
GENDER EQUALITY IN PROPERTY RIGHTS: LEGAL EFFORTS

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ABSTRACT

Property rights are a crucial aspect of gender equality, ensuring financial independence, social security, and empowerment for women. Historically, property laws in India were male-centric, restricting women's rights to inheritance and to have ownership over properties. However, significant legal reforms have been introduced time to time to bridge the gap exclusively based on the gender and also to provide women with equal property rights.

In line of traditional custom prevalent in the property laws in the Hindu, the **Hindu Succession Act, 1956**, initially granted limited rights to women in ancestral property. However, the **2005 amendment** marked a milestone by granting daughters the same inheritance rights as sons, irrespective of their marital status. Similarly, the **Indian Succession Act, 1925**, governs property rights for Christian and Parsi women, ensuring equal inheritance. Further, **Muslim personal laws** provide daughters with inheritance rights, though with some limitations as compared to sons.

Apart from inheritance laws, other legislative measures have been enacted to safeguard women's property rights. The **Dowry Prohibition Act, 1961**, prevents coercive property transfers as made through dowry, while the **Benami Transactions (Prohibition) Act, 1988**, protects women to hold property in her own name even though source of funds are from her husband. Judicial interventions have also played a crucial role in upholding gender equality in property rights, with landmark Supreme Court rulings reinforcing women's rightful claims.

Despite progressive laws, challenges persist due to deep-rooted patriarchal norms, lack of awareness, and social resistance. Many women still face difficulties in asserting their legal rights due to family pressures and procedural hurdles. Addressing these challenges requires a combination of legal enforcement, awareness campaigns, and socio-economic empowerment initiatives. Ensuring gender equality in property rights is fundamental to achieving true social justice. Continued legislative efforts, judicial activism, and societal change are essential to strengthening women's property rights and promoting gender parity in wealth and resources.

Gender Equality in Property Rights: Legal Efforts

Gender equality is a fundamental principle provided in the Indian Constitution. Over the years, India has implemented several legal frameworks to promote gender equality, particularly in areas such as property rights. This document explores key laws and policies that contribute to gender-responsive legal structures in India in respect of the property laws.

Gender justice in India has evolved through centuries of socio-political movements and legislative reforms. While the Constitution guarantees fundamental rights to all citizens irrespective of gender, historical disparities have necessitated additional legal protections to ensure equal opportunities and safeguard women's rights. Legal frameworks addressing gender equality encompass property and inheritance laws, despite progressive reforms; the effective implementation of these laws remains a challenge. Cultural and societal norms often hinder gender equality, making it imperative to strengthen legal awareness, empower women through education and financial inclusion, and ensure stringent enforcement of gender-responsive policies.

1. Property Rights and Inheritance Laws

Property ownership and inheritance rights have long been tilted against women, particularly due to patriarchal norms in all the region resided within the boundaries of the India. However, there are numerous legal reforms have been made to bridge the gender gap in property ownership, ensuring women's financial security and independence, but there is more steps towards the reforms required to be taken. In India, there is no uniform rules/regulation for determination of the property ownership, and the law/rules in respect of the ownership of the property are normally governed as per their applicable personal laws.

1.1 Property Rights and Inheritance Laws for Hindu women –

In the ancient time, Hindu women did not have right to inherit property on their own name and the property related rights had been restricted. As it was believed that woman were not considered equal to men and accordingly they had no or less rights in comparison with the male members of the society. Reason for such perpetual thought process, may be the type of livelihood prevalent at that time. Early humans live was purely based on the hunting, later on to the land based activities such as agricultural, horticulture and other activities. There are large

number of wars had been fought at every level (village level, kingship level or world level) for possession & holding of land and therefore, these property related rights were lies only with the powerful class of the society especially male. The denial of property rights to women can also be traced back to religious practices, as they were considered incompetent to take part in sacrificial rituals and were accordingly prohibited from offering pious obligation including of offering funeral cakes for the spiritual salvation of their common ancestor.

1.1.1 Woman's Property Right under Mitakshara and Dayabhaga Schools

In India, there are two Hindu school of law, one is Mitakshara School and another is Dayabhaga School. The earlier one was followed throughout India except the Eastern part of India wherein later School was followed.

As per the Mitakshara School, property rights were distributed among the male member of the Hindu Undivided Family (later as HUF) as a coparcener based on the patriarchal lineage and the women were never considered as the member of the HUF (coparcener) for the distribution of the property. The women in the Mistaskhara School is never a absolute owner of the property, even if there is a widow of a deceased coparcener, could not get his share and she was not allowed to enforce a partition of his husband's share against his brothers.

However, in the Dayabhaga School, it was somewhat lenient, as it was different from Mitakshara School in the matters of inheritance to the women. The woman under the Dayabhaga School does not have absolute power to hold property in her own behalf, but if she got widow, she had the right to inherit her deceased husband's share and could also enforce a partition against his brothers. Further, the above entitlement was also not absolute but it had a limitation. In cases, the widowed woman passes away without sons, her husband's share does not inherited by her daughters but it would be inherited by the nearest male heir of her husband.

1.1.2 Hindu Woman's Right after enactment of the Hindu Succession Act, 1956

In the wake of the industrialization and development at the all corner of the global, it was acknowledged in all over the country that half of the population cannot be left behind and in order to foster the nation's comprehensive development, women should be granted equal status and rights alongside men. Hence, in this way, the first major legislation named Hindu Succession Act, 1956 codifying the laws relating to intestate succession among Hindus. Vide

this enactment, there was first time women's rights to inheritance of property was recognized one step further to the previous one. In respect of the giving rights to the women of the Hindu women there are some section such as Section 2(F), Section 9 & its Rule 1, 2 & 3, Section 14 and Section 15 of the Hindu Succession Act, 1956.

Section 3(f) of the Hindu Succession Act, 1956¹ has provided the definitions and interpretation of the word 'heir'. As per the above provision, heir means any person including female, who is entitle as well entitle to succeeded to the property of the person, who dies without any testamentary disposition. Before enactment of the Hindu Succession Act, 1956, the all the disposition of the property are made to coparcener, who are male member of the HUF. However, as per the above enactment, this is the first time the female members of the family/HUF are got eligible as heir for the property disposition process.

Section 8 of the Hindu Succession Act, 1956² has mentioned the general rule of succession in the case of males, who died intestate. Vide the above provision, the property of the intestate male have to devolve according to priority of the class of heir as per the schedule. Priority for property disposition is firstly devolve upon class I heir, secondly on class II heir, if no class I heir are present and so on. As per the schedule in the Hindu Succession Act, 1956, class I heirs apart from the other heirs also includes daughter, widow, mother, daughter of a predeceased son, son of predeceased daughter, daughter of a of a pre-deceased daughter; widow of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son. Further, section 10 of the Hindu Succession Act, 1956 has mentioned the distribution of property among heir in class I of the schedule, wherein widow, mother and daughter of the deceased person has been given priority to inherited the property of the deceased person.

Section 14 of the Hindu Succession Act, 1956³ has given the authority to female Hindu

¹ The Hindu Succession Act, 1956, Section. 3(f) of - "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;

² The Hindu Succession Act, 1956, Section- 8- General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:— (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased

³ The Hindu Succession Act, 1956 Section -14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

to hold the property (moveable or immoveable) in her name absolute terms. As per this section, any property hold by the female whether it was acquired before the commencement of this act or after its commencement, she will be considered as the full owner of the property not a limited owner as she does not required anyone permission in this regards. Further, this section gives unfettered rights to women, including the right to dispose the property off. Explanation of this section has mentioned the mode through which a property (moveable or immoveable) can be received by the Hindu women, such as by inheritance, by devise at a partition, in lieu of maintenance (current or arrears), by gift from any person (relative not required), whether before, at or after her marriage, by her own skill, by purchase, also any property like stridhana or any other manner whatsoever. Apart from the above, this section has itself clarify that the provision of the this section will not affect the ownership status of the property, if it was hold with the restriction/limitation as prescribed in the any instrument, will, order of the civil court or award or terms of the gift or will.

In a leading case of *Punithavalli Ammal v. Ramalingam and Anr*⁴, Hon'ble Supreme Court held that Section 14(1) of the Hindu Succession Act, 1956 gives absolute right to women, and it cannot be curtailed in any manner by making any presumption or interpretation of the law. Further, the Hon'ble Court also stated that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which were previously limited.

Further, the Section 15 of the Hindu Succession Act has provided the general rules of succession in the case of the female Hindus. By providing this provision in this section, it is established fact that if any Hindu women died intestate, the property hold by her in her life time must be held by her absolutely. Accordingly, the property of the Hindu women will be devolving as per the priority as mentioned below:

- Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

⁴ 1970 AIR 1730 1970 SCR (3) 894, 1970 SCC (1) 570

- Secondly, upon the heirs of the husband.
- Thirdly, upon the mother and father.
- Fourthly, upon the heirs of the father.
- Lastly, upon the heirs of the mother.

As per the Section 30 of Hindu Succession Act, 1956, any Hindu including of female member, has the entire legal authority to sell her belongings either through intestate or testamentary succession as per the right to full ownership. However, previously, the above mentioned rights were only available as well permitted to the male member of the Hindu.

1.1.3 Hindu Woman's Right after the Hindu Succession (Amendment) Act, 2005

Prior to the Hindu Succession Amendment Act 2005, sons enjoyed the exclusive rights over the coparcener property, whereas daughters could able to enjoy some property right after the enactment of the Hindu Succession Act, 1956. As per the recommendation of the 174th Law Commission Report's, the Hindu Succession (Amendment) Act, 2005 was passed and made significant changes to the 1956 Act. Vide the above amendment Act, women are now become coparceners in a succession of the property of the patriarch and hold equal property rights. Vide the Amendment to Section 6 of the Hindu Succession Act devolution of Coparcener property has made to the women also and women can also inherit property as coparceners. Section 6 of Hindu Succession Act, 1956, stated that any Hindu including female member of the HUF as governed by the Mitakshara Law, are become coparcener in her own right as same manner as the son and also have same rights as well liability in respect of the coparcener property. In view of the above the female member of the family, has the entire legal authority to sell her belongings either through intestate or testamentary succession as per the right to full ownership. The provision of this section is applicable form the date of the commencement of this Act i.e. 09.09.2005. This legal shift also ensured that women had the same duties and liabilities at par with their male member of the HUF.

Further, Section 6(3) of the Hindu Succession (Amendment) Act, 2005, a deceased coparcener's stake in the assets of a HUF will pass through testamentary or intestate succession. The devolution must occur in a manner that the daughter has the same share as that

of a son and the pre-deceased woman coparcener's share goes to her surviving children similarly in the same way it was given to her. This Amendment Act, enabled financial independence to the section of the Hindu women and has reduced their dependence on male family members. Despite these provisions, societal resistance and lack of awareness often prevent women from asserting their property rights, necessitating better legal literacy programs.

1.2. Christians, Parsis, and Jews women property right as per the Indian Succession Act, 1925

The Indian Succession Act, 1925, is a crucial legislation that defines inheritance, wills, and succession laws for individuals who are not governed by religious personal laws. This Act recognizes women's rights to inherit property, create wills, and ensure succession while also establishing clear rules regarding their share in an estate. **The provision of the Indian Succession Act, 1925** governs inheritance right of the property in respect of the Christians, Parsis, and Jews resides in the India.

Further, the Indian Succession Act, 1925, provides legal protection to ensure that widows, daughters, and mothers have a rightful share in the property of a deceased person. The provision of Section 33 of this Act state that if a husband dies intestate (without a will), his widow is entitled to a portion of his property depending on the presence of other heirs: (i) 1/3 share of estate, if deceased husband has children or grandchildren, (ii) 1/2 share of the estate, if no children but other relative are present and (iii) full share, if no relative exist. Further, section 35 of the Act ensures that a widower has equal inheritance rights over his deceased wife's property, ensuring parity in succession law. Section 37 and 38 of this Act also state that, if the women died intestate, her children (both sons and daughters) will inherit her property in equal shares. If she has no children, her grandchildren become the legal heirs. This provision ensures that daughters are not excluded from their mother's or father's property. Further, as per section 42 of the Indian Succession Act, 1925, if a person dies intestate leaving only their father, the father receives the entire estate. However, if the father is not alive, the mother inherits everything. If both parents are deceased, the property is passed on to siblings as per the provision of the Section 44 of the Indian Succession Act, 1925. Further, to provide the financial autonomy for the women and to enable decision-making power, the provision of Section 59 of this Act has empowered the married or unmarried woman to make a will for her property and

to dispose her property as per her wishes. But the will must be executed voluntarily, without coercion, fraud, or undue influence.

The Indian Succession Act, 1925, is a crucial piece of legislation that protects women's inheritance, will-making, and succession rights. It ensures that widows, daughters, and mothers receive their rightful share in an estate and prevents unjust exclusion from property ownership. By granting women the legal authority to make wills, the Act also strengthens their financial independence. Under this Act, women enjoy equal inheritance rights, reinforcing gender equality in property distribution. Unlike Hindu and Muslim laws, the Indian Succession Act does not differentiate between male and female heirs, setting a precedent for gender-neutral inheritance laws.

1.3. Muslim women property right as per the Muslim Personal Law (Shariat) Application Act, 1937

Inheritance in Muslim law comes into effect only after a person's death. Unlike Hindu law, which recognizes a child's right to property by birth, Muslim personal law does not grant inheritance rights to a living person's property, but it will only devolve after the death of the person. The division of assets occurs only after fulfilling the deceased's obligations, such as funeral expenses, debts, and other liabilities. Additionally, there is no distinction between movable and immovable property or self-acquired and ancestral assets—all are equally inheritable.

Muslim inheritance law classifies heirs into two categories: sharers and reliquaries. Sharers receive a fixed portion of the deceased's estate, including immediate family members like the spouse, parents, children, and siblings. Reliquaries inherit the remaining property after the sharers receive their shares. In cases where a deceased person has no legal heirs, the property is transferred to the government through escheat.

A Muslim individual has the right to create a will (wasiyat), allowing them to distribute up to 1/3rd of their estate to anyone they choose. However, if a person attempts suicide, their will is rendered invalid under Islamic law. On the other hand, if a Muslim writes a will but later converts to another religion, the will remains valid. Further, if a person marries under the Special Marriage Act, 1954, their will is regulated by the Indian Succession Act, 1925, rather than Shariat law.

The distribution of property under Muslim law follows two methods. Sunni law applies the per capita method, where the property is divided equally among all heirs, with individual shares depending on the number of heirs. Shia law follows the per strip method, which considers family branches first before dividing property among individuals.

Women in Muslim law have inheritance rights, but they receive a smaller share than male heirs. This is based on the principle that women receive Mehr (a mandatory gift from their husband at marriage) and maintenance, whereas men are responsible for providing for the family. A daughter typically inherits $\frac{1}{2}$ of the share of a son. The Mehr given to a woman is her exclusive property, and no one—not even her guardians—can claim it. A husband can offer any amount as Mehr, and in some cases, he may even transfer his entire property to his wife as Mehr.

For married women, inheritance depends on the presence of children. A widow is entitled to $\frac{1}{4}$ th of her husband's property if she has no children, but if she has children or grandchildren, she receives only one-eighth. If the deceased had multiple wives, they share this portion. However, a woman loses inheritance rights if her husband dies without consummating the marriage. Interestingly, if a husband divorces his wife while ill and later dies, she still has a right to his property unless she remarries.

Regarding divorced women, Shariat law prohibits accepting or offering maintenance after divorce. However, under Indian law, the Muslim Women (Protection of Rights on Divorce) Act, 1986, grants divorced women maintenance for the Iddat period (a waiting period after divorce), along with the Mehr amount and support for minor children.

Mothers also have rights over their deceased children's property. If a son dies without children, his mother is entitled to $\frac{1}{3}$ rd of his estate. If he leaves behind children, she inherits $\frac{1}{6}$ th. Additionally, an unborn child is considered a rightful heir if born alive; however, if the child is stillborn, they have no inheritance rights.

The Muslim inheritance law is deeply rooted in religious principles and ensures that both men and women have access to inheritance, though with different shares. While traditional Islamic rules govern most aspects, Indian legislation has introduced some modifications, particularly regarding the rights of divorced women. The system aims to maintain fairness while upholding the responsibilities of men as financial providers and women as beneficiaries

of maintenance and Mehr.

2. Preventing Coercive Property Transfers of the women in respect of her marriage (as Dowry)-

Dowry has long been a deeply ingrained social evil in Indian society, leading to financial exploitation, gender discrimination, and even violence against women. It refers to the money, property, or valuable gifts demanded by the groom or his family from the bride's family as a condition of marriage. To combat this injustice, the Dowry Prohibition Act, 1961, was enacted, making the giving, taking, and demanding of dowry as a punishable offense⁵, punishable with imprisonment for a term not less than 4 year and with fine upto Rs.15000/- or for a value of dowry which more. Further the agreement for giving or taking dowry shall be considered void⁶. Additionally, even the mere act of demanding dowry, without an actual exchange, is punishable with imprisonment of six months to two years and a fine of up to ₹10,000.

To further strengthen women's financial security, the law mandates that if any dowry is received for the bride, it must be transferred to her within 3 months of marriage. Failure to do so can result in a penalty of two years of imprisonment and a fine of ₹5,000⁷. One of the most significant impacts of this Act is its role in preventing coercive property transfers, where women and their families are forced to part with their wealth under social pressure. This not only weakened women's financial independence but also increased economic inequality. The Act aims to eliminate such forced transfers and protect women's rightful access to property and resources. Moreover, preventing dowry helps ensure that women are not seen as financial burdens, allowing them to claim their inheritance rights and economic security within their families.

3. Maintenance to the women for ensuring Gender Equality-

Section 144 of the Bharatiya Nagarik Suraksha Sanhita , 2023, provides a statutory right to maintenance for dependents who are unable to sustain themselves. This provision applies to wives, children (legitimate or illegitimate), and elderly parents, ensuring financial

⁵ The Dowry Prohibition Act, Section -3 Penalty for giving or taking dowry

⁶ The Dowry Prohibition Act, Section -6 Agreement for giving or taking dowry to be void

⁷ The Dowry Prohibition Act, Section -7 Dowry to be for the benefit of the wife or her heirs

support from individuals with sufficient means. From a gender equality perspective, it is significant as it secures economic justice for women by granting them the right to claim maintenance from their husbands, including after divorce (unless remarried or disqualified under any other legal grounds)⁸. The law is also secular as well as gender-neutral in its application as it is applied to any person and also to children and parents. Both sons and daughters are equally entitled to maintenance, and both male and female children share the obligation to maintain their elderly or dependent parents. This provision eliminates the traditional notion that only male heirs bear financial responsibility.

4. Conclusion

In modern times, a country's progress is contingent on ensuring that its women i.e. 50% of the population should not be left behind. Women should also enjoy equal rights and should also get opportunities as men, not only in theoretical way but also in practical. Only when a nation truly uplifts the gender equality in both ways such in principle and in practice can be truly a way towards the development. Now the daughters have been same right as coparceners, and their interest in the ancestral property is now protected by the statute, since the daughters now also have also right by birth in the ancestral property as the sons. Now her share in the ancestral property cannot be denied by testamentary disposition by the father or any other person.

Despite its strong legal framework, the law's enactment for gender equality have faces several challenges in its implementation. Additionally, lack of awareness about the law prevents many women from asserting their property rights. These rights are crucial step in promoting gender equality and protecting women from financial exploitation. However, for the law to be truly effective, strict enforcement, widespread awareness, and social reforms are necessary. Only through continuous efforts in education, legal awareness, and societal change can India fully eliminate the gender based discrimination and ensure women's rightful access to property and financial independence.

⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144— Order for maintenance of wives, children and parents (previously under Section 125 of the Code of Criminal Procedure, 1973)