
GENDER JUSTICE VIS-À-VIS PROPERTY RIGHTS OF DAUGHTER UNDER HINDU SUCCESSION LAW

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ABSTRACT

Hindu women have been discriminated since time immemorial in all spheres of life. This fact is well known that property rights have a profound impact on the national economy still disparity in property rights pertaining to gender, spells from ancient times. Gender analysis of Hindu law relating to a woman's access to property within the home reveals a consistent pattern of subordination of women's economic interests. While enjoying the formal status of equality at law, in essence, a woman remains economically dependent on her parents, husband, or children from birth until death. The legislative reforms have perpetuated a myth that Indian women occupy a high status in Indian society. The reality is, however, that legislation has not improved everyday life for the majority of women as bulk of Indian women are illiterate and hold little or no property in their name. Economically, socially and politically, women remain at the lowest strata of society in India. Women empowerment, equal rights to both men and women, equal share of property, etc., are some of the issues which we discuss every day, in life, newspaper and on television. But the reality which bites is that these issues are still "unresolved". The methodology for the research has been carried out on legal propositions by way of analysing the existing statutory provisions and cases by applying the reasoning power. The research involves analysis of case law, arranging, ordering and systematising legal propositions by rational deduction. The present research paper tries to analyse the property rights of Hindu women and highlight that how the position of Hindu daughter vis-à-vis her property rights has been ameliorated from Shastras to present era. It also points out some of the lacunas that still remain to be filled in order to achieve gender just property laws. It is concluded that it is time that India breaks free from the obsolete, patriarchal norms and give the woman her due. More gender sensitive property laws should be drafted, so that justice and equity may prevail over the archaic chauvinistic ideals. This will not only redeem the position of the Indian family structure in the eyes of the world but will also make it a more happy composition of contended individuals.

Keywords: Women, gender, justice, empowerment, succession

Status of women is a benchmark of social process and there is a widespread view among scholars that the best way to judge a nation's progress is to find out the status of women there, says Menon¹. Many writers have equated cultural levels with the types of treatment meted out to women and have found that there is a strong correlation between low status of woman and low cultural levels of the society concludes Majumdar². Asthana³ has stressed that since the origin of society, women have formed an integral part of the social structure. Their role in the various walks of life has contributed to the evolution of values which have counted for, what may be described, all round progress, emphasises Sengupta⁴. Hence, if we want to know the status of women in any society; we must study the complexity of roles which women perform in society

1. Menon, M.Indu. *Status of Muslim Women in India*. New Delhi: Uppal Publishing House; 1981

2. Majumdar, D.N. *Races and cultures of India*. Bombay: Calcutta, London(etc): Asia Publishing House;1961

3 Asthana, Pratima. *Women's Movement in India*. Vikas Pub. House Pvt. Ltd; 1974

4. Sengupta, Sankar. *Women in Indian Folklore*. Calcutta: India Publication; 1969.

in the socio economic, cultural, religious and political fields. Since the creation of human civilization there is division of work between men and women. Light and domestic works restricted to women where as hard works done by male counterpart. This is naturally due to men's physical strength that keeps women at a corner. Thus women restricted to the inside house where as men work outside. In this way women become under the physical as well as economic control of men. This is more or less the background of establishing the patriarchal society. Chakraborty⁵ in his book has stressed that through the development of this male dominated society female has become subservient to male and discriminations between them have become prominent. The reason for gender injustice can be attributed to unequal power equation in gender relations. Patriarchal society, considering women's household work as economically insignificant, male child preference in society, lack of legal awareness in women and so on aggravated the differential status to the disadvantage of women. Empowerment of women and their parity with men in all walks of life and spheres of activity be it political, economic, cultural or social is a *sine qua non* of gender justice. Justice does not distinguish between men and woman says Gour⁶. Neither the term 'gender justice' nor is struggle for it new. What has intensified in recent days is the awareness on gender justice. It is being increasingly realized that discrimination against women are to be handled with greater sensitivity and women as seekers of justice, to be treated with extra care. The present research paper tries to analyse the property rights of Hindu women and highlights that how the position of Hindu daughter *vis-à-vis* her property rights has been ameliorated from *Shastras* to present era. It further points out some of the lacunas that still remain to be filled in order to achieve gender just property laws. These laws will help to confer economic and legal empowerment upon Hindu women.

PROPERTY RIGHTS OF DAUGHTER UNDER HINDU LAW

D) Ancient Position: The *Vedic* period can be regarded as “*Swarna Yuga*” or golden age for the status and rights of women in general. The social or familial status of the daughter was fairly satisfactory in the *Rigvedic* period. Women had similar education as man; she took part in philosophic debates like man and with men, she practised penances like man. Prabhu⁷ stressed that this shows that man and woman were regarded as having equally important status in the social life of the early period. Ordinarily daughters did not have any right to hold, acquire or dispose of property. But the daughter living in her father's house throughout her life got a share of his property⁸. But she could not claim any share with her brothers for it is clearly laid down in the *Rigveda* that “a son born of the body does not transfer wealth to sister⁹”. Married daughters living with their husbands could inherit from their father only when they had no brother. The general opinion of Hindu society at that time was that sisters got no share in the patrimony if they had brothers. During the *Smriti* period, considerable change of popular feeling regarding the proprietary position of the woman was reflected and *Manu*, *Yajnavalkya*, *Brishpati*, *Narada* and other *smriti* writers admitted certain female heirs in the order of succession¹⁰.

5. Chakraborty, Kabita. 'Gender Justice and Hindu Succession Law', Nirmal Kanti Chakraborty and Shachi Chakraborty(ed.), in *Gender Justice* (81-86) R. Cambray & Co. Private Limited ;2006

6. Gour, H. S.. *Empowerment of Women in India*, New Delhi: Universal Law Publishing India Pvt. Ltd; 2007

7. Prabhu, Pandharinath.H. *Hindu Social Organisation*. Bombay: Popular Prakashan; 1979

8. *Rigveda* II, 17.

9. *Rigveda* III, 31-32.

10. Manu expressly admitted the widow, the daughter and the mother in the order of succession. Brishpati emphasized a daughter's right of succession. Narada did not recognize a widow's claim but accepted the right of the daughter. Vishnu mentioned the wife, daughter and mother as successors. Devala included the daughter, mother and wife as inheritors of property.

Property acquired by a woman by her own exertions was her *stridhana* according to the Bombay, Benaras and Dravida Schools quotes Desai¹¹ and daughters were given a right to succeed to it. The Privy Council, also through its decisions expressed that a daughter should be subject to limitations and restrictions of the same description as was applicable in the case of a Hindu widow in estate inherited from her husband¹². But an exception to this rule prevailed in the Presidency of Bombay, where the estate inherited by a daughter¹³ from her father or mother devolved on her absolutely and without any restrictions.

II. Legislations on Daughter's Property Rights

a) *The Hindu Law of Inheritance (Amendment) Act, 1929*: The Hindu Law of Inheritance (Amendment) Act, 1929 was the first legislation in the direction of extending daughter's property rights¹⁴. The Act was very limited in its scope and did not make any radical change in Hindu Law in favour of women. By this Act neither daughters nor widows were provided with the right of inheritance. The Act only emphasized that certain degrees of remoter male heirs should be postponed in favour of the nearer degrees of female heirs and nothing more.

b) *The Hindu Women's Right to Property Act, 1937*: The Hindu Women's Right to Property Act, 1937 was passed and a serious defect of the Act was that it affected the daughters says Gill¹⁵. The Hindu Law-givers expressly laid down that the maiden daughter's maintenance till her marriage, and her marriage expenses were to be paid out of her father's estate. By the Act of 1937 and its amendment, a predeceased son's widow was placed before the daughter in the order of succession; but she was not liable to pay any amount to anybody out of the estate which devolved on her. Consequently, the maiden daughter could not enforce her claim to maintenance or her marriage expenses from the predeceased son's widow¹⁶. Infact, there was no justification in placing predeceased son's widow and the widow of a predeceased son of the predeceased son before the maiden daughter. Any of these widows might turn the daughter out into the street, since her rights were not protected in the Act or its amendments¹⁷.

In post independent India it was evident that in order to eliminate inequality and to provide opportunities for the exercise of human rights it was necessary to promote education and economic interests of women. Rao¹⁸ explained that it became the objective of the State to protect women from exploitation and provide social justice.

11. Desai, S.T. (ed). *Mulla's Principles of Hindu Law*, Bombay: N.M.Tripathi ; 1994

12. *Chotay Lall v Chunno Lal* and others (1878) ILR 4 Cal 774 (P.C.). See also; *Mussumat Thakoore Dehyee v Rai Baluk Ram* (1866) 11 MIA 139; *Bhugwan Deen Doobey v Myan Bae* (1867) 11 MIA 487; *Sheo Shankar Lal v Debi Sahai* (1903) LR 30 IA 202 at 206; *Lal Sheo Pertab Bahadur Singh v Allahabad Bank*, (1903) LR 30 IA 202.

13. *Bhagirathi Bai v Kahnijirav* (1887) ILR 11, Bom 285 (F.B).

14. The Indian Council Act, 1929, Section 2. provides A son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified be entitled to rank in the order of succession next after a father's father and before a father's brother, provided that a sister's son shall not be included, if adopted after the sister's death.

15. Gill, Kulwant. *Hindu Women's Right to Property in India*. New Delhi: Deep & Deep Publications; 1986

16. The Indian Council Act no. XI of 1938.

17. Calcutta Weekly Notes, XCIX.

18. Rao Mamta. '*Law relating to Women and Children*', Lucknow: Eastern Book Company; 2008.

c) The Hindu Succession Act, 1956: In pursuance of the constitutional directive to the State¹⁹, The Hindu Succession Act, 1956 was enacted to confer better proprietary rights upon women in general and consequently upon daughters. The Act did not merely codify the existing Hindu Law of Succession but in reformatory spirit made fundamental changes explains Jain²⁰ in his article and it may be justly called the Hindu female's magnacarta. Some of the reforms introduced by the Hindu Succession Act, 1956 regarding the property rights of daughters are as follows

- i) The Act introduced the principle of concurrent succession under which the heirs of different categories could succeed to the property of the deceased at the same time. Under traditional Hindu Law, the son took the whole of the property and excluded all others heirs, but under the said Act, the son, the daughter, the widow, and other could inherit the property of the deceased concurrently and the father got excluded as he belonged to Class II category and heirs says Jain²¹ in his book.
- ii) Equality of sexes was the cardinal principle underlying the Act. It removed the distinction between the son and the daughter in the matter of their right to inherit the property, the share to be allotted to them and the nature of property they could obtain. Thus under the Act -
 - a) The daughter took simultaneously with the son, widow and other heirs specified in Class I of the Schedule²².
 - b) The daughter could inherit the interest of her father in the *Mitakshara coparcenary* property²³.
 - c) The property inherited by the daughter became her absolute property²⁴.
 - d) The daughter's right over the dwelling house of the father was subject to Section 23 of the Act.
- iii) .Many more females were introduced to the order of succession. Apart from the mother, widow and daughter, many females²⁵ were made heirs of Class I in the Schedule and these females could inherit simultaneously along with other Class I relatives of the deceased²⁶.
- iv) Similarly twelve females²⁷ were introduced as heirs in Class II of the Schedule. These female heirs inherited the property of the deceased only in the absence of any heir of the Class I in the Schedule. These heirs were further classified under nine entries. The heir coming into an earlier entry excluded all heirs in the latter entries. The heirs coming into one entry took simultaneously between them and took per capita²⁸.

19. The Constitution of India; Article 14, Article 15.

20. Jain, Parkash Chand. 'Women's Property Rights under Traditional Hindu Law and The Hindu Succession Act, 1956: Some observations', *Journal of Indian Law Institute*, 2003 vol 45 no's 3 & 4: (509-536).

21. Jain, M.P. *Outlines of Indian Legal History*. Nagpur: Wadhwa & Company Law Publishers; 2001

22. *The Hindu Succession Act, 1956*, Section 8 deals with general rules of succession of males dying intestate, read with Section 9&10.

23. *The Hindu Succession Act, 1956*, Section 6.

24. *Ibid*, Section 14.

25. They were widow of a predeceased son, daughter of a predeceased son, widow of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son, daughter of a predeceased daughter.

26. *Id*. Section 9

27. They were son's daughter's daughter, sister, daughter's son's daughter, daughter's daughter's daughter, brother's daughter, sister's daughter, father's mother, father's widow, brother's widow, father's sister, mother's mother, mother's sister.

28. *Id*. Section 9 and 11

- v) In the definition of agnates²⁹ of the deceased, all females who were related to him by blood or adoption wholly through males were also included and thereby made heirs as agnates of the deceased. These females' agnates could inherit only in the absence of any heirs of Class I and II in the schedule.
- vi) Apart from the female heirs included in Class I and II, females who were related by blood or adoption to the deceased not wholly through males, that is, through one or more females were also entitled to succeed as female cognates. They succeeded it only in the absence of the heirs of Class I, Class II and agnates. When there were more agnates than one, they inherited in accordance with the rules of preference³⁰.

In addition to a share in the self acquired property of the father, a daughter could inherit the interest of her father in the *Mitakshara coparcenary* property. The provision was laid down in Section 6 of the Act which indicated that when a male Hindu dies having at the time of his death an interest in *Mitakshara coparcenary* property and is survived by a female relative specified in Class I of the schedule of the Act or a male relative specified in that class who claims through such female relative, the interest of the deceased in the *Mitakshara coparcenary* property shall devolve by testamentary or intestate succession and not by survivorship³¹.

Some of the basic principles which contribute to gender inequality in the Hindu law of succession were left untouched by the HSA, 1956. The following were the demerits of the Hindu Succession Act, 1956.

i) **The *Mitakshara coparcenary*** was not abolished by the Hindu Succession Act, 1956; it has been retained under Section 6 of the Act which provides that the interest in the *coparcenary* property shall devolve by survivorship. However the section also provides that if the deceased left him surviving a female relative or a male relative who claims through such a female relative, the interest of the deceased in the *Mitakshara coparcenary* property shall devolve by testamentary or intestate succession and not by survivorship. Moreover another area where inequality had been allowed to prevail by the HSA was the inability of women to become *Kartas* of the *coparcenary*.

ii) Separate schemes for male and female intestates

The Hindu Succession Act, 1956 also retained two separate schemes of succession for men's and women's property. Section 15³² of the Act reflects the patriarchal assumption of a dominant male ideology. After her own children and husband who are Class I heirs, the property of a female Hindu dying intestate devolves not on her own heirs but upon the heirs of her husband. Thus, it is not her father or brother or sister or other relatives specified in Class II who would get the property but her husband's father, brothers, sisters, nephews, nieces and other relatives. Even though mother is a Class I heir under the Schedule, a daughter's property goes to the mother only in the absence of her (daughter's) children, husband and heirs of the husband. Thus, whilst in the case of the property of a male dying intestate, his mother is entitled to an equal share along with his wife and children as Class I heirs, the position is completely different and unfair in the case of female's property; her father and mother are relegated to a lower position as they come only after the husband's heirs. Besides, as between the heirs of the father and the mother, the father's heirs are above the mother's heirs.

29. *Id.* Section 3(1), read with section 8.

30. *Id.* Section 3(1), read with Section 8, 9, 10, 11 & 12.

31. *The Hindu Succession Act, 1956*, Section 6.

32. *The Hindu Succession Act, 1956*, Section 15 of deals with general rules of succession in case of Hindu female dying intestate

Another point of gender bias is noticed in clause (2), of Section 15, viz, property inherited by a female Hindu from her father or mother devolves, in the absence of her children, upon the heirs of her father. Thus even when a property is inherited by a female from her mother, the same shall devolve after her death not on the heirs of the mother but on the heirs of the father. This again is a discriminatory provision and may give rise to anomalous situation.

iii) Preference of Agnates over Cognates

Section 8 of the Hindu Succession Act, 1956 gives preference to agnates³³ over cognates³⁴ in matters of succession of a Hindu male dying intestate. A father's brother's daughter is an agnate but a father's sister's son is a cognate. The consequence of this will be that an agnate will be able to succeed to the intestate property no matter how remotely connected he/she is and no matter how closely connected the cognate is.

iv) Discrimination in respect of dwelling house

One more very glaring example of gender-based discrimination was Section 23 of the Act³⁵. As to the right of the daughter, even to reside in the dwelling house, was available only if she was unmarried, separated from her husband or widowed. It appeared so strange that a female who was legally the owner of a part of the property was not only debarred from asking her share unless the male heirs decide to divide their own shares, but also a right to reside there in. Thus, even if a married daughter was living with torture or in cruelty in her husband's house but at the same time, for whatever reasons-social, economic, etc. she did not want to legally break the marriage, she had nowhere else to go except to put up with the unhappy situation in her husband's house highlights Kusum³⁶ in her article. Although the 'Act' ostensibly proclaimed to improve the position and social status of Hindu females, yet a keen observer would easily see that whatever was incorporated in it was only an eyewash and the old wine put into the new bottle.

To overcome the lacuna and in order to make gender equality, the States of *Andhra Pradesh, Karnataka, Maharashtra* and *Tamil Nadu* amended Section 6 of Hindu Succession Act in 1986, 1994, 1994 and 1989 respectively declaring daughters to be a coparcener in a joint *Hindu* family. Besides with the enactment of *Kerala Joint Hindu Family System (Abolition) Act* in 1975, this State abolished fully the right to property by birth by males and put an end to the Joint Hindu Family system. Likewise all the members became tenants-in-common of the joint family property and became full owner of their share. The states of *Andhra Pradesh, Karnataka,*

33. *The Hindu Succession Act, 1956*, Section 3 (1)(a) states that one person is said to be an 'agnate' of another if the two are related by blood or adoption wholly through males.

34. *Ibid* Section 3 (1) (c) states that one person is said to be 'cognate' of another if the two are related by blood or adoption but not wholly through males.

35. *Ibid*, Section 23 of the Act states that "Where a Hindu intestate has left surviving him or her both male and female heirs specified in class one of the schedule and his or her property includes a dwelling house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares there in; but the female heir shall be entitled to a right of residence there in. Provided that where such female heir is a daughter she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow".

36. Kusum, 'Towards Gender-Just Property Laws', *Journal of Indian Law Institute*, 2005 vol. 47: (95-103).

Maharashtra and *Tamil Nadu* removed the discrimination inherent in *Mitakshara coparcenary*. The expression of the provisions in Hindu Succession Act are almost similar with each other. Only difference poses is that *Karnatka* in respect of property rights of women inserts sections 6A, 6B and 6C and the states of *Andhra Pradesh*, *Maharashtra* and *Tamil Nadu* insert sections 29A, 29B and 29C in the Hindu Succession Act of 1956, the Central Act. Another clarity in the provision is that the daughter can also dispose of the property in the form of will or other testamentary disposition because the property shall be held by her with the incident of *coparcenary* ownership. Moreover, the daughter can have double property rights. Firstly she became *coparcenary* property right owner in her natal joint family and secondly after her marriage she shall also be a member of her marital joint family. Hence it can be said that these four States³⁷ have altered the system of *Mitakshara* joint family *coparcenary*. The Law Commission, for recommendations³⁸ on the removal of anomalies, ambiguities and of property rights of Hindu Women under the Hindu Succession Act, 1956, took up the subject *suo motto* in view of the pervasive discrimination prevalent against women in relation to laws governing the inheritance *vis-à-vis* succession of property amongst members of a Joint Hindu Family. The Commission worked out the provisions of women's right to property on the ground of social justice³⁹ in one aspect and the amendments made by some states like *Andhra Pradesh*, *Karnataka*, *Maharashtra* and *Tamil Nadu* on the other. The aim of the Commission was to recommend for the equal distribution of ancestral property among both male and female heirs. Thus the Law Commission's 174th Report contributed to overcoming the oppression of women by creating a legal order for women on equal footing. Interestingly the Law Commission drafted the Hindu Succession (Amendment) Bill, 2000 so that recommendation made by it are implemented by the government and this Bill was embodied in the Hindu Succession (Amendment) Bill of 2004 which became the Hindu Succession (Amendment) Act, 2005 passed by both the Houses of Parliament in August, 2005, assented on 5th September, 2005 and came into force from 9th September, 2005.

d) The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act, 2005 is an attempt to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters under Section 6⁴⁰.

The daughter of a coparcener, by birth becomes a *coparcener* in her own right in the same manner as the son.

The daughter has the same rights in the coparcenary property as she would have had if she had been a son.

The daughter shall be subject to the same liability in the said coparcenary as that of a son, and any reference to a *Hindu Mitakshara* coparcener shall be deemed to include a reference to a daughter of a coparcener.

37. See for details; *The Hindu Succession (Andhra Pradesh Amendment) Act, 1986*; *The Hindu Succession (Karnataka Amendment) Act, 1994*; *The Hindu Succession (Maharashtra Amendment) Act, 1994*; *The Hindu Succession (Tamil Nadu Amendment) Act, 1989*.

38. "Property Rights of Women: Proposed Reforms under the Hindu Law", under the Chairmanship of B. P. Jeevan Reddy vide D.O.No. 6(3) (59) / 99-LC (LS), dated 5th May, 2000 ; Report No. 174.

39. Equal partner in economic and social sphere

40. Substituted by Act 39 of 2005, Section 3.

The daughter is allotted the same share as is allotted to a son. The share of a pre-deceased son or a predeceased daughter shall be allotted to the surviving child of such pre-deceased son or pre -deceased daughter.

The share of the pre-deceased child of a pre-deceased son or a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

But this provision shall not apply to daughters married before the commencement of the Hindu Succession (Amendment) Act, 2005. However the above provisions shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of property which had taken place before 20th of December, 2004⁴¹. However, the property to which a daughter becomes entitled to by virtue of the above provision shall be held by her with the incidents of coparcenary ownership and shall be regarded, as property capable of being disposed of by will and other testamentary disposition⁴². It is also provided that where a Hindu dies after the commencement of the amendment Act, his interest in the property of a joint Hindu family governed by the *Mitakshara* law, shall devolve by testamentary or intestate succession under the Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place⁴³. In *Pravat Chandra Patnaik v Sarat Chandra Patnaik*⁴⁴ it was held that daughter whenever born to be treated as a coparcener from the year 2005. It cannot be said that daughters who are born only after 2005 will be treated as coparceners. The Amendment Act is prospective in as much as partition prior to amendment cannot be reopened. In *Smt. Bagirathi & Ors V. S. Manivanan & Anr*⁴⁵ it was held that even though the intention of amended provision is to confer better rights on the daughters but it cannot be stressed to the extent of holding that succession which had opened prior to coming into force of the amended Act are also required to be reopened. Section 6 amended by The Hindu Succession (Amendment) Act, 2005 cannot be given retrospective effect. The Amending Act also added⁴⁶ in the schedule of the Hindu Succession Act, 1956, new heirs viz. son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son.

The Amending Act omitted Section 23 of the Hindu Succession Act, 1956 which denied a woman the right to seek partition of an inherited 'dwelling' unit or house if other male heirs are residing in it and further restricts her right to reside in the inherited residence unless she is widowed, deserted or separated from her husband. Section 24 of the Hindu Succession Act, 1956 has also been omitted and so now remarriage of a widow should not preclude her from claiming or inheriting the share in the property of her late husband.

Challenges and evolving judicial approach

Notwithstanding the transformative effect of the Hindu Succession (Amendment) Act, 2005, the realization of gender justice in matters of inheritance continues to face significant legal and societal challenges. While the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* (2020) convincingly recognized daughters as coparceners by birth with rights equal to those of sons, the Court has, in subsequent decisions, continued to strengthen the jurisprudence relating to women's property rights. In *Arunachala Gounder (Dead) by LRs v. Ponnusamy* (2022), the Supreme Court held that a daughter is eligible to inherit the self-acquired property of her father dying intestate, thereby rejecting the traditional preference for distant male agnates and reaffirming the constitutional mandate of equality. More recently, in **2025**, the Supreme Court clarified that the preferential right conferred upon Class I heirs under **Section 22 of the Hindu**

Succession Act extends to inherited agricultural land as well, thereby reinforcing the inheritance rights of daughters in a sector where gender discrepancy has historically been the most pronounced. The Court has also been examining issues relating to the inheritance rights of tribal women, reflecting an evolving constitutional address on extending gender equality to communities that remain outside the scope of the Hindu Succession Act. Simultaneously, judicial pronouncements have reiterated the distinction between **ancestral property and self-acquired property**, emphasizing that property obtained through a gift, will, or certain family arrangements does not automatically become ancestral merely because it is inherited, and therefore children, including daughters, do not acquire a bequest in such property under Mitakshara law. Nevertheless, the practical enforcement of these rights continues to be hindered by patriarchal social norms, lack of legal awareness, pressure on daughters to relinquish their lawful shares, delays in mutation of revenue records, and protracted civil litigation. Another area attracting increasing judicial and abstract attention is **Section 15 of the Hindu Succession Act**, governing the devolution of a Hindu woman's property. The provision has been criticized for retaining patriarchal assumptions by, in certain circumstances, preferring the heirs of the husband over the woman's natal family. Consequently, there have been growing calls for legislative reform to align Section 15 with the constitutional principles of substantive equality embodied in Articles 14 and 15. As Dr. **B. R. Ambedkar** aptly observed, *"I measure the progress of a community by the degree of progress which women have achieved."* Echoing this constitutional vision, Justice **Arun Mishra** in *Vineeta Sharma* remarked that *"the daughter remains a loving daughter throughout life and is by birth a coparcener,"* while Justice **D. Y. Chandrachud** has consistently emphasized that *"the Constitution is a transformative document."* These developments validate that although Indian succession law has undergone a remarkable transformation from proper equality to substantive equality, the true objective of gender justice can be realized only when statutory rights are excellently translated into social reality through legal responsiveness, institutional restructurings, and a fundamental change in societal defiance.

Conclusion

Thus, it is evident that Hindu Law of succession has been undergoing a continuous process of evolution and it is in the process of being a perfectly gender neutral law. It is clear that women have been a victim of history as far as rights of inheritance are concerned. Women were deprived of property rights for a multitude of reasons. There has been a popular, albeit unfounded conception that empowered women will lead to the breakup of the family. Moreover, since the system governing the Indian family system is essentially patriarchal in character, the question of property rights of women had never been favourably considered. In course of this paper, it has been clearly established that there has been a lot of changes taking place in the law relating to women's property. Ever since the British turned the wheel of change in the realm of women's right to property, the reform process may be said to have been started. The history of women friendly property legislations has had a chequered past, and is continuing till date. These various acts passed at different points of time have, without an iota of doubt, improved the conditions of the lot of women. However, over reliance on legislations to determine the status of the class for whom they are meant may lead to wrong or at least defective conclusions.

41. *The Hindu Succession Amendment Act, 2005*(Proviso to Section 6).

42. *Ibid*, Section 6(2).

43. *Ibid*, Section 6(3).

44. (2008) A.I.R. Ori. (D.B.) 133.

45. (2008) A.I.R. Mad. 250.

46. Added by Act 39 of 2005, Section 7(w.e.f.9-9-2005)

Conclusion

Thus, it is evident that Hindu Law of succession has been undergoing a continuous process of evolution and it is in the process of being a perfectly gender neutral law. It is clear that women have been a victim of history as far as rights of inheritance are concerned. Women were deprived of property rights for a multitude of reasons. There has been a popular, albeit unfounded conception that empowered women will lead to the breakup of the family. Moreover, since the system governing the Indian family system is essentially patriarchal in character, the question of property rights of women had never been favourably considered. In course of this paper, it has been clearly established that there has been a lot of changes taking place in the law relating to women's property. Ever since the British turned the wheel of change in the realm of women's right to property, the reform process may be said to have been started. The history of women friendly property legislations has had a chequered past, and is continuing till date. These various acts passed at different points of time have, without an iota of doubt, improved the conditions of the lot of women. However, over reliance on legislations to determine the status of the class for whom they are meant may lead to wrong or at least defective conclusions. For example, legislation must be judged, not by the bare provision of the statute, but by the existing socio-economic conditions under which the law has to operate.

In a male dominated society, even if the woman is granted a plethora of rights, she may be forced to relinquish them in the interests of her male relatives. A prima facie view of the society, whether rural or urban will testify to this effect. Although this waiver seems to be voluntary, and a reflection of her altruism, it is not truly so. It is in fact a result of the gender socialization that creates a sense of feeling among the women that it is her sacred duty to sacrifice herself for the interests of the family. Also there are a number of illustrations which show that the women are coerced or defrauded by her male relatives to part with her rights. Another issue which has been a matter of great debate is whether granting of property or other economic rights to women may lead to the destabilising of the family. In today's time, when the women's right to property are relatively restricted, the formal divorce rate in India is considerably lower than in the west. One may jump to the conclusion that denial of property rights to women is having a beneficial effect on the stability and tranquillity of the family. However divorce rate is not the only measurement to judge the level of stability in the family. In India, although the ratio of divorced women is far lesser than in the West, the rate of desertion, polygamy and informal separation is much higher. Thus behind the façade of family stability, there is a big volume of male induced instability. Hence, the argument that enhanced rights to the women will break the secured family structure in India is untenable. The myth of the great Indian joint family cannot be used to perpetuate inequalities against women, by denying what is rightfully hers.

Moreover there are reasons to believe that granting of property rights to women, rather than destabilising the family, will in fact strengthen it. Since the wife will bring in more income or property, she would be perceived as a more valuable member of the family and the husband will have more incentive to stay in the marriage, thus bringing down the rate of desertions. Since the woman's worth will be recognised, domestic violence will decrease and hence female induced destabilizations will become rarer. At the same time it cannot be suggested that women's property rights may not have any adverse impact on the stability of the family. Possible fallout may be that her tolerance level may be diminished. She may not willingly suffer atrocities at the hands of the husband without protest, and may be more open to walk out of marriage as compared to a poor and property less wife. Although this may seem to be a negative phenomenon, it is submitted that it is not in fact so. It is always better to have a small and happy family rather than a big, but forever quarrelling family of a number of unwilling

members who have been subjugated to stay in the family in the absence of any alternatives. Hence it is submitted that granting property rights to women will not go against the ideal of the Indian joint family.

The amending Act of 2005 is a total commitment for the women empowerment and protection of women's right to property. This amending Act in a patrilineal system, like *Mitakshara* school of Hindu law has opened the door for the daughters to have the birth right in the family property like the son. But the changes are not comprehensive and much needs to be done yet. For instance, the amendment, making daughter a coparcener in joint family, is applicable only to the women who are not married at the time of commencement of the Act. This is patently unjust. Further, making daughters coparceners will decrease the shares of other Class I female heirs such as deceased's widow, mother since the coparcenary share of the deceased male from whom they inherit will decline. Section 30 of the Act allows any Hindu to dispose of his property including his share in the joint family property by will. As has been pointed out by the women organizations and activist groups that this section can be used to disinherit a daughter from her share, if a father gives away whole of his property by will in favour of the son. Therefore, a limitation should be placed on such unrestricted testamentary power.

As a conclusion to this paper, it is contended that it is time that India breaks free from the obsolete, patriarchal norms and give the woman her due. More gender sensitive property laws should be drafted, so that justice and equity may prevail over the archaic chauvinistic ideals. This will not only redeem the position of the Indian family structure in the eyes of the world but will also make it a happier composition of contended individuals.

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