowering women to assert their rights. Strengthening women's access to legal services and institutions that can support them in navigating property-related issues is also essential.

International organisations, such as the United Nations and non-governmental organisations (NGOs), assume a crucial role in advocating for women's property rights

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<sup>17</sup> World Bank, “Women in Half the World Still Denied Land Property Rights Despite Laws” (Press Release, 25 March 2019) <<https://www.worldbank.org/en/news/press-release/2019/03/25/women-in-half-the-world-still-denied-land-property-rights-despite-laws>> accessed 2 march 2023.

globally. They provide support to governments, civil society, and local communities in implementing legal reforms, promoting gender equality, and creating awareness campaigns.

Overall, while progress has been made, there is still work to be done to achieve full gender equality in property rights worldwide. It requires concerted efforts from governments, civil society, and international actors to address discriminatory practices, provide legal protections, and ensure women's equal access to property and inheritance rights.

Legal frameworks and international standards play a critical role in shaping and protecting women's property rights globally.<sup>18</sup> They provide a foundation for ensuring gender equality, addressing discriminatory practices, and establishing legal mechanisms for property ownership, inheritance, and management. Here are some key aspects of legal frameworks and international standards related to women's property rights:

#### 1. International Conventions and Agreements:

- i. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international agreement that promotes the eradication of gender-based discrimination in various aspects of women's lives, encompassing the recognition and protection of their property rights. The significance of ensuring equal access to land and property for women is underscored, as it ensures their capacity to possess, inherit, and oversee property.
- ii. The Beijing Platform for Action, a document ratified at the Fourth World Conference on Women in 1995, places significant emphasis on women's entitlement to property, specifically in relation to housing and land. The necessary measures encompass the implementation of judicial reforms, the revocation of discriminatory statutes, and the enhancement of women's accessibility to credit and land resources.

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<sup>18</sup> McCammon, Holly J., et al., "A Radical Demand Effect: Early US Feminists and the Married Women's Property Acts" (2014) 38(1–2) *Social Science History* <<http://www.jstor.org/stable/90017030>> accessed 15 March 2023.

## 2. National Legal Frameworks:

- i. **Constitutional and Statutory Laws:** Many countries have constitutional provisions or laws that recognize women's property rights and guarantee equal access to and control over property. These laws may address issues such as land tenure, inheritance, marital property, and protection against forced evictions.
- ii. **Family and Inheritance Laws:** Reforms in family and inheritance laws are crucial for ensuring women's property rights. These laws determine the distribution of property upon marriage, divorce, or death, and their gender-neutral application is essential for equal inheritance rights.
- iii. **Land and Property Registration:** Effective land registration systems that allow for women's participation and documentation of their rights are crucial. Legal provisions that promote joint ownership, eliminate gender-based restrictions, and ensure women's access to land titling and registration contribute to securing their property rights.

## 3. Legal Reforms and Policy Initiatives:

- i. **Legal Reforms:** Governments have undertaken legal reforms to address gender disparities in property rights. These reforms may include the amendment of discriminatory laws, enactment of new legislation, and the establishment of specialized courts or tribunals to handle property disputes.
- ii. **Gender Equality Policies:** National policies and action plans focused on promoting gender equality often include specific provisions for women's property rights. These policies aim to remove barriers, provide legal protections, and empower women to exercise their property rights fully.

## 4. Implementation and Enforcement:

- i. **Access to Justice:** Ensuring women's access to affordable and accessible justice systems is vital. This includes providing legal aid, establishing legal clinics, and promoting alternative dispute resolution mechanisms that are sensitive to gender dynamics.

- ii. **Awareness and Capacity Building:** Public awareness campaigns, educational programs, and capacity-building initiatives are essential to inform women about their property rights and empower them to assert those rights. These efforts target both women and men, legal professionals, and other stakeholders.

#### 5. International Organizations and Initiatives:

- i. **United Nations Women (UN Women):** UN Women plays a crucial role in promoting women's property rights through policy advocacy, technical assistance, and capacity building. They work with governments, civil society, and other partners to advance legal reforms and improve access to justice.
- ii. **Non-Governmental Organizations (NGOs):** Various NGOs work globally and locally to advocate for women's property rights, provide legal assistance, conduct research, and raise awareness about gender disparities in property ownership.

By establishing legal frameworks and international standards, countries can ensure that women's property rights are protected, and gender equality is promoted. However, effective implementation, enforcement, and ongoing monitoring of these frameworks are necessary to address the existing gaps and challenges that women face in accessing and controlling property.

The property rights of women worldwide are significantly influenced by cultural and social factors. The influence of societal norms, customs, traditions, and gender roles is significant in determining the extent to which women are able to obtain and exercise ownership rights over property. Understanding these cultural and social factors is essential for addressing the challenges and barriers women face in asserting their property rights. Here are some key cultural and social factors that impact women's property rights:

1. **Patriarchal Norms:** Patriarchal societies often prioritize male inheritance and male control over property. In such societies, cultural norms dictate that property should pass from fathers to sons, excluding women from inheriting or owning property. These norms reinforce gender inequalities and limit women's economic empowerment.

2. **Gendered Division of Labor:** Societal expectations of gender roles influence women's access to property. Women's traditional roles as caregivers and homemakers may limit their ability to acquire property or accumulate assets independently. Unequal access to education, employment, and economic opportunities further exacerbate these disparities.
3. **Marital Laws and Practices:** Laws and practices related to marriage impact women's property rights. In some cultures, upon marriage, women may lose control over their property, which may be transferred to their husbands or their husband's family. Divorce or widowhood can further compound these challenges, as women may face difficulties in reclaiming their property.
4. **Customary and Informal Systems:** Customary or informal systems of governance and property rights can vary significantly across cultures and communities. In some cases, these systems may discriminate against women, particularly in relation to land and property ownership. Customary practices may prioritize male inheritance, leaving women vulnerable to displacement and loss of assets.
5. **Social Stigma and Discrimination:** Women who assert their property rights may face social stigma, ostracism, or backlash from their families or communities. Fear of being labeled as “disobedient” or “greedy” may discourage women from challenging discriminatory practices or claiming their rightful share of property.
6. **Lack of Awareness and Knowledge:** A notable obstacle is the lack of comprehensive knowledge among women regarding their legal rights and entitlements pertaining to property. Insufficient understanding regarding legal frameworks, inheritance protocols, and the significance of property ownership can potentially impede women's capacity to assert their entitlements with efficacy.
7. **Access to Justice:** Women's access to justice systems, including legal aid and mechanisms for dispute resolution, can be limited. Legal proceedings may be costly, time-consuming, or biased against women, making it challenging for them to seek redress for property-related issues.

Addressing cultural and social factors requires a multi-dimensional approach that includes legal reforms, awareness-raising campaigns, education, and community engagement. Empowering women to challenge discriminatory practices, promoting gender equality, and

involving communities in the dialogue on women's property rights are vital steps toward achieving meaningful change. Sensitizing legal professionals, community leaders, and policymakers to the importance of gender equality in property rights is crucial for fostering a supportive environment for women's rights to property.

Awareness, education, and empowerment are crucial components of efforts to promote women's property rights. By enhancing awareness of women's rights, providing education on legal frameworks and processes, and empowering women to assert their property rights, significant progress can be made. Here's a closer look at the importance of awareness, education, and empowerment:

#### 1. Awareness:

- i. Creating awareness about women's property rights is vital to challenge social norms and cultural practices that perpetuate gender inequalities. Awareness campaigns can help women understand their rights, recognize discriminatory practices, and advocate for change.
- ii. Targeted awareness programs can be conducted in communities, schools, workplaces, and other public spaces to reach a wide range of women and men. These initiatives can utilize various mediums, such as workshops, public discussions, media campaigns, and community outreach activities.

#### 2. Education:

- i. Providing education and information about women's property rights is key to empowering women to exercise their rights effectively. Education can include legal literacy programs, workshops, and training sessions to inform women about relevant laws, legal procedures, and avenues for seeking redress.
- ii. Education should not be limited to women alone; it should also target men, community leaders, and stakeholders to foster a broader understanding of gender equality and the importance of women's property rights.

### 3. Legal Aid and Support:

- i. Access to legal aid services is crucial for women who face property-related disputes or challenges. Establishing legal aid clinics or helplines can provide women with information, guidance, and support throughout the legal process.
- ii. Legal aid organizations and trained paralegals can assist women in understanding their rights, preparing legal documents, and representing their interests in court if needed. This support can help address the power imbalances that women often face in legal proceedings.

### 4. Economic Empowerment:

- i. Economic empowerment is closely linked to women's ability to assert their property rights. Providing access to financial resources, credit facilities, and income-generating opportunities can enhance women's economic independence and strengthen their position in property-related matters.
- ii. Entrepreneurship training, vocational skills development, and support for women's cooperatives or self-help groups can contribute to women's economic empowerment and increase their capacity to acquire and manage property.

### 5. Strengthening Women's Leadership and Participation:

- i. Empowering women to participate in decision-making processes related to property rights is crucial. This can involve promoting women's representation in community-level institutions, land committees, and local governance structures.
- ii. Leadership training programs can equip women with the skills and knowledge needed to advocate for their rights, engage in negotiations, and influence policies and practices that affect women's property rights.<sup>19</sup>

### 5. Engaging Communities and Stakeholders:

Engaging communities, traditional leaders, and other stakeholders is essential to challenge discriminatory norms and practices and promote gender equality in property rights. This can involve dialogue sessions, community consultations, and partnerships

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<sup>19</sup> Berry, Marie E. "When 'Bright Futures' Fade: Paradoxes of Women's Empowerment in Rwanda" (2015), pp. 1–27. JSTOR, <<https://doi.org/10.1086/681899>> accessed 27 march 2023

with local organizations to foster a collective understanding and commitment to change.

Awareness, education, and empowerment initiatives need to be context-specific and culturally sensitive, considering the diverse backgrounds and experiences of women. By promoting awareness, education, and empowerment, societies can create an enabling environment for women to assert their property rights, challenge discriminatory practices, and contribute to gender equality and sustainable development.

The researcher has examined the approaches to women's property rights in three specific countries/regions:

## **2.2. Rwanda**

- i. Rwanda has made significant strides in promoting women's property rights through legal reforms and progressive policies.
- ii. The country has enacted laws, such as the Law on Matrimonial Regimes, Successions, and Liberalities, which provide equal rights to women in inheritance and property ownership.
- iii. The Land Law of 2005 recognizes women's rights to own and inherit land and prohibits discrimination based on gender.
- iv. Rwanda has implemented land tenure regularization programs that ensure secure land rights for women, including joint land titling for spouses.
- v. The government has also undertaken awareness campaigns, legal aid services, and initiatives to economically empower women, enabling them to assert their property rights effectively.<sup>20</sup>

## **2.3. Nordic Countries (e.g., Sweden, Norway, Finland):**

- i. The Nordic countries are recognized for their progressive approaches to gender equality, including women's property rights.

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<sup>20</sup> Berry, Marie E. "When 'Bright Futures' Fade: Paradoxes of Women's Empowerment in Rwanda" (2015), pp. 1–27. JSTOR, <<https://doi.org/10.1086/681899>> accessed 27 march 2023



- ii. These countries have comprehensive legal frameworks that ensure equal property rights for women and men.
- iii. Matrimonial property laws in these countries often adopt the principle of community of property, where assets acquired during marriage are jointly owned by spouses.
- iv. The inheritance laws prioritize gender equality, ensuring that both the male and female child get equal rights to inherit property.
- v. These countries also emphasize social policies, such as affordable housing, childcare support, and gender-balanced parental leave, which contribute to women's economic empowerment and property ownership.

It's important to note that approaches to women's property rights can vary within a country or region based on cultural, ethnic, and socioeconomic factors. While these examples demonstrate positive efforts, challenges may still exist in implementing and enforcing women's property rights fully. Continued attention to legal reforms, awareness-raising, and economic empowerment programs is necessary to further enhance women's property rights worldwide.<sup>21</sup>

Access to justice and legal support services are crucial elements in promoting and protecting women's property rights. They play a crucial role in ensuring that women have the necessary resources, information, and support to navigate the legal system, address property-related disputes, and assert their rights effectively. Here are key aspects related to access to justice and legal support services for women:

1. **Legal Aid Services:** Governments and organizations should establish and strengthen legal aid services specifically tailored to address women's property rights issues. These services can provide women with free or affordable legal advice, assistance with legal documentation, representation in court, and mediation services. Legal aid clinics and help lines can be established to offer women easy access to information and guidance.

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<sup>21</sup> Cook, Rebecca J. "Women's International Human Rights Law: The Way Forward." *Human Rights Quarterly*, vol. 15, no. 2, 1993, pp. 230–61. JSTOR, <<https://doi.org/10.2307/762538>> accessed 24 April 2023

2. **Awareness and Information:** Efforts should be made to raise awareness among women about their property rights and available legal support services. This includes conducting awareness campaigns, workshops, and community outreach programs to educate women about their rights, relevant laws, and avenues for seeking legal assistance. Providing accessible and easy-to-understand information materials can empower women to make informed decisions regarding their property.
3. **Capacity Building for Legal Professionals:** Training programs and capacity-building initiatives should be conducted for legal professionals, including lawyers, judges, and paralegals, to enhance their understanding of gender issues, women's rights, and the specific challenges women face in asserting their property rights. This training should emphasize gender-sensitive approaches, cultural sensitivity, and a rights-based perspective to ensure that legal professionals are equipped to provide effective support to women.
4. **Specialized Courts and Alternative Dispute Resolution Mechanisms:** Establishing specialized courts or tribunals to handle property-related disputes involving women can help ensure prompt and fair resolution of cases. These courts should have judges trained in gender-sensitive approaches and have a thorough understanding of the complexities surrounding women's property rights. Alternative dispute resolution mechanisms, such as mediation and arbitration, can also offer women more accessible and less adversarial options for resolving property disputes.
5. **Mobile Legal Clinics and Outreach Programs:** To reach women in remote or marginalized areas, mobile legal clinics and outreach programs can be organized. These initiatives bring legal services and support directly to communities, increasing accessibility for women who may face geographical or social barriers in accessing justice. Mobile clinics can provide legal consultations, mediation services, and support in documentation and court processes.
6. **Collaboration and Partnerships:** Collaboration between government institutions, is essential to strengthen access to justice and legal support services. Governments should actively engage with stakeholders to develop and implement strategies, share resources, and coordinate efforts with the aim & objective to make justice easily accessible to women. Partnerships can also facilitate the sharing of best practices, technical

expertise, and financial resources to improve the quality and reach of legal support services.

7. **Data Collection and Monitoring:** Governments and organizations should collect gender-disaggregated data on property-related disputes, legal cases, and the effectiveness of legal support services. This data can help identify gaps, measure progress, and inform evidence-based policymaking and program development. Regular monitoring and evaluation of legal support services can ensure their effectiveness and identify areas for improvement.

By ensuring women's access to justice and providing them with robust legal support services, we can empower women to assert their property rights, challenge discriminatory practices, and contribute to gender equality and social justice. Access to justice and legal support services are integral components of a comprehensive approach to promoting women's property rights and creating a more equitable society for all.<sup>22</sup>

Creating awareness, providing education, and empowering women are key components of advancing women's property rights. By enhancing knowledge of rights, challenging discriminatory cultural norms, and promoting women's economic empowerment, women can assert their property rights more effectively.

Collaboration among governments, civil society organizations, and international partners is crucial for the advancement of women's property rights. Sharing best practices, exchanging knowledge, and providing financial and technical support can accelerate progress and contribute to a more equitable society.<sup>23</sup>

As we move forward, it is imperative to recognize the intersectional nature of discrimination and prioritize the rights of marginalized women. Efforts must address the specific challenges faced by women from diverse backgrounds and ensure inclusivity and equity in the promotion of women's property rights.

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<sup>22</sup> Nelson, Robert H. 'Lutheranism and the Equality of Women in the Nordic Countries' (2010) Finnish Literature Society <<http://www.jstor.org/stable/j.ctv11cvx18.13>> accessed 21 April 2023.

<sup>23</sup> Estin, Ann Laquer. "International Divorce: Litigating Marital Property and Support Rights" JSTOR <<http://www.jstor.org/stable/23240320>> accessed 20 April 2023.

By embracing the future directions and recommendations outlined in this paper, we can pave the way for a more just and equitable society where women can exercise their property rights, contribute to economic development, and participate fully in decision-making processes. Achieving gender equality in property ownership and control will not only benefit individual women but also foster sustainable development and create a more inclusive and prosperous world for all.<sup>24</sup>

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<sup>24</sup> Jacobs, Susie. "Gender, Land and Sexuality: Exploring Connections" (2014) JSTOR <<http://www.jstor.org/stable/24713311>> accessed 25 April 2023.

**CHAPTER 3**

**LEGAL FRAMEWORK ON PROPERTY RIGHTS OF HINDU  
WOMEN IN INDIAN**

**3.1. Statutory Development of Women’s Property Rights**

The notion of “coparcenary” holds significant prominence within the framework of a Mitakshara joint Hindu family. Nevertheless, this practise is restricted to male individuals within the familial lineage and is applicable solely within a maximum of four generations from the most recent possessor of the estate. Conversely, a Joint Hindu family encompasses individuals of both genders, irrespective of their lineage from the shared male progenitor.<sup>25</sup>

As per the legislation enacted by the governing authorities:

- i. Every female individual possesses the entitlement to obtain and retain assets under her own legal identity.
- ii. In the event that a woman possesses any form of property, she is afforded the autonomy to exercise her discretion in its utilisation.
- iii. Women possess the inherent right to receive their income directly and maintain the freedom to choose whether to retain or allocate it according to their personal preferences.
- iv. Women possess the same rights as men in terms of purchasing or selling property.

The primary objective of the enactment of the Hindu Succession Act of 1956 was to undertake a comprehensive revision and codification of the legal provisions governing the distribution of property in cases of intestate succession specifically within the Hindu community. The Act implemented significant alterations to the legal framework pertaining to succession, placing a special focus on the ownership rights enjoyed by women.

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<sup>25</sup> Mulla, *Principles of Hindu Law* (LexisNexis Butterworth, New Delhi, 20<sup>th</sup> Edn, 1982)

It is imperative to recognise that the Act does not infringe upon the specific privileges of individuals who are part of the Hindu Mitakshara coparcenary. The scope of this document is restricted to providing guidance on the process of transferring the assets and interests of a deceased male individual in certain prescribed situations. The legislation provides a comprehensive and standard structure for the allocation of inheritance, specifically targeting individuals who are subject to the Mitakshara and Dayabhaga schools of law. Moreover, the Act mentioned above includes not only adherents of Hinduism but also individuals who identify with Buddhism, Jainism, Sikhism, and other religious communities that are distinct from Islam, Christianity, Parsi, and Jewish faiths. It is important to note that testamentary dispositions are not covered by the Act, as they are governed by the Indian Succession Act of 1925.

Section 6 of the Hindu Succession Act, 1956 addresses the distribution of the share of coparcenary property belonging to a male Hindu and recognises the concept of devolution by survivorship among coparcenary members. However, the exclusion of women from the Mitakshara coparcenary system leads to their inability to inherit ancestral property on par with their male counterparts. The exclusion mentioned above not only leads to discrimination against female offspring based on their gender, but also violates their inherent right to equal treatment as protected by the Constitution. A number of states, specifically Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, have enacted legislative modifications in order to establish fair entitlements for daughters in Mitakshara coparcenary property. The implementation of the Kerala Joint Hindu Family System (Abolition) Act of 1975 has taken place within the geographical boundaries of the state of Kerala.

Various proposals have been advanced in order to address the discriminatory elements inherent in Section 6 of the Hindu Succession Act of 1956. These proposals advocate for the equitable provision of rights to daughters with regards to Mitakshara coparcenary property. Moreover, a suggestion has been put forward to eliminate the provision delineated in Section 23 of the legislation. This provision presently imposes limitations on female heirs, preventing them from pursuing partition in a residential property exclusively held by a joint family till the men who inherit opt to divide their respective portions. The

purpose of this amendment is to remove the previously mentioned restriction placed upon female heirs.

The aforementioned proposals were formulated in accordance with the recommendations put forth by the Law Commission of India, as delineated in its 174th Report titled “Property Rights of Women: Proposed Reform under the Hindu Law.”

It is imperative to acknowledge that women constitute 50% of the global population, and over the course of history, they have assumed diverse societal roles. Nevertheless, these individuals have frequently experienced disparities, inequities, and mistreatment. Throughout history, women have been subjected to gender disparities, experiencing inequitable treatment and discrimination. It is imperative to acknowledge and rectify the existing gender disparities and injustices in order to foster women's autonomy and self-reliance. This empowerment is crucial as it equips women with the means to provide for themselves and their families, even in challenging circumstances. The existence of property rights plays a pivotal role in the perpetuation of these disparities, which have endured since antiquity.<sup>26</sup>

The absence of a cohort of resilient women would undeniably result in the absence of a cohort of exceptional men.

There have been multiple legislative advancements aimed at granting women property rights. These developments can be categorised into four distinct eras, namely:

1. The ancient era, specifically referring to the time period prior to 1937,
2. The 2nd Era, from 1937 to 1956,
3. The 3rd Era, from 1956 to 2005,
4. The 4th Era, from 2005 onwards.

According to Hindu law, there are five distinct categories of estate that are prescribed specifically for Hindu women. The following items are: -

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<sup>26</sup> AIHC, ‘History of Ancient India up to 550 A.D.’ (2006) Vol. 102, AIHC 102

1. The term “absolute estate” refers to a legal concept in property law that denotes the highest form of ownership interest
2. A life estate refers to a legal arrangement in which an individual retains the right to use and enjoy a property for
3. The concept of a limited estate refers to a type of property ownership that is subject to certain restrictions or limitations.
4. The term “restricted estate” refers to a legal concept that pertains to a property or land that is subject
5. The term “Widows Estate” refers to a legal concept in property law that pertains to the rights

During the pre-1937 era, women were limited to possessing life estates, which granted them the right to maintenance. The notion of absolute estate was restricted solely to the domain of stridhana.

The second era, spanning from 1937 to 1956, witnessed a significant legislative advancement with the enactment of the "Hindu Women's Right to Property Act, 1937." This legislation, for the initial instance, granted a widow possessing a restricted estate the entitlement to partition coparcenary property that her deceased husband possessed during his lifetime. The property in question was referred to as the "Widow Estate," which was characterised by its limited holdings of personal property.

The HSA of 1956 marked a significant milestone in the third era by granting women the right to the concept of unconditional ownership over personal property is introduced for the first time. However, it failed to establish provisions for complete ownership of coparcenary property.

During the 4th era, commencing on September 9th, 2005, a significant legislative advancement occurred, granting women full and unrestricted ownership rights over personal and coparcenary properties.

### **3.1.1 Ancient era to 1937**

The period from ancient times until 1937 can be referred to as the ancient era.



The ancient joint family system in India held the family as a fundamental unit within the hierarchical structure of Hindu society. The composition of these families consisted of parents, children, grandchildren, uncles, their descendants, and collateral relatives on the paternal side. The individuals cohabitated and collectively pooled their resources. Nevertheless, with the emergence of private property within these familial units, the occurrence of disputes and conflicts pertaining to land division and inheritance became inevitable, thereby prompting the need for the establishment of legal frameworks and governing bodies. The Mitakshara and Dayabhaga systems of family law emerged as significant pillars of civil law in India.<sup>27</sup>

According to the Mitakshara Law, a male individual obtains an inherent entitlement and stake in the ancestral property by virtue of their birth. Within this particular system, an individual who is classified as a son, grandson, or great-grandson is acknowledged as a member of the coparcenary class, thereby entitling them to specific rights. Nevertheless, it is noteworthy to mention that the Mitakshara Law does not recognise females as coparceners. The transmission of joint family property within a coparcenary in the Mitakshara system occurs through survivorship. The Mitakshara Law acknowledges the principle of inheritance through succession, albeit with a restriction to property that is owned individually.

Conversely, the Dayabhaga system regulates the process of inheritance by emphasising the primacy of individual entitlements rather than the principle of survivorship. Offspring, regardless of gender, do not possess inherent rights of co-ownership or entitlement to a specific property during their father's lifetime. Subsequent to the father's passing, the individuals in question assume the status of tenants-in-common, thereby possessing an equitable division of ownership in the property. In the Dayabhaga system, daughters are entitled to an equal share of the inheritance, alongside their male siblings.

Over the course of history, the ancient family laws gradually established the fundamental principles upon which civil law in India was built. These laws specifically dealt with

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<sup>27</sup> Hindu Succession Act 1956, s 4

matters pertaining to the distribution of property and the inheritance process within joint families.

Throughout the ancient era, women were completely deprived of any rights pertaining to property ownership. In Hindu society, there has been a historical preference for the birth of male offspring, as it is commonly believed that sons are more likely to provide care for their parents in their later years and safeguard the family's reputation and honour. According to the Manusmirti, women are not afforded the autonomy to independently make decisions. Regardless of their age, females are expected to comply with the directives of their father during their formative years, their husbands during their adolescent years, and their sons after the demise of their husbands. Throughout history, women have been consistently marginalised, leading to their exclusion from the status of fully autonomous individuals. Consequently, they have been systematically denied the right to own property. She had exclusive entitlement to maintenance. The daughter did not have a legal claim to any portion of her father's assets. Manu further asserts that the wife does not possess any entitlement to a share of her husband's estate during his lifetime. The woman possesses a legal entitlement to financial support from her spouse, a right that remains intact regardless of her moral conduct or virtue. Despite the absence of a male heir in her husband's lineage, Manu does not acknowledge the widow as the rightful inheritor of his estate. In the past, there existed a period wherein the ownership and control of stridhana were entirely vested in a single individual.

### **3.1.2. Period from 1937 to 1956**

The implementation of the Hindu Women's Right to Property Act in 1937 signified a significant progress in the domain of inheritance rights for women within the Hindu community. The enactment of this law had a discernible influence on the treatment of women, particularly widows, with regards to their rights and entitlements concerning joint family property. The dominant concept of survivorship was subjected to scrutiny due to its expansion of widows' entitlements, granting them an equitable portion of the collective family assets. This mirrored the rights that their late spouses had possessed while alive.

According to Section 3 of the Hindu Women's Right to Property Act, 1937 (which has subsequently been repealed), widows possess the legal right to acquire the assets and estate of their departed spouses. The individuals possessed the legal authority to act as representatives of the estate and were granted the privilege of holding a significant stake in it. The aforementioned interest was commonly known as the "Hindu Women's Estate" as stipulated in Section 3(3) of the Act, signifying a restricted form of ownership that could be held by a Hindu widow. The legislation sought to bestow women with enhanced rights and facilitate substantial societal changes. The primary objective of this initiative was to enhance the social standing of widows and ensure their equitable entitlement to property.

The case of *NareshJha v. Rakesh Kumar* has garnered attention due to its implications on property devolution and the entitlement of widows to inherit property. In the present case, an individual adhering to the Hindu faith has deceased, thereby leaving in their wake a surviving spouse and two male offspring. Due to the demise of the individual prior to the enactment of the Hindu Women's Right to Property Act in 1937 (subsequently replaced by the Hindu Succession Act of 1956), the widow did not possess any legal entitlement to a portion of the estate. The distribution of personal possessions was conducted in a manner that allocated an equal share to each of the sons, with the exception of the widow who was not included in this process. Despite the widow being designated as an heir under the 1937 Act, her entitlement to inheritance was subject to certain limitations, thereby affording her the opportunity to exercise the choice of requesting a partition.

The legislation provided widows with a limited estate pertaining to their individual assets. In reference to the case of *Tulasamma*, Paragraph 41 highlights the emphasis made by Mr. Justice Fazal Ali regarding the restricted estate, asserting that it solely denotes a life estate in relation to the aspect of enjoyment. The Act was enacted with the intention of mitigating the longstanding disadvantages experienced by widows and granting them a legally acknowledged stake in the assets of their deceased spouses. However, it is important to note that certain restrictions on the scope of their inheritance remained in place.

### **3.1.3 Period from 1956 to 2005**

The Hindu Succession Act of 1956, which was implemented on June 17th, 1956, represented a notable deviation from the traditional Hindu Law as codified by Manu. The implementation of this framework brought forth a more equitable and fair approach to addressing the matter of intestate succession within the Hindu male population. According to the legislation, a woman's property is regarded as her exclusive and unrestricted possession. Nevertheless, the document does not address the issue of female property rights within joint families and partition, suggesting that current legislation continues to regulate these aspects. This suggests that there were no substantial alterations with respect to the rights of women in coparcenary properties.

The Act possesses a prevailing scope of application and takes precedence over any pre-existing laws that are in conflict with it. The legislation nullified any prior laws that were in conflict with its stipulations. The coparcenary system, which grants exclusive birthright to ancestral property to male members of a joint Hindu family, perpetuates a patrilineal regime that governs the inheritance of property solely through the male lineage.

The Hindu Succession Act of 1956 brought about a significant departure from conventional legal norms by conferring equal inheritance rights upon daughters, regardless of their marital status. This entitlement was extended to daughters alongside sons, widows, and other individuals listed in Class I of the schedule of heirs. Every female offspring is eligible to receive a portion that is equal to that of a male offspring. In the context of inheritance, it is customary for siblings who are classified as Class I heirs to distribute the property among themselves in an equitable manner, ensuring an equal division. In the context of inheritance, daughters are granted their portion as absolute property, as opposed to a limited estate.

One notable departure from traditional legal norms is the removal of favouritism towards either married or unmarried daughters. The Supreme Court's ruling in the case of *Savita Samdeviv v. Union of India* established that in order for a married daughter to be eligible to assert property rights, she must have established prior residency in the specific state in question.

Mothers are also included as beneficiaries under the Act, alongside sons, widows, daughters, and other heirs listed in Class I. The individuals obtain their complete portion. The mother's entitlement to inherit as the heir of her son remains unaffected by her chastity, remarriage, or divorce. In a similar vein, it is worth noting that a widow of the male counterpart is entitled to inherit property, just like sons, daughters, and other beneficiaries. The individual in question holds an unequivocal entitlement to the property, not in the capacity of a widow's estate, but in alignment with the provisions outlined in Section 14 of the relevant legislation.

The Supreme Court, in the legal matter of *Kalawati Bai v. Soiryabai*, provided clarification regarding the Hindu Succession Act of 1956. It was established that a Hindu woman, who held possession of a property at the time of the Act's implementation, has the potential to attain absolute ownership if she had previously been a limited owner. The court acknowledged the entitlement of an impoverished widowed daughter to seek financial support from her father while he is alive and from his estate after his demise. This recognition was made despite previous court decisions that had restricted women's property rights, such as the denial of a daughter-in-law's claim to her father-in-law's property on the grounds of her husband's involvement in his father's murder.

The provisions outlined in the Hindu Succession Act of 1956 were implemented with the objective of promoting gender equality in inheritance laws and safeguarding the property rights of women within the Hindu community.

### **3.1.4 Period of 2005 and onwards**

The Hindu Succession (Amending) Act of 2005 was enacted with the objective of eliminating discriminatory practises within the Hindu Succession Act of 1956. This amendment aimed to ensure that daughters are granted equal rights to sons in terms of inheritance of Hindu Mitakshara Coparcenary property.

Moreover, notwithstanding its belated execution, the amendment introduced to the Hindu Succession Act of 1956 in 2005 can be deemed as a propitious advancement for women in India. The Indian government has exhibited a robust dedication to promoting gender

justice. The Constitution of India incorporates the principles of gender equality, which are prominently enshrined in its respected preamble and various sections, including Parts III, IV, and IV A. The aforementioned sections encompass the Fundamental Rights, Fundamental Duties, and Directive Principles, all of which emphasise the utmost importance of equality. The constitution additionally confers upon the state the authority to promulgate legislation that enforces affirmative action policies aimed at providing advantages to women.

### **3.2. State Constitutional Amendments Pertaining to Women's Property Rights**

The Hindu Succession (Andhra Pradesh Amendment) Act of 1986, the Hindu Succession (Tamil Nadu Amendment) Act of 1990, the Hindu Succession (Karnataka Amendment) Act of 1994, the Hindu Succession (Maharashtra Amendment) Act of 1994, and the Kerala Joint Family System (Abolition) Act all pertain to legislative amendments made in the respective states of Andhra Pradesh, Tamil Nadu, Karnataka, Maharashtra, and Kerala. Several states have implemented amendments to the legislation concerning Mitakshara Coparcenary, which recognises daughters as coparceners in Hindu Joint Families.<sup>28</sup>

The Hindu Joint Family System and the male primogeniture principle regarding property acquisition have been entirely abolished within the jurisdiction of Kerala State.

### **3.3. Law Commission of India on Property Rights of Women**

The responsibility of formulating recommendations to achieve a just and equitable distribution of inherited wealth among male and female heirs was assigned to the Law Commission of India. The commission's 174th report, published in 2000, highlighted the pervasive presence of gender-based discrimination pertaining to women's property rights. The statement underscores the inherent injustice of gender-based exclusion of daughters from inheriting coparcenary property. In light of the findings presented by the commission, the Central Government proceeded to modify section 6 of the Hindu Succession Act of 1956, thereby ensuring that women are accorded equitable legal entitlements as inheritors

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<sup>28</sup> The Hindu Succession Act 1956, s 30.

of ancestral property. Furthermore, in accordance with the recommendation of the commission, sections 24 and 23 of the Act were excluded.

The primary aim of executing the suggestions outlined the Law Commission of India in its 174<sup>th</sup> report was to redress societal inequalities and afford women a semblance of parity in relation to property rights. The aforementioned modifications played a pivotal role in addressing societal irregularities and promoting a system that is more inclusive and equitable in terms of women's entitlement to inheritance.

#### **3.4. Changes made by Hindu Succession (Amended) Act, 2005**

The Hindu Succession Act of 1956 experienced substantial modifications through the Amendment Act of 2005, particularly pertaining to the entitlements of female offspring within a collective Hindu household governed by Mitakshara Law. The amendment has effectively established equal rights, obligations, and limitations pertaining to coparcenary property for daughters, commencing from their birth, in a manner equivalent to those of sons. Nevertheless, it is important to note that any pre-existing disposition or transfer of property that occurred prior to December 20, 2004, such as partitions and testamentary dispositions, will continue to be legally binding and unaffected by the aforementioned amendment.

The recent case has established that unmarried daughters are entitled to the same rights as sons under Sections 6 and 6A of the Hindu Succession Act, 1956. The aforementioned clauses grant female Hindus the right to possess any property, which they hold with coparcenary ownership. This ownership enables them to distribute the property through their will or other testamentary dispositions.

Moreover, the amendment effectively repealed Section 23 of the 1956 Hindu Succession Act, which previously granted Hindu women the right to seek the partition of the ancestral property solely upon the initiation of other family members. The provision outlined in Section 4(2) of the aforementioned Act, which conferred upon Hindu women the same inheritance rights as their male counterparts in relation to agricultural land subsequent to September 9, 2005, was subsequently repealed.

Furthermore, the elimination of Section 24 resulted in the removal of the provision that previously barred widows from inheriting their deceased husband's portion of property in the event of subsequent marriages.

The Hindu Succession Act of 1956 underwent an amendment that included modifications to its schedule. These revisions expanded the list of eligible heirs to encompass individuals such as The individual in question is the male descendant of a departed daughter, the female descendant of a departed daughter, the male descendant of a departed son, and the female descendant of a deceased son.

Recent legal decisions have brought attention to the fact that a father has the ability to bestow ancestral immovable property upon his daughter, subject to specific conditions and limitations. Furthermore, the Supreme Court has provided clarification that the amended Section 6 of the Hindu Succession Act The legislation provides equal rights to male and female members of a joint Hindu family with regards to coparcenary property. In accordance with the amendment, a female coparcener possesses equal entitlements and responsibilities with respect to coparcenary property, akin to those of a male coparcener.

According to the Supreme Court, it has been established that under Section 23 of the Hindu Succession Act, any female heir possesses the entitlement to seek partition, even in instances involving a residential property. Section 23 can only be invoked in the event that a cause of action arises subsequently, and it is important to note that the partition cannot be enforced through the physical demarcation of boundaries.

In its entirety, the amendment made to the Hindu Succession Act in 2005 represents a notable advancement in terms of promoting women's empowerment and safeguarding their property rights. The provision grants daughters the entitlement to coparcenary properties, thereby expanding their authority and ownership rights beyond basic subsistence. Although the retroactive nature of this amendment has raised concerns, there are potential social issues and disputes that may emerge within families. However, it is widely acknowledged as a significant stride in the pursuit of women's empowerment and the promotion of gender equality in the context of ancestral property rights.



Moreover, it can be contended that enacting legislation solely for a limited number of coparcenary properties would have detrimental consequences on the lives of the majority of individuals. In the event that the coparcenary property in question is an agricultural land, and if the daughter has obtained a legal entitlement to it and subsequently requests its partition, it is plausible that the fertility and agricultural productivity of said land may experience a subsequent decline.

However, despite the various arguments presented, this legislative measure has granted women a robust entitlement that empowers them to advocate for themselves in challenging circumstances and maintain a respectable and harmonious livelihood. These types of arguments should not be given significant consideration, particularly in the current era of equality that encompasses all domains. The Amending Act of 2005 represents a significant step towards promoting women's empowerment and deserves commendation.

### **3.5. Stridhana**

The concept of “Stridhana” refers to the legal and cultural practise in ancient India where women were entitled. Within the realm of present-day Hindu jurisprudence, the concept of “stridhana” encompasses various classifications of assets acquired or held by women, granting them absolute control and ownership, in addition to the specific types of property delineated in the Smritis, ancient Hindu legal texts. Stridhana refers to properties that are bestowed upon a girl prior to her marriage, during the wedding rituals, during the farewell ceremonies, or subsequently. The woman's spouse and other family members are prohibited from exercising any form of control or authority over these properties, as they are considered to be exclusively owned by her. Despite the husband's legal entitlement to utilise the stridhana property during times of hardship, he bears a moral obligation to restore the asset or its equivalent value to his wife.

According to ancient teachings, such as those espoused by Manu, individuals classified as wives, sons, or slaves were not entitled to property ownership. Consequently, any wealth accumulated by these individuals would be attributed to the person to whom they were affiliated. However, it should be noted that this does not imply their incapacity to possess property. According to Manu's analysts, the interpretation of this observation implies that

individuals lack the capacity to independently manage their belongings. Gautama's recognition of a woman's capacity to possess individual property and his provision for its inheritance lend support to this perspective. Apastamba asserts that a wife's portion encompasses her personal jewellery and any monetary assets she may receive as an inheritance from her own kin. Undoubtedly, a woman's material belongings commence with her wedding, encompassing contributions from her immediate family, the groom's family, and his extended kin.

Following its enactment in 1956, the Hindu Succession Act introduced a significant provision in Section 14(1). This provision mandates that any property held by a female Hindu, irrespective of its acquisition before or after the enactment of the Act, is to be recognised as her absolute ownership rather than restricted ownership.

As per the aforementioned provision, the term "property" encompasses both tangible and intangible assets that can be acquired by a female Hindu through various means including inheritance, partition, maintenance, gifts, personal skills or labour, purchase, prescription, or any other legally permissible method. Furthermore, it includes all the assets that she owned as stridhana prior to the enactment of the Act.

The aforementioned legislative and judicial advancements signify a notable transition towards acknowledging and safeguarding the property entitlements of Hindu women, thereby guaranteeing their absolute ownership and authority over the assets they have acquired.

The court's ruling in the case of *Gulwant Kaur v. Mohinder Singh*<sup>29</sup> elucidates the objective of Section 14, which aims to remove restrictions and limitations on the property rights of Hindu women. This provision ensures that Hindu women have the ability to exercise complete ownership over property and derive full enjoyment from it, irrespective of the manner in which they acquired it. The term "justification" explicitly pertains to property acquired as a substitute for financial support, and a widow is not required to provide additional evidence of ownership in order to establish full possession according to Section

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<sup>29</sup> *Gulwant Kaur v. Mohinder Singh* AIR [1987] SC 225

14(1) of a property received as support. If an individual possesses a property instead of receiving maintenance, the entitlement to receive maintenance serves as a valid claim that facilitates the transition from possession to complete ownership.

In cases where a female Hindu acquires property through a written document or court order, Section 14(2) serves as an exception to Section 14(1). However, it is important to note that this exception does not apply if the acquisition of the property can be traced back to any previous right.

In a separate legal case pertaining to stridhana, the Supreme Court has rendered a verdict stating that Section 14(1) of the Indian Constitution does not violate the provisions outlined in Articles 14 and 15(1). Section 14(1) was enacted with the aim of mitigating the challenges faced by Hindu women, who were restricted to accessing only the assets bequeathed to them by their deceased husbands due to the constraints imposed on a widow's estate under Hindu Law. Hence, there is minimal rationale for male individuals belonging to the Hindu community to raise objections against the favourable provisions outlined in Section 14(1) based on claims of discriminatory treatment.

### **3.6. Non-Stridhana**

1. The topic of discussion pertains to the ownership of property that has been passed down to a woman through inheritance.

The widow's<sup>30</sup> estate is a commonly observed mode of inheritance whereby women frequently receive assets from men.<sup>31</sup> Within the realm of Hindu law, there exists a lack of direct equivalence to the legal terminologies employed in English law, such as fee, life estate, estate tail, and various others. In situations where the testator's will explicitly designates that the residual property shall be transferred to other individuals subsequent to the lifetimes of the husband and wife, it has been determined that the woman would be granted a life estate rather than a widow's estate, thereby restricting her from engaging in the sale of the property.

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<sup>30</sup> The Hindu Women's Rights to Property Act 1937, s 3(3)

<sup>31</sup> *Rangasami Gounden v. Nachiappa Gounden* [1919] 46 IA 72

In the context of Hindu inheritance laws, it is recognised that a widow belonging to the Hindu faith possesses the entitlement to avail herself of the complete benefits associated with the estate she inherits.<sup>32</sup> Unless she intentionally engages in the deliberate misuse of the property, she is not accountable to any individual or entity.<sup>33</sup> The widow's estate is characterised by its unique feature of transferring ownership to the heirs of the most recent male proprietor upon the widow's death.<sup>34</sup> In the case of stridhana property, however, the estate is inherited by the heirs of the last female proprietor.<sup>35</sup> She does not give rise to a new lineage of offspring herself. Irrespective of the gender of the individual from whom she receives inheritance, the constraints on her authority to allocate the property remain unchanged.

### **3.6.1. Women Estate in Inherited Property**

The retrospective application of the Hindu Women's Rights to Property Act of 1937 was not observed upon its promulgation on April 14, 1937.<sup>36</sup> The aforementioned legislation broadened the parameters of inheritance entitlement for Hindu widows, widowed daughters-in-law, and granddaughters-in-law. The individuals in question acquired the right to receive inheritance from a Hindu male, not only in lieu of his male offspring, but also in conjunction with them. It is imperative to acknowledge that the constraints imposed on the woman's property determine its nature rather than its length of existence.<sup>37</sup> The estate in question is not solely limited to a life estate, as there are specific circumstances in which the widow may be granted an unrestricted and full ownership of the property. In the case of *Janaki Ammal v. Narayanaswami*,<sup>38</sup> it is affirmed that the right of the woman in question can be characterised as a property right. Her status can be likened to that of an owner, albeit with certain limitations on her powers in that capacity. A more precise depiction would be that the wife in question possesses an inherited estate, which is designated for her own benefit as well as for the benefit of her husband's heirs.

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<sup>32</sup> *Sheo Shanker v Debi Sahai* [1903] 30 IA 202; 25 All 468S

<sup>33</sup> *Bastiram v Veda Prakash*, [1974] Punj 152

<sup>34</sup> *Renka v Bhola Nath* [1915] 37 All 177

<sup>35</sup> *Veeramalai Chettiar v Ramayee Ammal*, [1962] Mad 437

<sup>36</sup> *Krishtappa v Ananta Kalappa Jarathakhane*, AIR 2001 Kar 322

<sup>37</sup> *Ram Sumran v. Govind Das* [1926] 5 Pat 646, 676

<sup>38</sup> *Vasonji v Chanda Bibi* [1915] 37 All 369, 37

Nevertheless, an important constraint of the 1937 Act was its failure to confer exclusive property ownership upon widows, despite its efforts to enhance their inheritance rights.

### 3.6.2. Maintenance

Section 125 of the CrPC delineates the basis upon which relief may be sought, namely, the non-compliance or neglect of an individual to provide financial support to their spouse, children, father, or mother, despite possessing the means to fulfil such obligations. An individual will be considered to possess adequate resources if they possess the capacity to generate a livelihood, irrespective of the actual existence of said resources. The individual is required to provide substantiating evidence demonstrating their insufficient means to sustain their own well-being and provide assistance to others.<sup>39</sup> While it is not obligatory for the husband to explicitly declare his refusal to provide financial support to his wife, such a stance can potentially be inferred from his behaviour. The act of denying paternity can be considered analogous to declining to provide financial or emotional support.

Women are entitled to receive maintenance.

i. Concubine: A concubine refers to a female individual in the Hindu tradition who maintained a continuous relationship with a male individual until his demise, and is legally entitled to receive financial assistance from his estate, regardless of whether it was obtained through inheritance or personal acquisition.<sup>40</sup> Similar to a widow, she relinquishes her entitlement if she experiences incontinence.<sup>41</sup>

ii. According to customary norms, a daughter is eligible for financial assistance until the time of her marriage, along with the provision of reimbursement for any expenses incurred during her wedding ceremony.<sup>42</sup> The widowed daughter is required to provide evidence indicating her financial destitution during the pertinent period. The concept of residence is an integral component of the right to maintain. Nevertheless, in the event that she

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<sup>39</sup> *Bhikaiji v. Monecki*, 5 Cr LJ 334 [1907]

<sup>40</sup> *Ningrareddi v. lakshmawa* [1902] 26 Bom 163

<sup>41</sup> *Yashvant Rao v Kashibai* [1888] 12 Bom 26

<sup>42</sup> *Bai Mangal v Bai Rukhmini* [1899] 23 Bom 291

experiences incontinence, similar to a widow, she forfeits her entitlement to the property of her deceased lover, regardless of whether it was acquired through inheritance or purchase.<sup>43</sup>

iii. The entitlement of a wife to receive financial support from her husband, irrespective of his possession of assets, is a matter of her individual responsibility that arises upon entering into marriage.<sup>44</sup>

The establishment of a claim for separate maintenance is not viable<sup>45</sup> if she voluntarily leaves her spouse, regardless of whether her departure is unjustified or stems from common marital disagreements.<sup>46</sup>

iv. Widowhood: Maintenance is provided to the widows of family members.<sup>47</sup> The individual in question has the option to request either a partial amount or ongoing support, selecting the option that provides the greatest benefit to her. However, it is not permissible for her to request both simultaneously.<sup>48</sup> In the event that her male offspring appropriates her spouse's distinct assets, she is eligible to receive financial support. If the deceased individual held coparcenary status at the time of his demise,<sup>49</sup> the surviving spouse is eligible to receive maintenance as a means of safeguarding herself against potential claims from those who inherit her husband's share through survivorship.<sup>50</sup>

The concept of “quantum of maintenance” refers to the minimum amount of maintenance required for a particular system or entity to function properly.

An individual who has been raised in a wealthy family would inherently possess a greater quantity and costlier desires compared to someone who has been raised in a state of destitution.<sup>51</sup> The determination of the property's scope would be crucial in determining

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<sup>43</sup> *Khantamoni v Shayam Chand*, [1973] Cal 112 .

<sup>44</sup> *Jayanti Subbiah v Alamelu Mangamma* [1904] 27 Mad 45

<sup>45</sup> *Sidlingappa v Sidava* [1878] 2 Bom 634

<sup>46</sup> *Venkatamma v Nookamma*, [1956] AP 49

<sup>47</sup> *Ramanath v Rajonimoni* [1890] 17 Cal 674

<sup>48</sup> *Gajavalli v Narayanaswamy*, [1962] Mad 187

<sup>49</sup> *Kripal Singh v Chandravathi Devi*, [1951] All 507

<sup>50</sup> *Ramesh Chandra v ved Kumar*, [1951] Punj 129

<sup>51</sup> *Mahesh Partab v Dirgpal* [1899] 21 All 232

whether these desires could be fulfilled in a manner that is fair to the other individuals involved. In cases where a Hindu individual passes away, leaving a widow and a daughter, along with a will that includes provisions for the support of the wife and daughter, it should be noted that the court retains the authority to determine a fair and appropriate amount for maintenance. The provision stated in the will may be interpreted as a recommendation put forth by the husband regarding what he deems to be a suitable arrangement for financial support. Hence, in the event that the court determines the insufficiency of the provision stated in the will, it possesses the authority to replace it with a more equitable provision.<sup>52</sup>

### **3.6.3. Partition**

The Hindu joint family system in India encompasses distinct provisions pertaining to the rights and privileges of its members, specifically in relation to the division of assets. There exists a specific subset of individuals within a group who possess restricted entitlements in terms of asserting a partition, yet retain the right to a portion in the event of a partition. This category comprises three female individuals: the spouse of the father, the mother, and the grandmother.

It is crucial to acknowledge that female individuals possess the entitlement to inhabit the dwelling. This implies that while they lack the ability to actively assert their claim for division, they are permitted to maintain their residence within the dwelling.

Conversely, it should be noted that a daughter who is married does not possess the entitlement to inhabit the familial abode. Nevertheless, there exists an exception to this general principle. In the event that a daughter who is married experiences widowhood, abandonment, or divorce from her spouse, she is entitled to reoccupy the familial residence. The inclusion of the provision prohibiting a married daughter from residing in the household was implemented as a measure to address apprehensions surrounding the potential introduction of unfamiliar individuals into the familial setting.

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<sup>52</sup> *Jamuna Kunwar v Arjun Singh*, ILR [1940] All 739

Widowed daughters-in-law, widowed granddaughters-in-law, and the widow of the deceased are granted unrestricted residency within the household. Furthermore, no stipulation exists that prohibits individuals from cohabitating with their spouse in the primary residence following remarriage.<sup>53</sup>

Section 23 of the Hindu Succession Act, 1956, is applicable exclusively in cases where there exists a combination of male and female heirs within a family. It is important to note that this provision does not extend its applicability to situations where all the heirs are exclusively of one gender, be it male or female. This particular section of the policy restricts the inclusion of female members, thereby enabling male members to unilaterally initiate a partition if they so wish.

However, a significant alteration was enacted in the legislation through the introduction of the Hindu Succession (Amendment) Act of 2005. The repeal of Section 23 of the Hindu Succession Act, 1956 occurred, thereby conferring upon daughters the entitlement to seek the division of a shared familial residence inhabited by coparceners. The aforementioned amendment possesses a nationwide scope and guarantees that daughters are afforded equal rights as sons in matters pertaining to the division of ancestral property.

It is noteworthy to acknowledge that certain states, namely Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, had already incorporated Sections 29A, 29B, and 29C into the Hindu Succession Act prior to its nationwide amendment. The aforementioned sections conferred nearly identical rights upon daughters as the amendment enacted in 2005.

Section 29B of the law stipulates the mechanism by which property is transferred through survivorship in the event of the demise of a female Hindu who possesses a stake in coparcenary property. Section 29C of the law provides a legal provision that confers upon other coparceners the privilege of exercising a preferential right to acquire the share of a daughter who elects to sell or transfer her stake in the property. This preferential right is granted to the detriment of other co-heirs or coparceners.<sup>54</sup>

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<sup>53</sup> *Aruna v. Dnanendra*, [1975] 79 CWN 305

<sup>54</sup> The Hindu Succession (Amendment) Act 2005 , s 6



The aforementioned sections will be retained within the newly proposed legislation applicable to the entire nation of India. According to the preceding legislation, it was stipulated that a female constituent of the Hindu Undivided Family (HUF) was prohibited from amalgamating her personal assets with the collective estate, thereby precluding the conversion of her individual property into joint family property. Nevertheless, pursuant to the most recent amendment, she now possesses the capacity to engage in such actions. The amendment that has been recently enacted does not make any explicit reference to the legal provisions pertaining to adoption, guardianship, and maintenance. The legal responsibility for arranging the marriage of a daughter in a manner appropriate to the family's social standing is imposed upon the Karta (manager) of the family by the Guardianship and Maintenance Act of 1956. Upon the daughter assuming the role of a coparcener, her pre-existing rights under the aforementioned act will continue to be preserved alongside the acquisition of her new rights. Daughters are expected to hold a more advantageous position compared to sons.

#### **3.6.4. Testamentary Succession**

Testamentary succession refers to the legal process by which a person's assets and property are distributed after their death

The Hindu Succession Act of 1956 acknowledges various classifications of successors, encompassing daughters and their progeny. The legislation confers equal legal standing upon daughters, thereby granting them the same inheritance rights as other members of the family. According to this Act, the individuals who qualify as Class I heirs are as follows: the son, daughter, mother, widow, grandson from a deceased son, great-grandson from a deceased son, granddaughter from a deceased son, great-granddaughter from a deceased son, granddaughter from a deceased daughter, grandson from a deceased daughter, daughter-in-law whose husband is deceased, and granddaughter-in-law whose husband is deceased.

In the scenario where an individual passes away, leaving behind a total of twelve heirs, the distribution of the estate will be allocated in the subsequent manner: the son shall receive a fraction of  $1/7$ , the daughter shall receive a fraction of  $1/7$ , the mother shall receive a fraction of  $1/7$ , and the widow shall receive a fraction of  $1/7$  (in the event of multiple widows, the share shall be divided equally among them). In the event of multiple widowed daughters-in-law, the share will be divided equally among them, with each receiving  $1/21$ . Likewise, in the event of a widowed granddaughter-in-law, her entitlement will be calculated as  $1/21$  of the total inheritance. In cases where there are multiple widowed granddaughters-in-law, the share will be divided equally among them.

#### **3.6.5. Self-Acquired Property**

As per the Mitakshara School of Hindu law, it is established that a male adherent of the Hindu faith possesses complete authority to transfer ownership of his self-acquired property. This implies that he possesses the unrestricted authority to distribute his personally acquired assets through acts of gifting or by means of testamentary disposition. Nevertheless, limitations were imposed on the authority of a Hindu coparcener with regards to their control over the undivided portion of the joint family property. Over the

course of time, the process of judicial interpretation has facilitated the possibility of attaching and selling an individual's undivided portion of joint family property in order to enforce monetary judgements. Certain high courts have ruled that a coparcener possesses the authority to independently sell their undivided share. It is important to acknowledge that according to the Mitakshara School, a coparcener is unable to transfer their undivided share inter vivos without obtaining the consent of the other coparceners. Prior to the year 1956, it was not permissible for a coparcener to transfer their undivided share through the means of a will. Following the implementation of the Hindu Succession Act in 1956, it is now within the purview of every Hindu individual to exercise the authority to distribute their property, regardless of whether it is self-acquired or constitutes an undivided share in the Mitakshara joint family property, by means of a legally recognised testamentary document.

In contrast, according to the principles of the Dayabhaga School of Hindu law, a coparcener possesses complete authority to transfer his property, encompassing both self-acquired assets and his portion of the communal family property. The individual has the option to transfer ownership of his portion either during his lifetime or through testamentary means.

Even within the framework of the Mitakshara School, it was permissible for a coparcener to transfer his property through the execution of a will. Through the act of declaring an intention to partition, a coparcener possesses the ability to sever their legal status and subsequently gain the freedom to distribute their share through acts of gifting or by creating a testamentary disposition.

It is imperative to acknowledge that the information presented herein constitutes a broad synopsis and may exhibit variations contingent upon particular circumstances and individual instances. It is advisable to seek legal counsel in order to obtain a thorough comprehension of the Hindu Succession Act and its associated ramifications.

1. The inheritance of paternal property
2. The topic of inheriting a father's property can be examined through the following categories:
3. The topic of discussion pertains to the process of inheriting self-acquired property.

4. The topic of discussion pertains to the devolution of joint family property and its implications.
5. The topic of discussion pertains to the concept of succession as it is governed by customary law.
6. Self-acquired property refers to assets that an individual has obtained through their own efforts, independent of any inheritance or;

As per the perspective of Brihaspati, it is stated that both sons and daughters are born from every part of a man's body. Therefore, it is questioned how any other individual can rightfully inherit the father's property while the daughter is still alive. According to a passage from Mitakshara, it states that "the daughters inherit when the wife is absent." Apararka, on the other hand, proclaimed that "daughters acquire ownership of their father's wealth by birth, similar to sons." Nevertheless, it is worth noting that none of the esteemed scholars in our tradition have advocated for a distribution of inheritance that exceeds twenty-five percent for the daughter. Within the traditional Hindu Dharmashastra texts, a clear differentiation was established between daughters who were married and those who remained unmarried. Nevertheless, the prevailing consensus among high courts and the Privy Council was that, in accordance with the Mitakshara School of law, women were typically deemed incapable of inheriting. It is noteworthy to acknowledge that there existed divergent perspectives on this issue, as evidenced by the contrasting positions adopted by the Bombay and Madras High Courts.

The Inheritance (Amendment) Act of 1929 was implemented to broaden the scope of individuals eligible to inherit assets. The aforementioned amendment introduced provisions that expanded the list of eligible heirs to include a son's daughter, a daughter's daughter, and a sister. Within the group of individuals entitled to inherit, the female offspring occupies the fifth position in the established sequence of succession.

Nevertheless, it is important to acknowledge that in the scenario where a son, grandson, great-grandson, and widow are all living, the daughter would not be entitled to inherit her father's estate. This implies that the daughter's entitlement to inheritance would be overridden by the existence of these additional relatives in the hierarchy of succession.

She possessed the right to inherit solely subsequent to the widow, in addition to the occurrence of her default. Within the context of this familial structure, it was established that unmarried daughters held precedence over their married counterparts, while the indigent daughter took precedence over the enriched one. Except for the Bombay School, the daughters were granted only a restricted portion of the inheritance. She was not regarded as a co-heir in a concurrent manner. Furthermore, her placement within the order of succession according to the Dayabhaga School was fifth.

### **3.6.6. Joint Family Property**

According to the Mitakshara School, the transfer of joint family property is determined by survivorship rather than succession. Upon the demise of a coparcener, their indivisible portion of the communal family property is transferred to the remaining coparceners via the principle of survivorship. It is noteworthy to observe that according to this legal framework, women are ineligible to become coparceners.

The Hindu Women's Right to Property Act of 1937 implemented certain amendments to this regulation. In situations where a coparcener passes away, leaving a widow, it should be noted that the widow's entitlement to the undivided share of the coparcener through survivorship is not automatically forfeited. Conversely, she is bestowed with a life-interest in said share. Nevertheless, it is important to acknowledge that the daughters were not granted any entitlement or share in the joint family property as per the provisions of this Act.

Specific women do have the right to seek a share in the case of a partition with respect to the joint family property, even if it is not within the rights of every female member of a joint family to demand one. The mother who has lost her husband, the mother who is still married, and the maternal grandmother are all included in the group of women being discussed in this context. However, it is important to underline that daughters do not have a legal claim to a share of the total family estate.

The topic of discussion pertains to the concept of succession as it is governed by customary law.

There appears to be a prevailing perspective, which has gained traction in recent times, suggesting that in the regions of Punjab and Haryana, daughters do not possess any rights to inherit their father's assets. This viewpoint asserts that the principle of agnation is strictly upheld in these areas. The assertion made by the present writer is highly inaccurate. The daughter's legal status under Punjab customary law is marginally more favourable compared to the Mitakshara School.

The determination of a daughter's share under customary law is a complex matter that cannot be definitively addressed through a single legal proposition. The legal systems vary among different tribes and geographical locations. Moreover, the response to the inquiry will vary depending on the type of property in question. The rules governing succession to ancestral property differ from those governing succession to non-ancestral property. Hence, the allocation of the father's property among his daughters can be examined through the following categories:

The practise of endogamy is a prevalent rule observed within certain tribal communities.

In endogamous tribes, the position of daughters has historically been relatively favourable. This can be attributed to the fact that in endogamous tribes, daughters typically marry within their own family, thereby mitigating concerns about property being transferred outside the immediate family unit. In his statement, Mr. Justice Rattigan addressed the observation that the doubt primarily arises from the strict endogamy practised by this tribe. Consequently, when land is transferred to women, it is unlikely to be separated from the family to which it belongs.

In the event that the daughter enters into a marital union within the family, she would inherit the estate of her father in the absence of any male offspring. Conversely, if the daughter chooses to marry outside the family, she would not possess the right to inherit.

In an exogamous tribe, there exists a rule.

In societies characterised by exogamy, it is customary for daughters to not inherit their father's property. The prevailing and fundamental assumption regarding exogamous tribes is that in the absence of male offspring, daughters are typically not granted inheritance

rights to their father's ancestral land upon his death. Justice Plowden, in his analysis, made the following observation

In the context of exogamous societies, it is customary for daughters to be excluded from inheriting ancestral land. The individual in question possesses the right to receive financial support as long as she remains unmarried, and to have her marriage expenses covered by her father or the current possessor of the ancestral land. Upon the conclusion of her marital union, the woman in question is relocated to her spouse's residence and assumes a state of reliance on him and his property for sustenance.

### **3.7 Gender Equality for Women**

The Hindu Succession (Amendment) Act of 2005 (39 of 2005), enacted on September 9, 2005, introduced substantial modifications to the Hindu Succession Act of 1956 with the objective of eradicating provisions that perpetuated gender-based discrimination. Section 6 of the Act conferred a number of rights upon daughters and aimed to eliminate gender-based discriminatory limitations that were prevalent in the preceding legislation. The primary provisions of the Amendment Act are outlined as follows:

1. The female offspring of a coparcener acquires coparcenary rights by virtue of her birth, analogous to those of a male offspring.
2. The daughter has the same ownership stake in the coparcenary property that a man would have.
3. When a coparcener's daughter is mentioned in respect to a Hindu Mitakshara coparcener, it means that the daughter now has the same rights and obligations with regard to the coparcenary property as a son. In accordance with the legal provisions, the daughter possesses an equal entitlement to the ancestral property as that of a son.
4. In the event that a coparcener's son or daughter passes away before them, the share of the deceased child will be allocated to their own offspring.
5. The distribution of the inheritance portion allocated to a deceased son or daughter is transferred to the offspring of said deceased son or daughter.

Additionally, as per the Amendment Act, it is stipulated that courts are prohibited from acknowledging any entitlement to reclaim a debt from a son, grandson, or great-grandson solely on the grounds of the pious duty, as prescribed by Hindu law, to settle such a debt owed by their respective father, grandfather, or great-grandfather. This provision serves to safeguard male descendants from assuming personal responsibility for the financial obligations incurred by their forebears.

The primary objective of the Amendment Act was to address the deficiencies present in the Hindu Succession Act of 1956. The preceding legislation imposed restrictions on the rights of female heirs, whereas the amendment enacted in 2005 broadened the extent of inheritance entitlements for daughters. The inclusion of specific class II heirs within the class I heirs category was implemented to promote enhanced gender equality. Nevertheless, the amendment contained inadvertent omissions and inconsistencies, notably the absence of explicit mention of male heirs. The rectification of these issues has been recommended by the Law Commission of India through the reclassification of specific heirs from class II to class I.

In situations where a Hindu male passes away without any living descendant from the primary category of heirs, the succession of property will be transferred to the secondary category of heirs. The second class of heirs is classified into distinct categories, wherein the highest priority is accorded to heirs falling within the first category, which exclusively encompasses the father. In the event of the father's demise, the subsequent category of heirs is taken into consideration, and so forth.

Following the amendment in 2005, the composition of the second class of heirs has undergone a change. Specifically, there are now 11 females and 8 males in this class, as opposed to the previous count of 13 females and 10 males. In the event that no surviving heirs exist within the second class, the inheritance of the property will be passed on to agnates, individuals who establish their connection to the deceased solely through male lineage. In the absence of any surviving agnates, the inheritance of the property will be passed on to cognates, who establish their relationship with the deceased not exclusively through male lineage. In the event that no beneficiaries are specified within these



designated groups, the property will be subject to escheatment to the government, taking into consideration any preexisting obligations of the deceased.

It is imperative to acknowledge that the proposed amendments discussed in the text pertain to rectifying the discrepancy wherein four beneficiaries have been transferred from the second category to the first category, yet have not been excluded from the roster of second category beneficiaries as outlined in the Schedule of the Act.

According to the Hindu Succession (Amendment) Act of 2005, in a Joint Hindu family that is governed by the Mitakshara law, the daughter of a coparcener is granted certain entitlements and rights.

By virtue of her birth, she acquires coparcenary rights on par with those of a male heir.

The woman possesses equal entitlements to the coparcenary property as she would have had if she were male.

Inclusion of a coparcener's daughter is implied when referring to a Hindu Mitakshara coparcener. Nevertheless, it should be noted that any dispositions or alienations of property, such as partitions or testamentary dispositions, that were executed before December 20, 2004, continue to be legally binding and are not impacted by subsequent changes in legislation.

The female individual is held to the same legal responsibilities regarding coparcenary property as a male offspring.

The aforementioned provisions grant a female Hindu the right to possess any property, which she shall hold with the characteristics of coparcenary ownership and may be disposed of by her through testamentary disposition.

The allocation of coparcenary property is considered to have transpired in a manner akin to a partition. The subsequent regulations are applicable:

1. The daughter is granted an equal portion as that of a son.

2. The portion of inheritance that would have been designated for a deceased son or daughter is instead transferred to their surviving offspring.
3. The portion of an estate that would have been allocated to a deceased son or daughter is instead transferred to their eligible child, if applicable.

It is imperative to acknowledge that the information presented herein is a concise overview of the pertinent clauses within the Hindu Succession (Amendment) Act of 2005, and should not be construed as legal counsel. It is advisable to seek guidance from a competent legal practitioner when dealing with particular instances or legal issues.

Nevertheless, there exist certain exemptions to this particular stipulation.

The creditor's ability to pursue the son, grandson, or great-grandson remains unaffected in instances where debts were incurred prior to the enactment of the Hindu Succession (Amendment) Act, 2005. The creditor retains the ability to initiate legal proceedings against the debtor in order to recoup the outstanding debt.

The principle of pious obligation permits the transfer of property, known as alienation, to be executed by the son, grandson, or great-grandson as a means of fulfilling or settling a debt. This implies that in cases where the debt is tied to religious or moral responsibilities, the family member has the authority to make appropriate arrangements, such as selling assets, in order to satisfy the debt in accordance with the principle of pious obligation.

According to the legislation, the provisions outlined in this section do not pertain to partitions that occurred prior to December 20, 2004.

The term "Partition," as used in this Section, refers to any division of property that is carried out either through the execution of a legally registered deed of partition under the Registration Act, 1908 (16 of 1908), or through a court decree.

In the historical context of Hindu civilization, women were frequently perceived as occupying a subordinate position within the social hierarchy, thereby being subjected to a state of dependency and experiencing restricted entitlements to property. Baudhayana's textual representation is indicative of the dominant belief system that women were devoid

of authoritative power and deemed incapable of inheriting, consequently resulting in their exclusion from the Hindu framework of inheritance. Nevertheless, specific excerpts recognised the entitlement of female successors to receive inheritance.

The Dayabhaga legal system, along with the Banaras and Mithila sub-schools of Mitakshara law, as well as the Madras and Bombay sub-schools, acknowledged a greater number of female beneficiaries who possessed the eligibility to inherit. These sub-schools recognised the entitlements to inheritance of particular female relatives, such as the daughter who is a widow, the mother, the paternal grandmother, and the paternal great-grandmother. However, it is important to note that certain legislative measures in India, specifically within the framework of "Personal Laws," which pertain to family laws based on religious affiliation, have occasionally contained discriminatory provisions targeting women.

During the period of British colonial rule, there were prominent social reform movements that emphasised the necessity of enhancing the societal standing of women. The inclusion of women in the inheritance system was a notable advancement brought about by the enactment of the Hindu Law of Inheritance Act in 1929. This legislation amended the principle of survivorship and conferred inheritance entitlements upon three female beneficiaries: the sister, granddaughters through the daughter, and granddaughters through the son. During this period, an additional significant legislative measure was enacted in the form of the Hindu Women's Right to Property Act XVIII of 1937, which conferred ownership rights upon women. This legislation resulted in significant modifications to Hindu law across various schools, affecting coparcenary, property division, inheritance, and adoption.<sup>55</sup>

The Act of 1937 granted widows the right to inherit property in conjunction with their sons, thereby enabling them to assert an equitable claim. Although widows were members of the Joint Family and possessed rights similar to coparcenary interests, they were not recognised as coparceners. Nevertheless, the legislation provided widows with a limited

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<sup>55</sup> United Nations Human Rights, 'Violence Against Women in Politics' (2018) UN Women < <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/ViolenceAgainstWomeninPoliticsReport.pdf>> accessed on 23 May 2023

share of the deceased individual's assets, along with the opportunity to seek partition. In contrast, daughters were largely devoid of any entitlement to inherit. Both of these laws, despite being subsequently repealed, did not effectively address the fundamental elements of gender-based discrimination against women.

The drafters of India's Constitution acknowledged the imperative of improving the social standing of women, taking into account their historically marginalised position. In addition to the prohibition of discrimination, Articles 14, 15(2) and (3), and 16 of the Indian Constitution grant the state the power to enforce affirmative action measures in support of women, subject to suitable conditions. These provisions play a crucial role in upholding the Constitution's assurance of fundamental rights.

In conjunction with the inherent rights, the Directive Principles of State Policy delineated in Part IV of the Constitution also assume a pivotal function in the pursuit of gender parity. These measures encompass principles such as the equitable remuneration for comparable labour and hold equal importance in the governance of the state. Nevertheless, notwithstanding the existence of these protective measures to ensure equality, women persistently encounter neglect not only within their own familial units but also within the families they enter through marriage, primarily as a result of specific legal provisions and prevailing societal perspectives.

The Hindu Succession Act of 1956, commonly referred to as the HSA, represents the initial comprehensive legislation pertaining to property rights and inheritance specifically tailored for Hindus subsequent to the enactment of the Indian Constitution. The aforementioned policy was implemented on the 17th of June, 1956. The Act encompasses individuals who engage in the practise of Hinduism in any manifestation, as well as followers of the Brahmo Prarthana or the Arya Samaj movements, and individuals with affiliations to the Buddhist, Jain, or Sikh traditions. Nevertheless, it is important to note that the Hindu Succession Act (HSA) does not have jurisdiction over testamentary dispositions, as these are regulated by the Indian Succession Act of 1925.

The Hindu Succession Act (HSA) implemented substantial modifications to Hindu personal law, thereby bestowing women with improved property rights. Section 14 of the

aforementioned Act granted women the legal right to exercise complete ownership over the assets bequeathed to them by their husbands. In the fifteenth and sixteenth sections, daughters were granted the entitlement to inherit property from their fathers' estates. The conservative factions within Hindu society expressed strong resistance towards any endeavours aimed at comprehensive modification and formalisation of Hindu law. However, Prime Minister Pt. Jawaharlal Nehru, a prominent proponent of these reforms, proposed a phased legislative strategy to mitigate resistance and tackle the disparities and constraints experienced by Hindu women. The aforementioned strategy resulted in the implementation of the Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Succession Act of 1956.

The Hindu Succession Act of 1956, which is presently in effect, regulates the process of succession and inheritance within the Hindu community in India. The document incorporates clauses that are designed to provide advantages for women. According to the legislation, the Act confers upon women the status of absolute ownership over property obtained through succession or other means, thereby abolishing the restricted ownership rights that were present under the previous legal framework. Nevertheless, it is imperative to acknowledge that there are still existing deficiencies within the legal framework that necessitate attention and rectification. The Act resulted in substantial alterations in property dynamics within Hindu households, bestowing unprecedented entitlements upon women. The aforementioned development was perceived as a significant stride towards the realisation of a gender-neutral familial structure within the context of India.

The Schedule-1 of the Act implemented a novel system of inheritance, which notably included a significant proportion of female relatives. Indeed, it is a verifiable fact that the number of female heirs surpasses that of their male counterparts. Furthermore, the Act introduced a substitution of the notion of restricted ownership for female Hindus with unrestricted ownership. Furthermore, it conferred upon women the entitlement to reside in a residential abode, specifically in cases where they are single, abandoned, divorced, or widowed.

Despite its stated objectives of promoting equity and progress, the Act did not succeed in attaining its intended objective of establishing a society that is completely gender-equitable. An example of gender inequality can be observed in the Mitakshara coparcenary system, where women are still excluded from membership rights. This results in a disadvantaged position for women in their parental household, as they are denied the right to inherit property by virtue of their birth.

In the context of property inheritance, it is customary for women to be granted the right to assert their claim to a share of the property solely upon the demise of their father, under the condition that the property is divided equitably among all offspring. Nevertheless, the implementation of this arrangement may not genuinely uphold principles of fairness. The current system provides equal rights to women solely with respect to their father's self-acquired property. Women in joint family property face a notable disadvantage due to their exclusion from coparcenary membership. The legal principle of survivorship, which pertains to Mitakshara coparcenary property, mandates that said property must be divided equally among all coparceners. Due to the exclusion of women from coparcenary membership, they encounter a practical impediment in asserting their entitlement to a portion of the ancestral joint family property. The allocation of joint family property is inherently biased towards sons, who are granted an automatic entitlement solely based on their birth right, while daughters are unjustly excluded from this privilege. As a result, following the demise of the father, the distribution of the property among Class-I heirs, comprising both sons and daughters, results in sons being allocated an additional portion of the joint family property in addition to their inherent shares obtained by virtue of birth. In accordance with the Hindu Succession Act, daughters are entitled to a share in the joint family property, specifically from their father's portion, in addition to any share they may receive from their father's self-acquired property.

Section 6 of the Hindu Succession Act (HSA) stipulates the establishment of coparcenaries consisting of male relatives who possess a biological interest in the collective ancestral property. The determination of a coparcener's exact share in the division of joint family property remains uncertain until the occurrence of partition, which may result in a share of one half, one fourth, or one third. While a coparcener may possess or utilise the properties,

they are not entitled to assert ownership over them. The aforementioned interest is subject to variability and is contingent upon fluctuations resulting from familial births and deaths. As per Mayne, a renowned authority in the field of Hindu law, it is established that each co-owner possesses the lawful entitlement to participate in the ownership and utilisation of any communal property within a joint family. This entitlement is derived from the fundamental principles of community of interest and unity of possession.

Nevertheless, the legal practise of excluding daughters from coparcenary ownership based solely on their gender has not only resulted in the discrimination against women, but has also led to their subordination and the violation of their constitutionally guaranteed fundamental rights. The state has consequently not fulfilled the constitutional obligations by failing to enact suitable legislation. In order to address this inequity, it is imperative to undertake substantial revisions to the Mitakshara law of coparcenary, with the objective of establishing parity in the allocation of assets. This includes the deceased male's personal property acquired independently, as well as his share in the undivided coparcenary property, among all heirs, irrespective of gender, particularly sons and daughters. This proposed alteration would effectively mitigate the adverse ramifications associated with the dowry system, thereby affording daughters a sense of esteem and respect within their familial context.

Despite the commendable efforts and resulting changes brought about by the HSA, its current state remains insufficient, leaving ample opportunity for further enhancement. It is imperative to acknowledge that the enactment of legislation in isolation is insufficient to propel social transformation, as the advantages of favourable laws can only be fully realised when accompanied by comprehensive socio-economic empowerment. The underlying principle to be derived from this situation is that legislative measures ought to be formulated in a manner that is impartial to gender, thereby necessitating the revision of laws that seemingly exhibit bias towards either men or women.

The Hindu Succession (Amendment) Act of 2005 was formulated in response to the criticisms levied against the prevailing legislation. The objective of the Act is to eliminate provisions that discriminate against women and confer upon them complete membership

in the Mitakshara coparcenary, thereby granting them all the privileges and obligations associated with being a member of a joint family. The allocation of shares in said property would be extended to daughters in an equitable manner, similar to that of sons.

The suggestion to confer membership in the Hindu coparcenary upon daughters and their descendants was first brought up in written submissions to the Hindu Law Committee as early as 1945. Nevertheless, despite the progressive concept, the Mitakshara joint family system was upheld, while the notion was disregarded.

There have been no substantial alterations to the Mitakshara coparcenary property subsequent to the enactment of the Hindu Succession Act (HSA). Kerala has implemented the abolition of the practise of asserting ancestral property solely on the basis of birthright. In contrast, other states have taken measures to enhance the entitlements of daughters in coparcenary property, thereby significantly reducing gender-based discrimination within the framework of the Mitakshara coparcenaries. The legislative provisions in these states are articulated using comparable language, incorporating additional sections or references within their respective statutes.

The state legislations grant equal entitlements to daughters in coparcenary property, incorporating non-obstante provisions. According to legal provisions, it is asserted that a female offspring of a coparcener within a Mitakshara joint Hindu family attains coparcenary status by virtue of birth, thereby acquiring comparable entitlements, obligations, and limitations as a male offspring. After the process of partition, she is granted a portion that is equivalent to that of a male offspring, and she has the authority to distribute the property through a will or other forms of testamentary arrangements. The aforementioned legislations are forward-looking in nature and do not have jurisdiction over daughters who are already married or partitions that took place prior to the commencement of said acts.

Nevertheless, there have been criticisms concerning the implementation and utilisation of these four state legislations. The inclusion of daughters as coparceners in the acts has brought about a substantial transformation in the understanding of the Mitakshara joint family and coparcenary. Upon becoming a coparcener, a daughter retains her membership



in her natal joint family and acquires membership in her conjugal joint family following marriage.

The Hindu law of succession has undergone a continuous process of evolution, progressively advancing towards achieving complete gender neutrality. The historical subjugation of women is apparent in their restricted inheritance rights, which can be attributed to factors such as the denial of property ownership. Over the course of time, notable advancements have transpired, characterised by the implementation of reforms by the British government aimed at rectifying the issue of women's property rights. Nevertheless, it is imperative to take into account the socioeconomic backdrop within which legislative measures are enacted, rather than concentrating exclusively on the legal stipulations. In societies characterised by male dominance, women may find themselves compelled to surrender their granted rights in order to safeguard the interests of their male relatives. The social framework frequently imposes societal norms that require women to prioritise the welfare of their family over their individual rights. Hence, placing exclusive reliance on legal frameworks may prove inadequate in attaining gender equality. Empirical instances provide evidence of the societal phenomenon wherein women encounter coercion or manipulation from male family members, leading to the relinquishment of their entitlements.<sup>56</sup>

The topic surrounding the provision of property rights and other economic entitlements to women, and its potential ramifications on the stability of the family unit, has incited considerable scholarly discourse. Bina Agarwal tentatively affirms the aforementioned inquiry in the affirmative. Presently, the property rights of women in India are predominantly unshielded, while the nation exhibits a comparatively lower rate of formal divorce in contrast to Western societies. One could argue that the restriction of women's property ownership has the potential to contribute to enhanced family harmony and stability. Nevertheless, it is important to note that divorce rates alone may not provide a comprehensive assessment of the overall stability of a family unit.

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<sup>56</sup> United Nations Human Rights, 'Violence Against Women in Politics' (2018) UN Women < <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/ViolenceAgainstWomeninPoliticsReport.pdf>> accessed on 23 May 2023

In contrast to Western countries, India exhibits comparatively lower proportions of divorced women, yet it faces elevated occurrences of desertion, polygamy, and informal separations. This suggests that there exists a notable degree of instability resulting from men concealing their true selves behind the outward appearance of familial stability. Hence, the proposition that the expansion of women's rights will have a detrimental impact on the robustness of the family structure in India lacks persuasive force. The act of withholding women's rightful entitlements cannot be rationalised by the notion of the traditional Indian extended family, and instead serves to sustain gender-based discrimination.

Moreover, there exist compelling justifications to support the notion that granting women the opportunity to possess property can potentially enhance familial dynamics instead of weakening them. The allocation of greater financial resources and acquisition of property may contribute to an enhanced sense of worth among wives within the familial context, potentially leading to increased motivation for husbands to uphold the institution of marriage. The recognition of a woman's worth may potentially contribute to a reduction in domestic violence, thereby mitigating the destabilising factors associated with women.

The author acknowledges that the provision of property rights to women may potentially have adverse implications for the stability of the family unit. For instance, it is possible that women may exhibit decreased levels of tolerance and a reduced inclination to endure instances of abuse without expressing objection. Individuals who possess property may exhibit a greater propensity to terminate a marital union in comparison to brides who do not possess property. Nevertheless, there is an argument suggesting that these potential outcomes may not necessarily have negative implications. Having a small, harmonious family is more desirable than having a large, perpetually discordant family where members are compelled to remain against their will due to limited alternatives. Hence, the provision of property rights to women does not contradict the concept of the Indian joint family.<sup>57</sup>

Furthermore, the Hindu Succession (Amendment) Act of 2005 introduced a modification that recognised daughters as coparceners of their fathers' ancestral property, alongside

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<sup>57</sup> The Hindu Succession (Amendment) Act, 2005, s 6

sons. While there are those who contend that this amendment may diminish the importance of love and affection within the familial unit and potentially facilitate coercion by husbands or their relatives, it is crucial to acknowledge that this amendment signifies a dedication to the progress of women and the safeguarding of their property rights.

The constitutional validity of the Amendment Act has been called into question due to its discriminatory treatment of daughters based on their marital status. The constitutionality of the Karnataka (Hindu Succession Amendment) Act, 1990, was called into question due to its perceived failure to ensure equal treatment of all daughters and its alleged discrimination against married daughters. Nevertheless, the court affirmed the constitutional validity of the Act, asserting that the distinction was warranted on the grounds of the potential for social turmoil and disruption it could engender.

## **CHAPTER 4**

### **JUDICIAL APPROACH ON HINDU WOMEN'S PROPERTY RIGHTS IN INDIA**

When analysing the involvement of the Indian judiciary in regards to the property rights of Hindu women, it is imperative to take into account the historical backdrop, specifically during the period of British colonial rule in India. The British judicial system exerted a notable influence on the development of Hindu law, employing the knowledge and guidance of Pandits, esteemed scholars well-versed in the intricacies of Hindu legal texts, to navigate its complexities.

Nonetheless, the British judges faced difficulties as a result of the complex characteristics of Hindu law, its numerous sub-schools, and the absence of clear and consistent guidelines within ancient legal texts. In order to address divergent interpretations, the British courts frequently sought the perspectives of multiple Pandits, resulting in protracted court proceedings and the consequent postponement of cases.

One of the primary challenges encountered by the British was their constrained comprehension of the sociological milieu and prevailing customs within Indian society. The presence of various sub-schools within Hindu law presented a significant challenge due to the distinct principles and practises associated with each school. The Supreme Court generally adhered to the laws of the particular school of thought that were applicable to the parties involved. However, this approach occasionally failed to fully comprehend the intricacies inherent in Hindu law.

Numerous pivotal legal cases have provided valuable insights into the judicial interpretation of Hindu law. The legal matter of a co-widow's succession rights was brought to the forefront in the case of *Bai Kesarbai v. Hansraj Morarji*. The court effectively addressed this issue by employing a harmonious interpretation that reconciled the principles of the Mitakshara and Mayukha schools of thought.

The earliest documented instance of the Dayabhaga School can be found in the legal case of *Pranballav Shaha and another v. Smt. Tulsibala Dassi and Another*, the court rendered a

judgement in favour of the widow's entitlement to succession, thereby excluding the widow of the deceased father. In the legal matter of *Perammal v. Venkatammal*, the court rendered a decision stating that the inheritance of the property by the mother was contingent upon the absence of a widow. These decisions exemplified the judiciary's inclination towards favouring widows over other female relatives.

In the broader context, the Indian judiciary has assumed a crucial role in the interpretation and implementation of Hindu law, particularly in relation to the property rights of Hindu women. Notwithstanding the difficulties encountered by the British courts in comprehending the intricacies of Hindu law and Indian customs, their judgements played a significant role in moulding the legal framework and enhancing the elucidation of women's entitlements to property.

During the era of British colonial rule, the British courts played an active role in the transformation of Hindu law in India. The individuals sought guidance on Hindu law by consulting Pandits who were affiliated with the courts, and in instances of disagreements, they sought additional opinions from other Pandits.

Nevertheless, the British courts faced difficulties as a result of their restricted comprehension of the sociological landscape in India and the various sub-schools of Hindu law. Despite a tendency to apply the laws of the particular school that pertained to the parties involved, persistent inconsistencies and variations among these schools resulted in protracted legal proceedings.

The Privy Council, a judicial institution in Britain, diverged from the Mitakshara perspective and adopted a more restrictive stance regarding the position of Hindu women, drawing from ancient texts authored by Manu, Katyayana, and Yajnavalkya. The aforementioned limited perspective failed to acknowledge the comprehensive interpretation provided by Vijnaneshwara, thereby constraining the understanding of Stridhana (women's absolute property rights). The Privy Council's approach was shaped by the inadequate state of property rights for married women in England prior to the enactment of the Married Women's Right to Property Act of 1882.

During the period of British colonial governance, the jurisdiction of Stridhana property, specifically inherited property, was gradually curtailed as a result of judicial rulings. A novel legal doctrine has surfaced, positing that inherited property does not fall within the purview of Stridhana. The aforementioned principle, which was heavily influenced by English law, imposed restrictions on women's ability to dispose of or transfer their Stridhana. Consequently, upon the demise of women, their property would revert back to the male relatives of their husbands, commonly referred to as reversionary. These legal rulings, which emerged from property conflicts within the Bengal Presidency, subsequently became established legal principles applicable to other presidencies as well.

The decisions rendered by the Privy Council, subsequently upheld by several high courts, resulted in a constriction of the Stridhana applicability, specifically excluding inherited property from its purview. The judiciary expanded the aforementioned principle to encompass inherited property from female kin, thereby effectively impeding the transmission of property through the female lineage. Over the course of time, the aforementioned judgements gradually undermined the concept of Stridhana property as a result of patriarchal cooperation and rulings made by colonial courts.

The enactment of the Hindu Women's Rights to Property Act in 1937 resulted in notable transformations, as it extended inheritance rights to widows, widowed daughters-in-law, and granddaughters-in-law, in addition to male heirs (sons). The legislation ensured that a widow, irrespective of whether her husband had male descendants, would inherit his share of coparcenary property. Nevertheless, her inclination was constrained and recognised within the confines of a Hindu woman's domain. Although she possessed considerable capacity for enjoyment within the prescribed boundaries, she did not possess an unequivocal and comprehensive ownership.

In summary, the Indian judiciary has played a crucial role in the interpretation and implementation of statutory provisions pertaining to the property rights of Hindu women. Notwithstanding the difficulties encountered by the British courts in comprehending Hindu law and Indian customs, their judgements influenced the legal framework and contributed to a more lucid understanding of women's property rights. The development of these rights

underscores the impact of British colonial governance and societal transformations in acknowledging and protecting women's rights to property ownership.

The Indian judiciary has acknowledged the restrictions imposed on the inheritance rights of widows, recognising that they are unable to transfer property without the approval of collateral heirs, unless it is for religious, charitable, or spiritual purposes. The significance of the father's consent to alienation was underscored, noting that its applicability does not automatically extend to cases where collateral heirs are absent. The courts recognised the absence of consistency within Hindu law as a result of its numerous schools and sub-schools, presenting difficulties in the fair and equitable administration of justice.

Hindu law experienced distortions during the British colonial era. Nevertheless, within the framework of widow's property rights, the judiciary exhibited a degree of leniency. However, the complex and diverse characteristics of Hindu law, its absence of standardisation, and the impact of colonial perspectives posed challenges in the pursuit of fairness and equality in property-related issues.

#### **4.1 The Judicial System's Function in the Post-Independence Era**

The establishment of the Supreme Court of India occurred on January 28, 1950, a mere two days prior to India's attainment of independence. This event signified the nation's transformation into a Sovereign Democratic Republic. The inauguration occurred within the premises of the Parliament building, which serves as the shared domicile for the Council of States and the House of the People of India's Parliament. The Federal Court of India convened in the Chamber of Princes within this building for a period of 12 years, spanning from 1937 to 1950, prior to its formal establishment. The Supreme Court would persist in functioning from this particular site until it ultimately relocated to its current premises.

After gaining independence, the Supreme Court of India embraced a more progressive stance in relation to the property rights of Hindu women, in contrast to the approach taken by the Privy Council. The issue of gender equality and justice garnered considerable focus in the context of post-independence India. Several legal measures were enacted with the aim of emancipating Hindu women and facilitating the modernization, unification,

democratisation, and secularisation of Hindu family law. The judiciary has played a significant role in facilitating the advancement of women, particularly in the realm of economic development. Despite encountering challenges, certain provisions of these reformative laws have been upheld by the courts on some occasions.

#### **4.2 The Assertions of Women and Constitutional Provisions**

During the period following India's independence, the Indian Constitution assumed a crucial role in delineating and protecting the rights of women. The legislation implemented measures that exceeded those of numerous Western nations in relation to gender equality, encompassing the right to vote for adults, the prohibition of gender-based discrimination, and the implementation of affirmative action policies to support women and children. The constitutional notion of equality transcended mere formal equality and embraced the principle of egalitarian equality.

Throughout its history, the Supreme Court has progressively construed socio-economic rights as an essential component of fundamental rights, with a particular emphasis on Article 21 of the Constitution, which safeguards the right to life. Article 15(3) acknowledges the historical disadvantages experienced by women and permits the state to implement specific measures aimed at safeguarding their rights, thereby departing from the principle of absolute equality. This provision functions as a remedial action of affirmative action in support of women.

The case of *Maya Devi v. State of Maharashtra*, which took place in 1986, involved a legal challenge against the mandatory requirement for married women to seek their spouse's consent prior to pursuing public employment. The argument put forth was that this requirement contravened the provisions outlined in Articles 14, 15, and 16 of the Constitution. The court placed considerable emphasis on the importance of women's economic autonomy in addressing longstanding inequalities and rendered a verdict in support of gender parity in public sector employment.

One noteworthy decision is the case of *Mackinnon Mackenzie & Co. The case of Ltd. v. Audrey D'costa* pertained to the issue of gender-based wage disparity within the workplace.



The Supreme Court ruled that such discriminatory practises are unlawful and required equal remuneration for work of comparable nature, irrespective of gender.

The aforementioned judicial rulings demonstrate the unwavering dedication of the Indian judiciary to safeguarding gender equality and preserving the rights of women, as enshrined within the constitutional framework. The advancement of women's rights in India has been significantly influenced by the progressive interpretation and implementation of constitutional provisions.

The Supreme Court has established the notion of matrimonial property, which pertains to assets that are jointly owned by spouses and acquired in close proximity to the time of marriage. Section 27 of the Hindu Marriage Act, 1955, delineates the prerequisites for its implementation<sup>58</sup>:

1. It is imperative to submit the application prior to the finalisation of the primary matrimonial proceeding.
2. The acquisition or presentation of the property ought to have occurred in close temporal proximity to the occasion of matrimony.
3. It is recommended that the ownership of the property be held jointly by both the husband and wife.

During the post-constitutional era, the judiciary has undertaken the task of interpreting and addressing multiple facets pertaining to the property rights of women. This analysis will delve into the aforementioned aspects in the following manner.

The Hindu Succession Act of 1956 confers upon Hindu women an unequivocal entitlement to property ownership, as stipulated in Section 14. The aforementioned legislation has effectively broadened the scope of women's ownership rights, thereby removing any constraints on their ability to transfer property through inter-vivo actions or testamentary authority. The provisions of this Act have been subject to broad interpretation by the High Courts, wherein all property deemed to be "possessed" by a woman is regarded as her unequivocal ownership.

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<sup>58</sup> Hindu Marriage Act 1955, s 27

The notion of Stridhana pertains to the distinct property owned by females. The legal recognition and protection of women's rights to ownership and control over their personal property has been established.

The legal regulations pertaining to the inheritance of assets belonging to a deceased woman who has not made a formal will have been duly considered. The adjudication of numerous cases by the Supreme Court and High Courts has resulted in the clarification of the rights of heirs and the methods by which property is distributed.

The judiciary has provided protection for the rights of females in the dwelling house, particularly in situations involving marital disputes or separation. The judiciary has acknowledged the entitlement of a woman to inhabit the matrimonial residence and has established legal measures to safeguard her ongoing tenancy.

The legal system has scrutinised the entitlements of females in relation to a testamentary document, with the aim of safeguarding their inheritance rights and nullifying any discriminatory clauses.

The legislation pertaining to the entitlements of women in the estate of a male individual who passes away without a testament has been construed in a manner that guarantees just and impartial allocation among the beneficiaries, encompassing female kin.

The examination of the rights of reversionary, specifically male relatives who possess the entitlement to inherit property following the demise of a female proprietor, has been conducted in consideration of alterations in property legislation. The judicial system has deliberated upon matters pertaining to the voluntary relinquishment of rights by women and its implications on their entitlement to inheritances.

The judiciary has addressed instances wherein women have engaged in the merging of property, particularly through family settlements, and has taken measures to safeguard their rights and interests.

The Supreme Court has provided clarification regarding the rights of women in coparcenary property, thereby challenging the conventional concept of inheritance exclusively reserved for males. The legal framework now ensures that women are afforded

equal rights in coparcenary property, encompassing the entitlement to the right of survivorship.

The recognition and protection of matrimonial property, which is jointly owned by spouses, has been established by judicial authorities. In contemporary society, women have been afforded the opportunity to exercise their entitlement to assert ownership over matrimonial assets in cases of divorce or separation.

By the procedure of judicial interpretation and the formation of landmark decisions, the Indian court has substantially aided in the expansion of the property rights of women and the promotion of their equality in society. In India, the progressive mindset and dynamic legal system have made major contributions to the advancement of gender equality.

The concept of a woman's estate was defined by the Privy Council as a limited type of ownership owned by a woman that was subject to certain restrictions on the transfer and inherits of the property. However, the 1956 passage of the Hindu Succession Act led to the conversion of the aforementioned idea into what is today known as stridhanam, which refers to an absolute estate. Judicial rulings established the requirements for Section 14 of the Act's applicability. Among these criteria is that the woman had to be in possession of the estate and have a claim to it at the time the Act was passed.

In the case of *Kamaladevi v. Bachulal Gupta*<sup>59</sup>, the Supreme Court deliberated upon the interpretation and implementation of Section 14. The Court determined that the inclusion of the phrase 'whether acquired before or after the commencement of this Act' within Section 14 confers absolute ownership of the property. The case of *Kassinath Bysack v. Hura Sundari*, as determined by the Privy Council, established the recognition of a widow's power to administer her deceased husband's assets for religious objectives.

Based on the principles outlined in *Kassinath*, it has been observed that the restriction on the authority to bestow a gift is contingent upon its reasonableness and justifiability in relation to the deceased father's total assets and the specific circumstances surrounding the situation. Historically, the judiciary exhibited a consistent inclination towards upholding

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<sup>59</sup> *Kamaladevi v. Bachulal Gupta* [1957] AIR 434, 1957 SCR 452

women's rights pertaining to property matters, a trend that predates the enactment of the Hindu Succession Act in 1956.

The Supreme Court, in the case of *Angurbala Mullick v. Debarata Mullick*<sup>60</sup>, upheld the rights of women by incorporating the entitlement to shebaitship succession within the legal framework of “property” as defined by the Hindu Women's Right to Property Act of 1937. The court underscored the absence of justification for excluding women from inheriting the position of shebaitship, provided that there are no legal grounds for objection to their appointment.

The case of *Saraswati Ammal v. Jagadabel and another* pertained to the matter of inheritance rights, specifically in relation to a prostitute. The court ruled that the customary preference for unmarried daughters over married sisters in matters of inheritance did not extend to a daughter who was married to an idol and involved in the profession of prostitution.

The Supreme Court conducted an examination of the retrospective application of Section 14 of the Hindu Succession Act, 1956 in the case *Kamala Devi v. Bochulal Gupta*. The court provided clarification that although the Act exhibits retrospective characteristics with regard to property acquisition; it does not possess retroactive applicability in relation to possession.

The Indian judiciary has exerted a substantial influence in empowering women and promoting their property rights, predating the implementation of comprehensive legislation such as the Hindu Succession Act of 1956. This has been achieved through the interpretation and rulings made by the judiciary.

Moreover, in the case of *Gummalapura Taggiana Matada Kotterswami v. Setra Veerawa and Others*<sup>61</sup>, the court placed significant emphasis on the requirement that, in order for Section 14 of the Act<sup>62</sup> to be applicable, the Hindu female must have possession of the

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<sup>60</sup> *Angurbala Mullick vs Debarata Mullick* AIR 1951 SC 293, 1951 2 SCR 1125

<sup>61</sup> *Gummalapura Taggiana Matada Kotterswami vs Setra Veeravva And Others* 1959 AIR 577, 1959 SCR Supl. (1) 968

<sup>62</sup> Hindu Succession Act 1956, s 14

property at the time of the Act's commencement. This possession can be actual, physical, or constructive in nature.

The judicial decisions made in the early years of independence demonstrate the proactive stance taken by the judiciary in promoting women's property rights and ensuring their equal access to inheritance.

Following the implementation of the Hindu Succession Act in 1956, the judiciary has remained instrumental in the interpretation of its provisions. In general, the courts exhibited a preference for women and construed the Act in a manner that conferred upon them a greater extent of rights. Nevertheless, there were occasions in which divergent perspectives were adopted, as the courts were constrained from contravening the explicit provisions of the legislation.

However, in the context of the Commission of Income Tax in Madhya Pradesh. In the case of Seth Govind Ram Sagar Mills (1966), the Supreme Court adopted a divergent position. According to the court's ruling, it was determined that the position of Karta, or manager, within a Hindu joint family could not be held by a widow who is not a coparcener. This decision was based on the requirement of coparcenership as a prerequisite for membership in such a family.

In the case of *Satrughan Isser v. Sabijpari*<sup>63</sup>, the Supreme Court's decision did not completely uphold the statutory provision granting widows the right to claim partition if they acquired property under the relevant Act. This ruling curtailed the legal benefits available to the widow.

The case of *Neelawwa v. Shivawaa*<sup>64</sup>, heard by the Karnataka High Court (specific date not provided), The inquiry revolves around the issue of whether a daughter who was born before the adoption of a Hindu male, who subsequently died without leaving a will, can be considered a "heir" as defined by Section 3(f) of the pertinent legislation. The court rendered a decision affirming that the daughter was indeed recognised as a "heir" to the deceased individual. The statement underscores the fact that adoption, despite legally

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<sup>63</sup> *Satrughan Isser vs Smt. Subujpari & Others* 1967 AIR 272, 1967 SCR (1) 7

<sup>64</sup> *Neelawwa vs Shivawwa* AIR 1989 Kant 45, ILR 1988 KAR 2761, 1988 (1) KarLJ 58

severing the ties between someone and the family they were born into, does not sever the biological connection.

Section 4 of the aforementioned Act confers an overriding effect to its provisions and explicitly stipulates that any rule, text, interpretation of Hindu law, custom, or usage that previously held the status of law shall henceforth be rendered ineffective. In the case of *Gopal Narain v. D.P.*, the Delhi High Court made a ruling. Goenka argued that the Act does not have any impact on the preexisting legislation pertaining to joint families, which encompasses the entitlement of a mother or widow to receive a portion during the process of partition. Section 4(2) of the aforementioned legislation provides protection for specific state legislations that are designed to address the issue of agricultural holdings fragmentation or the regulation of tenancy rights transfer within such holdings. In the case of *Tukaram v. Laxman*<sup>65</sup>, the Bombay High Court provided clarification regarding the interpretation of Section 4(2), stating that it should not be understood as rendering the Act completely inapplicable in the context of regulating succession in agricultural land.

It is of significance to acknowledge that Sub-Section 4 has been excluded from the Act as a result of the Amending Act of 2005.

The Indian judiciary has consistently adhered to the principles of gender justice and has played a significant role in safeguarding women's rights to property. The significance of interpretational laws established by higher courts has been crucial in this context.

The interpretation of Explanation 1 to Section 6 of the Hindu Succession Act, 1956,<sup>66</sup> has been a subject of varying interpretations among several high courts, such as the Bombay, Delhi, Orissa, and Gujarat High Courts, particularly in cases pertaining to the rights of women in relation to property. In the cases of *Gurupad v. Hirabai* and *Shyama Devi v. ManjuShukla*, the Supreme Court established that the proviso to Section 6 offers a method for ascertaining the portion of inheritance to be allocated to a female claimant. This is achieved by considering a partition to have occurred immediately prior to the demise of

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<sup>65</sup> *Tukaram v. Laxman* AIR 1994 Bom 247, (1994) 96 BOMLR 227, 1994 (1) MhLj 991

<sup>66</sup> Hindu Succession Act 1956, s 6

the deceased. This interpretation served as the basis for determining the portion belonging to the deceased individual.

The Supreme Court, in the case of *Nagindra Prasad and Others v. KemponanJamma*<sup>67</sup>, the court rendered a decision stating that the interpretation of Section 8(d) should not be limited in scope, and that the term "mother" encompasses a stepmother. This ruling effectively broadened the scope of entitlements for female beneficiaries, enabling a step-grandmother, in her capacity as the solitary surviving heir, to assert her claim to a portion of the communal family assets.

In the case of *Mangal v. Ratno*<sup>68</sup>, the Supreme Court opined that in order for a Hindu widow to be deemed in possession of a property as per Section 14(1) of the Act, she must possess a legitimate entitlement to the property and demonstrate either actual or constructive possession. Nevertheless, according to the ruling in the case of *Dindayal and others v. Raja Ram*, it was determined by the court that a widow who unlawfully occupies a property is unable to obtain any legal entitlements under the aforementioned Act.

The Supreme Court, in the case of *Tulassamma v. V. Sesha Reddy*, acknowledged the necessity of granting the broadest conceivable interpretation to Section 14(1) of the Act. The court placed significant emphasis on the fact that the right to maintenance for Hindu women is not merely a procedural requirement, but rather a concrete entitlement that can be enforced against property. It further argued that Section 14(1) should be interpreted in a manner that favours women, in order to rectify the historical limitations placed on their rights to property ownership. The court further elucidated that Section 14(2) pertains to various legal instruments, such as decrees, awards, gifts, etc., which establish fresh entitlements or interests specifically for females. However, it does not impact pre-existing rights. The court placed significant emphasis on the need for a broad interpretation of possession, encompassing actual, constructive, and symbolic forms of possession.

In the particular instance of *Tulasamma*, it was determined by the Supreme Court that the properties allocated to her were a manifestation of her pre-existing entitlement to maintenance. Therefore, the restrictions placed on her ability to transfer the properties were

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<sup>67</sup> *Nagendra Prasad vs Kempananjamma* 1968 AIR 209, 1968 SCR (1) 124

<sup>68</sup> *Mangal Singh & Ors vs Shrimati Rattno & Anr* 1967 AIR 1786, 1967 SCR (3) 454

not encompassed by Section 14(2), but rather fell under the purview of Section 14(1) of the legislation. This pivotal ruling established significant principles pertaining to the property rights of women.

In general, the Indian judiciary has consistently interpreted legal provisions in a manner that safeguards women's entitlement to property and upholds principles of gender justice.

There is a contention that the interpretation of sub-section (2) of Section 14 by the Supreme Court is erroneous, as it is being treated as a proviso to the first sub-section, despite the fact that these two clauses serve distinct purposes. There is an additional argument posited that asserts the broad scope of the proviso's language, suggesting that it does not explicitly forbid its application to the pre-existing rights of widows. Furthermore, the Court's determination that the term "possessed by" in Section 14(1) of the Hindu Succession Act of 1956<sup>69</sup> should be understood as synonymous with "owned by" is considered inconsequential due to the deliberate omission of the phrase "owned by" by the legislature.

Throughout the 1990s, a number of notable legal decisions were rendered, encompassing cases such as *Nazar Singh v. Jagjeet Kaur*, *Vijay Singh v. Dy Director Consolidation*, *Banarshidas v. Madhav Rao*, and *Lalthachami v. Latha Chungi*. These cases expanded the jurisdiction of Section 14 to encompass the spouses of bigamous marriages as legitimate wives. In addition, the analysis took into account international provisions and constitutional provisions that highlight the importance of gender equality.

The Supreme Court, in the case of *Kalwanti bai v. Sairya bai*<sup>70</sup>, issued a ruling affirming that under the Hindu Succession Act of 1956, a female Hindu who owned property prior to the enactment of the law could achieve complete ownership rights only if she held the legal status of a limited owner. The legislative intent did not encompass the objective of granting the privilege of estate enlargement to all female Hindus, irrespective of their status as limited owners. In the case of *Masilamani Mudaliar v. Idol of Sri Swaminath Swami*<sup>71</sup>, the Court acknowledged the concept of complete ownership by females over specific properties. The Court further supported its stance by citing international conventions and

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<sup>69</sup> Hindu Succession Act 1956, s 14(1)

<sup>70</sup> *Kalawatibai vs Soiryabai And Others* 1991 AIR 1581, 1991 SCR (2) 599

<sup>71</sup> *Muthusami Mudaliar And Anr. vs Masilamani And Ors.* 5 Ind Cas 42 1909



constitutional provisions, thereby underscoring the importance of gender equality. The case of Ragubir Singh v. Gulab Singh served to reaffirm the legal principle regarding the conversion of a female's limited estate into an absolute one.

The matter pertaining to the inclusion of subsequent wives within the definition of the term “wife” as per Hindu law was examined in the legal case of Beni Bai v. Ragubir Prasad. The Court determined that the interpretation of "female Hindu" solely as a wife was flawed. The judiciary commonly embraced a lenient and pro-women stance. In the case of Naresh Kumari v. Shashi Lal<sup>72</sup>, the Court rendered a decision stating that the application of Section 14 would not be extended if a widow renounced her rights by means of a sale deed or by surrendering her share to her sole son. This decision conformed to legal regulations, yet it did not align with the interests or rights of women.

The case of Velamuni Venkata Sevaprasad v. Kothuri Venkateshwara pertains to the legal matter concerning the remarriage of widows. A widow who entered into a subsequent marriage prior to the enactment of the 1956 Act, regardless of the nullity of said marriage, was not eligible to receive inheritance rights. The judiciary refrained from permitting any unwarranted exploitation of the Act of 1949 and instead enforced the stipulations outlined in the Hindu Widow's Remarriage Act of 1856.

Section 14 of the Hindu Succession Act of 1956 effectively transformed the restricted entitlement of Hindu women into an unqualified and complete legal prerogative. In the event that a woman obtains property from her spouse, she possesses the ability to engage in its sale, thereby transferring absolute rights to the purchaser. The judiciary has played a pivotal role in broadening the parameters of Section 14.

In the legal matter of Gulabrao Balwant Rao Shinde v. C. Balwant Rao Shinde<sup>73</sup>. The decision rendered by the High Court of Bombay was subsequently rectified by the Supreme Court, with Balwant Rao Shinde presiding over the case. The legal matter pertained to a deceased individual who entered into matrimony on two separate occasions and fathered children with each spouse. The offspring stemming from the initial marital union initiated legal proceedings in an effort to reclaim their rightful portion of the assets bequeathed by

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<sup>72</sup> NareshKumari v. ShashiLal Appeal (civil) 1798 of 1980

<sup>73</sup> Gulabrao Balwantrao Shinde & Ors vs Chhabubai Balwantrao Shinde & Ors Appeal (civil) 7212 of 2002

their paternal figure, which were currently under the control and ownership of the subsequent spouse. The second wife presented the argument that the property was bestowed upon her as a substitute for financial support, and she had obtained complete ownership as per the provisions outlined in Section 14(1) of the Hindu Succession Act of 1956. Nevertheless, the Supreme Court rendered a verdict in favour of the offspring of the initial spouse, asserting that no substantiating evidence was presented to establish that the property was bestowed upon the subsequent spouse for the purpose of upkeep. Furthermore, due to the fact that the property in question holds ancestral significance, the second wife is unable to deprive the children of their entitlements as stipulated in Section 14(1). The court placed emphasis on the objective of Section 14(1) to eliminate constraints on the property rights of females, while cautioning against the potential for inequitable outcomes for other parties.

The case of *Jose v. Radha Krishnan*<sup>74</sup> involved the Kerala High Court's examination of the meanings attributed to the terms "Hindu female" and "in any other manner whatsoever" as stated in Section 14 of the Hindu Succession Act, 1956. The court reached the determination that the designation "female Hindu" ought not to be limited solely to spouses, but should encompass daughters as well. Furthermore, the phrase "in any other manner whatsoever" was interpreted in a broad manner. Section 14 of the Act, when examined in conjunction with Section 4, confers unequivocal property entitlements upon female Hindus, regardless of whether such assets were obtained independently or through alternative means.

In the case of *Marabasappa v. Ningappa*<sup>75</sup>, the Supreme Court rendered a decision affirming that the property possessed by a woman as her Stridhana is considered her unconditional and exclusive ownership, thereby granting her the authority to dispose of it at her discretion. This particular property does not possess the characteristic of becoming joint family property, and as a result, it is not susceptible to being divided among the various members of the joint family.

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<sup>74</sup> *Jose v. Radha Krishnan* AIR 2004 Ker 16, 2003 (3) KLT 999

<sup>75</sup> *Marabasappa (D) By Lrs. & Ors vs Ningappa & Ors* CIVIL APPEAL NO. 3495 OF 2001

The Supreme Court, in the case of *Lekh Ram v. Sunder Ram*, rendered a decision that the gift deed executed by the plaintiff's father was deemed non-binding. This ruling was based on the finding that the father lacked the requisite legal authority, ownership, or claim to execute the gift deed in favour of a third party. The subject property in question was possessed by the plaintiff's mother, who acquired complete ownership as stipulated in Section 14(1) of the relevant legislation. Consequently, the petitioner possessed a legitimate entitlement to assert ownership over her mother's property.

The case of *P. Bhala Subramaniam v. Pachiyammal* involved a settlement deed that contained a provision stipulating that the initial wife of the individual establishing the settlement would have exclusive rights to the property for the duration of her life. Subsequently, upon her demise, ownership of the property would be transferred to the male descendants from the second wife. According to the court's ruling, the initial wife, who held the property prior to the enactment of the Act, acquired complete ownership rights as stipulated in Section 14(1). The plaintiffs, in their capacity as the legal heirs of the deceased, possessed the rightful entitlement to a portion of the property.

The Calcutta Court addressed the matter of conversion and its impact on inheritance rights in the legal dispute of *Sasanka v. Amijia*. The court rendered a verdict that determined that a widow or daughter-in-law who had renounced their Hindu faith and converted to another religion would be ineligible to avail themselves of the entitlements provided by the Hindu Succession Act of 1937. According to Section 26 of the Hindu Succession Act of 1956, the applicability of the Act is limited to Hindu females. Consequently, a woman who undergoes a religious conversion ceases to be recognised as a Hindu and is thereby ineligible to access the advantages afforded by the aforementioned legislation.

Shifting focus to the status of tribal women subsequent to 67 years of attaining independence, it is disheartening to observe that they continue to encounter challenges in attaining legal parity. The case of *Madhu Kishwar v. State of Bihar*<sup>76</sup> brought forth the constitutional and discriminatory concerns surrounding Sections 7, 8, and 76 of the Chota Nagpur Tenancy Act, 1908, with regards to their impact on women. These sections

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<sup>76</sup> *Madhu Kishwar & Ors vs State Of Bihar & Ors* 1996 AIR 1864, 1996 SCC (5) 125

effectively deprived tribal women of their entitlement to inheritance rights. The State Government was instructed by the Supreme Court to undertake appropriate measures in order to resolve the matter. The State-level Tribal Advisory Board and the Bihar Tribal Council were consulted, and they expressed the viewpoint that the provision of inheritance rights to tribal women would potentially lead to the transfer of land to individuals from a different tribal group, namely their husbands. As a result, the issue of gender-based discrimination remains prevalent, leading to the continued denial of property inheritance rights for tribal women.

In the aforementioned case, the majority opinion, authored by Justices Punchhi and Kuldip Singh, adopted a prudent stance by offering restricted redress to women. The suspension of the exclusive male succession right was implemented through Sections 7 and 8 of the Act, provided that the right to livelihood and the female descendants of the previous male holder were still valid and actively observed. In contrast, Justice Ramaswami expressed a dissenting opinion, asserting that Sections 7 and 8 of the Act were in contravention of the provisions outlined in Article 14 of the Constitution. The individual put forth the contention that although numerous states have enacted laws that forbid the transfer of tribal lands to individuals outside of the tribe, the prevailing viewpoint did not sufficiently guarantee equitable rights for women belonging to tribal communities.

#### **4.3 Prior to the enactment of the Hindu Succession (Amendment) Act in 2005**

Numerous Indian states have implemented measures aimed at addressing the matter of women's property rights. Several Indian states, including Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu, have enacted provisions that specifically target the issue of women's property rights. The aforementioned states' high courts utilised the aforementioned provisions to uphold the property rights of women in various legal cases.

In a specific case, the Andhra Pradesh High Court delivered a judgement in favour of the first spouse of a deceased husband, affirming that the subsequent spouse was entitled to inherit the entire estate of the deceased, as there were no other surviving individuals. A legal dispute pertaining to the property rights of a concubine in Andhra Pradesh resulted in the determination that she is entitled to receive financial assistance from her partner until her death. The court determined that the life interest bestowed upon her as a substitute for

financial support prior to the enactment of the Hindu Succession Act of 1956 would be converted into a full-fledged estate upon the Act's enforcement.

The issue of a female's entitlement to property was deliberated upon by the Calcutta High Court in a legal matter wherein a female party sought to assert her claim over a residential property that was partially occupied by a tenant. The court's ruling affirms that the female's entitlement to property ownership remains intact even if the tenant chooses to leave the premises while a legal case is ongoing.

The judicial system has also adjudicated cases pertaining to settlement deeds and wills. The assertion has been underscored that it is impermissible for a Hindu individual to establish a line of succession via a settlement deed, as this would constitute the creation of novel regulations pertaining to inheritance. Inheritance rights extend to both daughters and widows, ensuring their entitlement to property. It is important to note that a settlement deed should not be regarded as a testamentary instrument or a means to exclude female heirs from inheritance.

The provisions of the Hindu Succession Act of 1956 have been subject to interpretation by the courts, taking into account both codified and uncodified principles of Hindu law. This is due to the fact that the rules of succession under the Act differ depending on the various schools of Hindu law. The primary objective of the Amendment Act of 2005 was to enhance the efficacy of safeguarding women's entitlement to property, while concurrently eradicating any instances of ambiguity or discriminatory practises. The passage of the Act was predicated upon the findings of the Parliamentary Standing Committee Report and the Indian government's dedication to promoting gender justice.

The judicial system has also deliberated upon the legal entitlements of daughters who entered into marriage prior to the enactment of specific amendments, and has elucidated that certain provisions may not extend their benefits to this particular group. It has been determined that daughters who entered into marriage prior to the amendments are not granted coparcenary status alongside their fathers. However, they are entitled to an equitable portion of their intestate father's share of coparcenary property.

In the broader context, the judiciary has exerted a substantial influence in the interpretation and protection of women's property rights, encompassing both the explicit provisions outlined in the Hindu Succession Act and the implicit principles derived from Hindu law. The Amendment Act of 2005 has played a pivotal role in enhancing women's property rights and promoting gender justice within the context of India.

#### **4.5 Women's Rights in the Context of Dwelling Houses**

The passage provided offers an analysis of court cases and Supreme Court rulings pertaining to the property rights of women as outlined in the Hindu Succession Act of 1956 within the context of India. The following are several significant points derived from the passage:

1. The enactment of the Hindu Succession (Amendment) Act in 2005 resulted in notable alterations to the property rights of women in India. Section 23, which previously imposed limitations on a daughter's entitlement to seek partition of the ancestral property of a Hindu intestate, has been eliminated.
2. The *R. v. Madras High Court* case was a significant legal proceeding that took place in the Madras High Court. The *Deivanai Ammal*<sup>77</sup> case established that Section 23 does not serve as an absolute prohibition against a daughter's entitlement to partition rights, thereby affirming a daughter's ability to assert her claim to a portion of the residential property.
3. The Kerala High Court, situated in the southern state of Kerala, has recently made a significant ruling in the case of *S. The Narayan v. Meenakshi*<sup>78</sup> case pertained to the ramifications of the 2005 amendment on ongoing litigation concerning partition. The court reached the determination that the omission of Section 23 renders it inapplicable, thereby enabling the daughter to assert her entitlement to a portion of the property.
4. The passage discusses additional instances in which courts have granted daughters the ability to assert partition rights in joint family property, such as the dwelling house. These

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<sup>77</sup> *R. Deivanai Ammal (Died) vs G. Meenakshi Ammal Appeal Suit No. 1133 of 1988*

<sup>78</sup> *Narayanan vs Meenakshi AIR 2006 Ker 143, 2006 (1) KLT 210*

decisions were made in light of the amendment and the subsequent elimination of Section 23.

5. The Supreme Court has rendered significant observations and judgements pertaining to the rights of women in relation to property ownership. The focus has been placed on prioritising gender justice and equality when interpreting and implementing legal principles.

6. The court has provided clarification regarding the entitlement of a daughter to request the division of a residential property. It has been determined that this right may be postponed or suspended until the sole surviving male heir decides to divide his portion or no longer resides in the premises.

7. The passage emphasises the significance of efficiently implementing legislative provisions in order to empower women and guarantee their property rights

8. The Supreme Court has deliberated on several facets pertaining to the property rights of women, encompassing matters such as the entitlement of married daughters, the transfer of property to the government under specific circumstances, and the entitlement to inhabit the primary residence.

9. The court has acknowledged the necessity of granting equal treatment to daughters as coparceners, ensuring that their rights are upheld in both form and substance.

10. The passage additionally references a legal instance in which the court invalidated a daughter-in-law's assertion of her entitlement to her father-in-law's assets on the grounds of her husband's disqualification, stemming from his act of patricide.

11. The Supreme Court has provided clarification regarding the permissibility of fathers bestowing ancestral immovable property upon their daughters, subject to reasonable limitations.

12. In situations where the ownership of a property is acquired through inheritance from either the father or mother, the process of succession may extend to the heirs of the father or mother if there are no direct descendants, such as sons or daughters, present. This includes the children of any deceased sons or daughters.

The passage being examined offers a thorough examination of the key issues and evaluations regarding the topic of women's property rights as delineated in the Hindu Succession Act in India.

The Supreme Court, in the case of *Kalawati bai v. Soirya bai*<sup>79</sup>, rendered a decision that offered elucidation on the rights and privileges bestowed upon female Hindu proprietors in accordance with the provisions outlined in the Hindu Succession Act of 1956. As per the provisions of the Act, a female practitioner of the Hindu religion who possessed property at the time of the Act's enactment could achieve absolute ownership exclusively if she possessed restricted ownership. The legislative body did not possess the intention to universally bestow the privilege of estate expansion upon all female individuals who practise Hinduism, regardless of their status as limited owners. The Hindu Women's Rights to Property Act of 1937, which has subsequently been annulled, prescribed that a widow would be entitled to inherit the entirety of her deceased husband's estate and assume the role of its representative. The legal entitlement of a daughter to inherit from her father's estate in the event of intestacy was not inherently recognised. However, it is important to acknowledge that a daughter who is widowed and experiencing extreme poverty has the legal right to request financial assistance from her father during his lifetime, as well as from his estate after his death. As per Section 15 of the Hindu Succession Act of 1956<sup>80</sup>, it is stipulated that illegitimate daughters are not eligible to assert their right to inheritance.

The examination of women's property rights has been undertaken by multiple High Courts in India across various contexts. Prior to the implementation of the Hindu Succession Amendment Act in 2005, specific states including Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu had instituted measures to protect the property rights of women within the boundaries of their respective jurisdictions. The aforementioned states' High Courts utilised these provisions to substantiate and maintain women's property rights. Other High Courts have also exhibited a certain level of concern regarding these rights. Based on a recent judicial decision, it has been established that unmarried daughters are

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<sup>79</sup> *Kalawatibai vs Soiryabai And Others* 1991 AIR 1581, 1991 SCR (2) 599

<sup>80</sup> Hindu Succession Act 1956, s 15



granted the status of coparceners and are eligible for equal entitlements as sons under Sections 6 and 6A of the Hindu Succession Act of 1956.

The legal matter involving Mallipeddy Seshaiah (deceased) and Narendra Tulasamma (deceased)<sup>81</sup> culminated in a judicial decision rendered by the Andhra Pradesh High Court, which ultimately favoured the initial spouse of the deceased husband. The court rendered a decision that the second spouse, who lacked legal marriage status with the deceased, possessed no legal claim to the deceased individual's assets. In the event that no individuals remain alive, the initial spouse is bestowed with sole and exclusive rights to the entirety of the property.

In a similar manner, the Karnataka High Court issued a ruling in a distinct legal case, wherein it was established that the widow of a deceased son, who did not possess the classification of a Class I heir, did not have the entitlement to assert the right of pre-emption on behalf of her sons.

The legal case of Prakash v. Pushpa Vani<sup>82</sup> was brought before the Andhra Pradesh High Court to address the issue of property rights in relation to a woman in a non-marital relationship. The court rendered a decision affirming the entitlement of the concubine to receive financial assistance from her partner until her death. The Hindu Women's Rights to Property Act of 1937 did not abrogate this specific entitlement. Following the implementation of the Hindu Succession Act in 1956, the life interest that had been provided to her in the house as an alternative to maintenance would undergo a conversion into absolute ownership.

The Calcutta High Court, in the matter of Kamal Basu Majumdar v. Usha Bhadra Choudhary<sup>83</sup>, engaged in a thorough examination of the rights of women with regard to ownership of residential property. The court unequivocally upheld the principle that women retain their entitlement to such property, regardless of whether the tenant decides to vacate the premises during the pendency of the legal proceedings. In the current case,

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<sup>81</sup> Mallipeddy Seshaiah (Died) vs Nadendla Tulasamma (Died) AIR 2005 AP 221, 2005 (2) ALD 821, 2005 (2) ALT 398

<sup>82</sup> Prakash vs Pushpa Vani 2004 (3) ALD 858, 2004 (4) ALT 286

<sup>83</sup> Kamal Basu Mazumdar vs Usha Bhadra Chowdhury AIR 2004 Cal 185, 2004 (2) CHN 383

the female petitioner sought legal recognition of her right to occupy a dwelling that was partially occupied by a tenant.

The issue of property devolution was raised as a significant concern by the Jharkhand High Court in the legal matter of Naresh Jha v. Rakesh Kumar<sup>84</sup>, particularly with regards to the inheritance rights of widows. In the current context, a deceased male follower of Hinduism has left behind a surviving widow and two male progeny. The lack of the Hindu Women's Rights to Property Act of 1937 (which was subsequently repealed by the Hindu Succession Act, 1956) at the time of the individual's death necessitates an equitable partition of the deceased's assets, resulting in an equal distribution between his two sons, without any allocation to the widow.

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<sup>84</sup> Naresh Jha And Ors. vs Rakesh Kumar Jha AIR 2004 Jhar 2, 2003 (51) BLJR 1239, 2003 (3) JCR 339 Jhr

## CHAPTER 5

### CONCLUSION and SUGGESTIONS

#### 5.1. Conclusion

The preceding sections have scrutinised the existing provisions outlined in the Hindu Succession Act (HSA) and the resultant disparities that ensue. As per the Mitakshara system, the transmission of joint family assets takes place via the principle of survivorship within the coparcenary, whereas inheritance by succession is recognised exclusively for individually owned assets. On the other hand, the Dayabhaga School recognises the notion of inheritance and joint family property, yet refrains from ascribing rights solely on the basis of birth or survivorship.

The framers of the Indian Constitution recognised the unfavourable and biased position of women in society and incorporated measures to address gender-based discrimination against women, as delineated in Articles 14, 15(2), and 15(3). Part IV of the Constitution encompasses the Directive Principles of State Policy, which serve to underscore the State's recognition of individuals who are governed by the Mitakshara Law within familial structures. This provision introduces the notion of joint family property held under the tenancy in common arrangement, thereby guaranteeing equitable ownership rights for all members of the family, irrespective of their gender.

The Law Commission initially engaged in deliberations regarding the potential recommendation of adopting the Kerala Model. This model involves the abolition of the birthright of males in the Mitakshara coparcenary and the subsequent dissolution of the Joint Hindu Family. It was subsequently determined that the adoption of the practise of granting daughters coparcenary rights similar to those of sons would be a more favourable course of action. This provision would ensure the entitlement of individuals to receive shares in the event of partition or the passing of male coparceners, thereby establishing subsequent ownership as tenants in common.

A number of states, namely Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka, have enacted modifications to the Hindu Succession Act (HSA) in order to recognise daughters as coparceners. The Law Commission, in its proposal, suggests a hybrid approach that incorporates elements from both the Andhra and Kerala Models. It is imperative to maintain the differentiation between daughters who were married prior to and subsequent to the implementation of the Act, as this acknowledges the prevalent practise of bestowing substantial gifts upon married daughters during the duration of their marriage. It is recommended to abolish the doctrine of pious obligation and grant daughters complete coparcenary rights, in accordance with principles of justice, equity, and familial concord.

It is imperative to acknowledge that the exclusion of the daughter's entitlement from the Hindu Succession Act would not yield a comprehensive resolution to the multifaceted social, economic, and emotional challenges intertwined with the dowry system. The utilisation of traditional family law frameworks, which are deeply rooted in the village community system that is prevalent in India, should be taken into account until the nation is adequately prepared to implement collective or cooperative farming as a viable economic solution. The preservation of the Mitakshara joint family system, which is distinguished by communal ownership and survivorship, is advocated in order to enable daughters to possess a stake in joint family property without its partition through succession. It is possible to impose reasonable limitations on the ability to transfer property, known as the power of alienation, and establish pre-existing rights of purchase for the remaining family members in order to safeguard individual interests.

In summary, despite the implementation of reforms aimed at improving the property rights of Hindu women, persistent challenges remain as a result of prevailing social attitudes, cultural norms, and gender biases. To effectively tackle these concerns, a holistic strategy encompassing legislative revisions, educational initiatives, and the advancement of gender parity is imperative. A more just and equitable system can be established by integrating elements from the Andhra and Kerala Models, as well as incorporating traditional frameworks and strengthening the principles of communal ownership and survivorship.

The significance of the judiciary in safeguarding the property rights of Hindu women in India is substantial. The judiciary has significantly contributed to the advancement of gender equality, the removal of discriminatory provisions, and the expansion of property rights for Hindu women through its interventions and decisions. The effects of judicial interventions are evident in the dismantling of discriminatory practises, the acknowledgment of women's rights to ancestral, self-acquired, and joint family property, and the elimination of gender-based inequalities in property laws.

The legal provisions pertaining to property inheritance and ownership have been elucidated through judicial interpretations, thereby guaranteeing equitable treatment of Hindu women as equal participants. Landmark judicial rulings have established legal precedents, thereby influencing the overall legal framework and providing authoritative principles for subsequent litigation. Through the invalidation of discriminatory provisions, the judiciary has effectively questioned prevailing societal norms and established avenues for women to exercise their property rights.

The aforementioned judicial interventions have exerted a significant influence in advancing gender equality within the realm of property rights. The efforts undertaken by various entities have resulted in the empowerment of women, the promotion of awareness regarding their entitlements, and the cultivation of a society that is more inclusive and equitable. The judiciary's prioritisation of constitutional principles, gender equality, and human rights has served as a catalyst for the implementation of legal reforms, alterations in policies, and the facilitation of societal transformation.

Nevertheless, there are still persistent challenges that need to be addressed in relation to the execution of court orders, the resolution of violations, and the provision of effective remedies for women who have been deprived of their property rights. The trajectory ahead necessitates ongoing attentiveness from the judiciary, cooperation with various actors, and the enhancement of legal structures and mechanisms for enforcement. The implementation of public awareness campaigns, educational initiatives, and the provision of legal aid are crucial factors in enabling women to assert their rights and pursue legal remedies in instances of property rights infringements.

In anticipation of the future, it is imperative for the judiciary to uphold its proactive function in the realm of property disputes, legal conflicts resolution, and the oversight of compliance with its rulings. It is imperative for the judiciary to maintain its focus on prioritising gender equality, adhering to constitutional principles, and interpreting laws in a manner that safeguards and advances women's property rights. The establishment of a conducive atmosphere that allows women to exercise their property rights without facing discrimination necessitates the active participation and cooperation of the judiciary, civil society organisations, and the government.

The judiciary can play a crucial role in promoting a fair and just society by acknowledging the importance of women's property rights and ensuring their robust safeguarding. The judiciary, by upholding gender equality and serving as custodians of justice, has the potential to facilitate a future in which Hindu women in India are afforded equitable opportunities to possess and manage property. This, in turn, would empower them socio-economically and make a positive impact on the advancement of society as a whole.

## **5.2. Suggestions**

Although notable advancements have been achieved in safeguarding the property rights of women in India, there remains scope for additional enhancements. The following suggestions are proposed to augment the safeguarding of women's property rights:

1. **Enhancing the Implementation and Enforcement Measures:** It is imperative to prioritise endeavours aimed at enhancing the efficacy and enforcement of court orders pertaining to the property rights of women. This encompasses the imperative of ensuring the prompt implementation of judicial decisions, tackling instances of non-adherence through efficient mechanisms, and imposing appropriate sanctions for infringements. The implementation of advanced surveillance methods, such as technological tools and heightened transparency, can effectively facilitate the monitoring of property disputes and guarantee adherence to regulations.
2. **Capacity building and sensitization** are two important components in the realm of knowledge enhancement and awareness-raising: It is imperative to implement ongoing capacity building initiatives aimed at judges, lawyers, and other legal professionals in

- order to augment their comprehension of women's property rights and foster gender-sensitive approaches to adjudication. Sensitization initiatives aimed at law enforcement agencies, government officials, and the broader public can effectively foster awareness regarding the significance of gender equality in property rights, as well as the ramifications associated with discriminatory practises/
3. **The provision of Legal Aid and Support:** There is a pressing need to enhance the scope of legal aid and support services, with a specific focus on marginalised women who encounter obstacles in asserting their property rights. One potential strategy involves the establishment of legal aid clinics, helplines, and support centres that are specifically dedicated to addressing property rights concerns. Sufficient financial resources ought to be allocated to guarantee the accessibility of cost-free or reasonably priced legal services for women who require them.
  4. **The Role of Awareness Campaigns and Education in Promoting Public Knowledge and Understanding:** It is imperative to implement public awareness campaigns aimed at providing women with comprehensive knowledge regarding their property rights, inheritance laws, and the legal avenues accessible to them. These campaigns have the potential to debunk misconceptions, question established societal beliefs, and enable women to assert their entitlements. The inclusion of gender-sensitive education on property rights within school curricula and vocational training programmes has the potential to foster lasting transformation and advance gender equality.
  5. **Enhancing the Efficacy of Alternative Dispute Resolution Mechanisms:** The utilisation of alternative dispute resolution mechanisms, such as mediation and arbitration, can effectively and efficiently resolve property disputes. One potential approach to address property-related conflicts is the establishment of specialised mediation centres. These centres can offer a more cooperative and harmonious setting for the resolution of disputes, as opposed to a confrontational and adversarial approach. Mediation has the potential to alleviate the workload of the judiciary and enhance the accessibility and timeliness of remedies for women.
  6. **The process of conducting research and collecting data is a fundamental aspect of academic inquiry:** Additional investigation is required in order to comprehensively comprehend the intricate facets of women's property rights, encompassing the inter-

connectedness of gender with other societal identities. The research should prioritise the examination of the efficacy of legal reforms, the consequences of judicial rulings, and the obstacles encountered by women in their pursuit of property rights. There is a need to enhance data collection endeavours in order to acquire thorough and segmented data pertaining to property disputes, infractions, and the consequences of legal interventions.

7. The subject of inquiry pertains to the development and reform of policies: It is imperative for policymakers to consistently evaluate prevailing legislation and policies in order to identify deficiencies and opportunities for enhancement in safeguarding women's property rights. The prioritisation of gender-responsive approaches in policy development is crucial to ensure the alignment of laws and regulations with constitutional principles of equality. Engaging in stakeholder consultations, which encompass women's rights organisations, legal experts, and individuals who have been impacted, can serve as a valuable means to gather insights and knowledge that can contribute to the formulation of policies and implementation of reforms.

By adhering to these suggestions, policymakers, the judiciary, civil society organisations, and other relevant stakeholders can collaborate to enhance the safeguarding of women's property rights in India. Ongoing research, the formulation of effective policies, and collaborative efforts are imperative in addressing persisting obstacles and guaranteeing that women can exercise their property rights without prejudice. This will facilitate their economic empowerment and foster a more equitable society.

It is imperative for international organisations, including the United Nations and non-governmental organisations (NGOs), to persist in their efforts to advocate for the safeguarding and advancement of women's property rights on a global scale. It is imperative to extend assistance to nations in the establishment and execution of legal frameworks that are attuned to gender considerations, with the aim of guaranteeing equitable opportunities for women to acquire and possess property.

Promote the exchange of knowledge and dissemination of best practises among nations in order to effectively tackle shared obstacles pertaining to the protection of women's property



rights. International forums and platforms provide opportunities for the exchange of experiences, strategies, and lessons learned.

It is imperative to advocate for international financial institutions to allocate funding and allocate resources in a manner that places a high priority on initiatives aimed at bolstering women's property rights. This encompasses various endeavours focused on enhancing legal frameworks, advancing gender parity, and fostering women's economic empowerment.

Offer technical support and capacity building assistance to nations in the development and execution of property laws and policies that are responsive to gender considerations. This may encompass educational initiatives aimed at enhancing the comprehension and application of women's property rights among legal professionals, policymakers, and civil society organisations.

In summary, it is evident that considerable advancements have been achieved in the realm of property rights pertaining to Hindu women in India. However, it is imperative to emphasise the necessity for ongoing endeavours at both the domestic and global scales. By enhancing legal consciousness, enhancing the availability of legal remedies, advancing educational initiatives and empowerment programmes, and advocating for the recognition of women's property rights on a global scale, we can work towards the achievement of a more just and inclusive society, wherein Hindu women are afforded equal opportunities to possess, inherit, and exercise control over property.

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