

# LEGAL TRANSFORMATION OF PROPERTY RIGHTS OF HINDU WOMEN

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## **Abstract**

The alterations in Hindu Succession law are explored in this research article, which emphasis the prospects and women's liberties incorporated in the constitutional architecture. Women have traditionally had an inferior status to men over the globe and India is no exemption. Following independence, a drive to improve women's status gained pace with various diplomatic treaties assisting in the process. The Hindu Women's Right to Property Act of 1937 was the primaevial to offer Hindu widows restricted succession claims in the shape of a "woman's estate". The Hindu Succession Act of 1956 was the main rule granting women property-related benefits after independence. Many adjustments are being made under this regulation only to make room for Hindu women's interests in the property. The Amendment of 2005 is an illustration of such a transformation. In any civilization, if there is gender biases in every domain against women, then it is nearly unattainable for that civilization to evolve. Therefore, the economic self-reliance of women is vital to the nation's headway.

**KEYWORDS:** Succession, Hindu women's rights, Women's estate, Amendment of 2005.

## Introduction

The Hindu Succession Act of 1956 was designed to have the vision of making a wave of parity among Hindu males and females, concerning property division and share of properties in joint families. Following such arrangements in traditional Hindu standards of succession, the Indian judiciary has been truly awakened and is presently assessing property issues reasonably. Numerous decisions have been seen in the lower and higher judiciary since such a provision of property rights for Hindu women was coordinated in the Hindu Succession Act, and India is encountering comprehensive social development as far as a step forward from gender disparity to gender parity in terms of property privileges. In India, the right to property for women is generally controlled through personal laws. The Hindu Succession Act, 1956 oversees persons belonging to Hinduism, Buddhism, Jainism, and Sikhism. Persons belonging to the Christian community follow an alternate framework, and Muslims presently have not codified their property rights. Sub-clans and sub-groups of different religions are similarly controlled by their arrangement of rules and conventions. Due to gender prejudice, women rarely obtain the privilege to possess property during the devolution of property. (Gupta & Uniyal, Gender Justice and Human Rights, 2019) The Constitution of India has amalgamated many Articles to guarantee that all the citizens are addressed with equity. Article 14 proclaims that “no person shall be denied equality before the law and equal protection of the law” (Article 14, Constitution of India, 1950). Article 15 of the Indian Constitution accommodates a specific utilization of the overall rule as exemplified in Article 14. The principal condition of Article 15 coordinates that “the state shall not discriminate a citizen on grounds of religion, race, gender, caste, or place of birth” (Jain M., 2018) The third clause empowers the government to make appropriate safeguards for the safekeeping of women and children. It is apparent from all of these articles that women are viewed as paramount member of society. (Uniyal & Bahuguna, 2020) They are safeguarded by the execution of various statutes. Our constitution’s vision of a welfare state can only be realized if the government works to implement it with a strong sense of moral responsibility. This duty is imposed upon the states through Directive Principles of State Policy enshrined in Part IV of the constitution. The Directive Principles lay down certain monetary and social guidelines to be pursued with various governments’ aid in India. Article 15 of the Indian Constitution accommodates a specific application of the overall rule as exemplified in Article 14 and Directive Principles of state policy.

## Changes in Regulations Resulted in Implementation of The Hindu Succession Act, of 1956.

Previously, there was no defined regulation governing the succession of property for Hindu females. Prior to the Hindu Succession Act of 1956, Hindus had been represented via means of conventional rules of succession laws that have varying temperaments, from vicinity to vicinity and regularly differed within identical areas, ensuing in the patchwork of legal guidelines. As an end result of the country’s different regions, making property laws are even more complex. Due to the lack of consistent Hindu succession law, each institution was initially supervised according to its own customs. However, in the year 1929, the Hindu law of inheritance (Amendment) Act was passed. It was the primary piece of regulation that included some classes of heiress among Hindus. For instance, Pursuant to the 1929 Amendment, heiresses at Hindu schools Benares and Mithila included the widow, daughter, mother, paternal grandmother, and paternal great-grandmother (Mulla, 2018) The heiress was acknowledged as the sister, son's daughter, and daughter's daughter once this Amendment was enacted. Another school in Madras called ‘Madras school’ also included the sister, son's daughter, and daughter's daughter.

The Hindu Women's Right to Property Act was enacted in 1937. It progressively changed the Hindu rules and regulations governing widows' succession. In comparison to previous legislation, it delivers more benefits by offering Hindu widows similar, substantial bequest rights and succession frameworks. By the execution of this Act, the widows were the ones who benefited the most. Except at the Dayabhaga school, the Hindu Women's Rights to Property Act of 1937 made the widow of a predeceased son and the widow of predeceased son's predeceased son heirs across India. This act gave widows the right to benefit from their husband’s possessions. The property was allocated in two cases where-

- the husband had independent property and
- the property was partitioned under the joint Hindu family.

The principal justification for the acceptance of the Act was that a widow should not have to rely on anyone for sustenance when her husband passed away, however ought to be monetarily reinforced, so, she procures the ability to take care of herself. The conspicuous rationale was getting her maintenance rights by giving her

possession, although restricted, over the property. Nonetheless, this Act didn't allude to impartible assets and to agrarian property. This Act essentially assisted her in withholding her right to maintenance.

The Hindu Succession Act, of 1956 oversees succession and inheritance in Hindu families. This law lays out an intensive and reliable outline for devolution and inheritance of property. Generally, the legacy of property among Hindus was to a great extent represented through the standards revered in the settlements of Mitakshara and Dayabhaga. Under these schools, freedom regarding the property was accessible only to male individuals from the family. The women didn't have property rights. (Gupta & Uniyal, Gender Justice and Human Rights, 2019) Such gender biases against women were felt to be profound and along these lines to control such discrimination, Hindu Succession Act, 1956 was put into effect.

### **Privileges to Property Under the Act of 1956**

Families with immovable assets handed it on to the male heir prior to the Act of 1956. Females did not have the same liberty. The allotment of property shifted with the birth and demise of male Hindus. "Joint Hindu families" and "Hindu Undivided Family (HUF)" were terms used to describe such families. (Srivastava, 2014)

Women were not coparceners, notwithstanding their association with the joint Family. They were denied the same rights as the other components of the HUF had. A HUF property was not legally owned by a daughter, wife, or mother. Their power to inherit came only after the demise of a male relative. Their claim to the HUF assets does not originate in their independent capacity; rather, it originates (as beneficiaries of the deceased) following the demise of a male representative to whom they are immediately correlated. Also, prominent and significant modifications and adjustments in the law have been achieved by various authorizations, which expect to ascertain a uniform code of individual regulation for Hindus in the entire country. The changes, presumably revolutionary, continue in the guideline of uniformity pushed in the constitution for advancing a simply friendly request in the wake of taking due note of existing circumstances and thoughts. This Act might appear to break thoroughly with the past however it must be surrendered that it is characteristic of the age which is one of the extraordinary beliefs and quick evolving hypotheses. The vision accomplished by the new regulation is substantial unification of Hindu regulation by merging a lot of what was moderate in the different philosophies of regulation which won in various regions of the nation and evacuation of numerous irregularities and confusing directives. One point of this regulation was to act, it is submitted appropriately, on the rule that where the explanation of the standard had stopped existing there was little support for the emphasis on its continuance. Daughters are now considered coparceners as well, due to the 2005 change.

The Act of 1956 has not just presented the novel arrangements for the guidelines related to succession however it likewise held a portion of the traditional regulation arrangements. The lawmaking body held these old standards with specific adjustments by giving females a strong standing in the honours connected with property, as in Partition.

*Partition* – When a family is partitioned, the joint family is split up and new Nuclear families are formed. In the case of Gurudev Singh (Gurudev Singh v. Ajmer Singh, 2018), it was held that the mere existence of separate living without documenting any family settlement in revenue records, does not imply partition. Following the modification of 2005, a daughter can ask for her share in the partition as she is also considered as the coparcener. The coparcener is obligated to share on the partition as per the accustomed principle, and both the Mitakshara and Dayabhaga schools recognize this general rule. Since a daughter is considered as the coparcener, she has the right to demand for partition. Some other females also have the right to share in the partition. These heiresses are- Father's Wife, the mother, and the grandmother.

In Danamma's case (Danamma Suman Surpur & another, 2018), the Honourable Supreme Court asserted that "regardless of the fact that daughters were born before the Hindu Succession Act, 1956, was effectuated, they have proportionate rights and privileges in the ancestral property."

*Father's wife*- In event of partition between her husband and his son, the father's wife is supposed to get a share equal to the son's share. She has independent access to her prorate solely from her husband. If no share is assigned to her she can request that the partition be reopened. (Radha v. Pandhari, 1940) She does not have such rights in Dayabhaga ideology.

*Mother*- During partition among the sons, a widowed mother is accredited to the same amount of share as that of the son. According to the Mitakshara school if the father's estate is divided among the sons after the demise of the father, the mother, as well as the stepmother (even if she is childless), are entitled to the same amount of

share as that of the sons. However, according to the Dayabhaga ideology, a stepmother who is childless is not privileged to have a share in the partition.

Grandmother- In the Mitakshara ideology, paternal grandmother and step-grandmother are entitled to share in partition under the following requisites: -

- When her son dies and her grandsons divide their estate, she is legally allowed to a share equal to her grandson's share. (Kanhaiya Lal v. Gaura , 1924)
- During the partition between her son and her grandsons, she is legally allowed to a share equal to her grandson's share (sons of a predeceased son). (Babuna Kunwar v. Jagat , 1927 )
- Different High Courts have different opinions when it comes to the partition of the estate between her sons and between son's sons, she is not obligated to a share, according to the Allahabad and Bombay High Courts, but she is obligated to a share equal to her grandson's share, according to the Patna and Calcutta High Courts. (Badri v. Bhagwat , 1882)

Women's right to property has been scrapped, and any estate owned by a female Hindu is now considered her outright property.

Daughter- After the alteration in 2005, female offspring are likewise considered to have equivalent fractions during the division of property as that of male offspring.

Section 15 of the Hindu Succession Act of 1956 addresses the prevailing legal guidelines of succession for female Hindus. According to Sub-section 1 of Section 15, the heirs of Hindu females are: - Sons and daughters (if their demise has already taken place then their children), husband, mother, and father, heirs of father, and heirs of the mother.

### **Woman's Property: Stridhan**

Section 14 of the Act has led to a paradigm shift in the Hindu Law of women's properties. Before 1956 there were only two sorts of properties, Stridhan, and women's estate but Section 14 extirpated the Women's Estate and gave recognition to Stridhan. As indicated by Smritikars, the word Stridhan incorporates that property that a woman gets by way of gifts from her family and relatives which included valuable properties like jewelry, dresses, and embellishments. Immovable property (a piece of land or house) was also given as a gift. Yajnavalkya's text has unfolded the definition of Stridhan by adding properties procured by inheritance, purchase, partition, seizure, and findings. The text of Manu has expanded the meaning of Stridhan. If a woman obtains a souvenir during the nuptial fire, she claims that she is the only beneficiary of that present and can bestow it according to her own consent. A female has full authority over the alienation of Stridhan because it is her absolute property. Stridhan of a married woman was divided into two groups: 1) the saudayaka which means gifts received from relatives and 2) non- saudayaka means other kinds of gifts received from strangers, property acquired by the endeavour, or mechanical adroitness. After the death of a woman, shares of her Stridhan passed to her heirs.

In Jamunabai's case (Jamunabai v. Bholaram , 2002), it was asserted that Section 14 has retrospective effect and it turns the persisting woman's estate into Stridhan, but two essentials must be fulfilled: a) she must own the property and b) she must have had the property when the act was effectuated.

### **Amendment of 2005 and Introduction of Women as Coparceners.**

The modifications made in the year 2005 has delivered enormous extrude in Hindu Succession Act, 1956. The Amendment of 2005 has appeared as an attempt to eliminate impartiality in inheritance rights among sons and daughters. In Bhagwan Dayal's case (Bhagwan Dayal v. Reoti Devi , 1961), it was laid down that "a coparcenary cannot be formed through consent. It is a legal being". As a result of the modification, the daughters are now designated as coparceners. Through the 174<sup>th</sup> report by the Law Commission of India, many alterations were suggested, one of which was the termination of the right to property by birth. This was done because many legislators believed that section 6 of the Act was contentious since it was biased against women. With this amelioration in section 6, the Hindu Succession Act, 1956 has been modified. Now the daughters are appellate to the same share in property as the sons. This change has been introduced because women should be dealt with parity in each financial and social sphere. Hence, this modification serves as the defender of the rights of women. Before this modification, people who were lineal descendants of the same ancestors had appeared as

coparceners. Coparcenary rights were not granted to daughters, wives, and widows. The law commission's 174<sup>th</sup> report on Women's Rights formulated alterations in Hindu Law which prompted the proposed impact of a bill named "Hindu Succession (Amendment) Bill, 2000". The proposals made by the Commission in this report elevated the Amendment Act of 2005. The commission took the preceding subject on its own initiative because of the widespread unfairness against women in statutes overseeing the succession of the property (Jadhav, 2019). The suggestions made by the Commission are: a) daughters should be made coparceners, in the same way, that sons are so that they can stand to gain and receive their share when the partition occurs or on the passing away of the male coparcener. b) Section 23 should be deleted owing to the restrictions on the daughter's ability to accrue the property of the dwelling house on the partition, and c) the doctrine of survivorship under Section 6 should be abolished. The Amendment incorporated all the changes as recommended by the Commission. It also removes section 24 of the Act. This section barred widows (widow of the predeceased son, widow of the predeceased son of a predeceased son, widow of the brother) who remarried on or before the date of succession to the intestate was opened (Diwan, Modern Hindu Law, 2019).

Now the present Section 6 of the Act makes it clear that with the onset of the Amendment, in a Joint Hindu Family regulated by the Mitakshara Law, the daughter, by birth, is considered the coparcener and shall have the same privileges and accountabilities in respect of the coparcenary property as a son. A female Hindu would be permitted to own the property with coparcenary holdings. In the Shantilala's case (Shantilala Sahu v. Sabitri Sahu, 2008), it was held that daughters now have the right to share in ancestral property as the coparceners as a result of the Amendment. Further, in Parvat Chandra's case (Parvat Chandra Patnaik v. Sarat Chandra Patnaik), it was determined that the Amendment of 2005 grants right to daughters born prior to 2005 and not just to daughters who were born after 2005.

Given the Amendment of 2005, Section 23 of the Act has been eradicated and in the Proclamation of Objects and Reasons, it was stated that – Section 23 of the Act prohibits a female heir from requesting for partition in respect of a dwelling house entirely possessed by a joint family until the male heir chooses to split their respective shares therein (Jain A., 2020). The alterations made in sections 6 and 23 were deemed lawful because they fulfilled the principles outlined in articles 14 and 15 of the Indian Constitution.

The Law Commission prescribed that the right to will should be restricted under section 30 of the Act since it was accepted that this part had been used to exclude women. This provision empowers any Hindu to dispose off his property including his portion of a joint family property. But this proposal was not taken into consideration.

Mitakshara School's survivorship doctrine states that the property passes to the survivors after the death of the common ancestors and sons of the family have a birthright in the property by virtue of the two rules: a) females will not inherit and b) agnate will be preferred over the cognates. (Dua, 2015) This way under the survivorship rule only males were regarded as the coparceners. Therefore, it was abolished after the Amendment on the recommendation of the commission.

In Prakash's case (Prakash v. Phulwati), it was held by the Hon'ble Supreme Court that from the beginning of the Amendment, the existing daughters of the living coparceners will have coparcenary rights. This means that the Amendment is only effective in the future (Garg, 2020). However, the Supreme Court overruled this case in Danamma case, holding that irrespective of the fact that her father died in the year 2001, prior to the Amendment, existing daughters of deceased coparceners are eligible for benefit of the coparcenary.

Because they were contradictory, both the preceding cases exacerbated the conflict. This issue was finally resolved in 2020. The Hon'ble Supreme Court rescinded Phulwati's case and to a certain degree quashed Danamma's case, in the case of Vineeta Sharma (Vineeta Sharma v. Rakesh Sharma and others, 2020), finding that apportionment of coparcenary is replenished by birth. Correspondingly, the day of birth of the daughter is tangential for this situation. It was indicated that the father didn't necessarily be alive when this Amendment resulted. It was postulated that the reform ought to be retroactively efficacious. That is, in defiance if the father demised afore 2005, the daughter will apprehend a portion of the coparcenary domain (Bhargava, Trivedi, Khanna, & Kabra, 2020). The Apex Court underscored the Act's objective, which was to take out gender bigotry in coparcenary rules. Therefore, the reason must be accomplished in the event that the Act was carried out retroactively. Recently, the Supreme Court has been outspoken and liberal in Hindu women's inheritance law. The Supreme Court of India declared on January 20, 2022, in the case of Arunachala Gounder v. Ponnusamy, that "if a Hindu father dies without a will, his daughter is entitled to inherit his self-earned

property or that acquired via familial inheritance”.In the case of Honamma (Honamma v. C.H Honnegowda , 2015 ), the Karnataka High Court ruled out that, “the new section 6 ensures that male and female members of a joint family have equivalent rights to coparcenary inheritance. The daughter has a right to a proportion of the ancestral patrimony.”

### **Concluding Remarks**

In a civilisation like our own, where male authoritarian standards continue to overwhelm females' economy, the law ought to act as a venturing stone instead of a blockade to defeat these obstructions, but as compared to the earlier scenario the situation and stand of the Hindu Women has changed to an assertive extent. Presently females have a similar property apantage as males. Thus, Hindu women who were rambling have accomplished a sheltered spotby efficacious implementation of the Hindu Succession Act, of 1956, which allowed them boundless rights. They likewise attained total dominion over the property they claimed, instead of the incomplete holding that had erstwhile kept them from completely appreciating it. By the Amendment of 2005, they have been considered as the Coparceners. The recognition of the property rights of Hindu women was given by the Hindu Succession (Amendment) Act, 1929 for the first time. Furthermore, these rights were then enshrined in the Hindu Succession Act, 1956, which filled a gap in previous legislation and was a watershed moment for widow's property rights. Where not changed or repealed by regulation, Hindu regulation might be portrayed as the old law of the Hindus entrenched in customary sacred texts and developed in perceived discourses and endorsed by uses. Despite the fact that the Constitution demands equality, women's equality in the private arena of family issues has mostly remained unmet. The role that judiciary played in this regard is laudable, as, without it, the rights of Hindu Women have abode exclusively in documented regulation and not in that frame of mind practically speaking. It would be relevant to take note that a couple of issues are of more pragmatic significance. The last hundred years and a big part of the legal adjudications has, however not in thoughts but rather substantiality focuses on both literal and conventional regulation. The progression can easily be seen in traditional Hindu laws and the drastic changes are made through the amendments, the propositions of the Law Commission of India, and also through the efforts of the Judiciary. Being malleable in nature the regulations that regulate Hindus have transformed over time. This is demonstrated by the fact that the Legislature has updated the legislation periodically in response to societal situations. The final barrier to women's access to ancestral property has been lifted by the decision of Arunachala Gounder v. Ponnusamy. Women were lagging throughout every perspective of society due to customary ideologies. Obliviousness among women in our country is a massive concern because many women are oblivious that they have been granted many rights. Because of the positive ideology of the constitution's authors, the prestige of women has shifted dramatically since independence. They are now, to some degree, positioned in the identical stance as men.

### **Suggestions**

Based on the above research some of the suggestions that can be considered for improving the existing laws are: -

- The states ought to step up and make alterations if there are any lacunas in the current regulations. For example, a state like Kerala shut down the joint Hindu family arrangement and completely annulled the right to property by the birth in cases of males.
- The need of great importance is to instruct society with respect to the property rights accessible to females. Females' endeavours and the local area need to keep on making community and public officials aware of privileges available to Hindu women and encourage them to adopt these rights.
- Owing to the fact that the idea of coparcenary is very androcentric in its nature and the venture to integrate females in it, makes functional issues more unpalatable.
- Many females do not know about the privileges which are given to them. The consciousness in regards to property freedoms ought to be made by getting sorted out the legal discernment camps alongside this, the concerned authorities ought to direct a gauge study to spot the gender issues in the property-related matters.

- In the current Hindu Succession regulations, the rules for the succession for males and females are unlike. This distinction ought to be obliterated and the regulations ought to be made invariable for the two genders.
- One the off chance that a joint family possesses property in various states one of which is coordinated according to the Amendment Act while the another isn't, it might prompt two kartas, presenting issues with the regional implementation of the regulation. Accordingly, an all India Act or Uniform Civil Code is required.

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