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# HINDU SUCCESSION LAWS: FROM GENDER BIASNESS TO SOCIAL EMPOWERMENT

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## ABSTRACT

Property rights have long served as a foundation of social organization and economic progress throughout human history. This article presents a comprehensive examination of the evolution of the right to property in India, tracing its development across various historical periods, socio-political contexts, and legislative transformations. Beginning with the pre-colonial era, the discussion explores the intricate framework of ancient Indian legal systems, where property ownership occupied a central place within the social hierarchy and was deeply influenced by prevailing cultural and religious values.

The advent of colonial rule brought a significant transformation to this framework, as British authorities introduced new legal concepts and property regulations aimed at reshaping traditional property relations in accordance with their administrative and economic interests.

In the post-independence period, the nature and scope of property rights became a subject of intense constitutional debate and policy deliberation. Initially recognized as a fundamental right under Articles 19(1)(f) and 31 of the Constitution of India, the right to property underwent a major change with the 44th Constitutional Amendment of 1978, which reclassified it as a legal right. This shift empowered the State to implement land reforms and promote redistributive justice in pursuit of social equity.

**Keywords:** property Rights, succession laws, economic development, women's rights, constitutional rights.

## INTRODUCTION

*Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself – John Locke<sup>1</sup>*

Property rights are the foundation for a Country's Economic stability. It plays a crucial role in ensuring the social as well as economic stability of the citizens, as it empowers the individuals' security, dignity, and ultimately, they give their contribution towards the country's economic framework.

Historically, property rights were deeply rooted in patriarchal norms. After Independence, India aimed for the implementation of land reforms in order to abolish the Zamindari system to ensure social equity. And, originally, the Right to Property was enshrined as a Fundamental right in the Constitution, so Zamindars and corporations were challenging these land reforms in court to enforce their Fundamental Right. This created a tussle between the Judiciary (who were protecting the property Owners) and the Parliament (who wanted to promote equality). Then Parliament brought the 44th Constitutional Amendment of 1978, which redefined the right to property from a fundamental to a constitutional right, allowing the State greater freedom to implement land reforms and promote social justice. This shift marked India's transition from a property-centric framework to one focused on equitable distribution and welfare.

Earlier, during the ancient and Vedic period, Women had the same status as men. They had the right to choose their husband through *Swayambar*, they were attending the assemblies, and they were also educated. But the society was discriminatory towards women when it came to Inheritance. And, as a result, the property was primarily inherited by the son.<sup>2</sup>

Over the period, the society transformed, and women were realizing the importance of their rights in property. These transformations gave rise to disputes in society. To set aside the already established boundaries of male domination, the law came into existence. The law acts as an instrument that brings change in society by resolving disputes and providing justice to

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<sup>1</sup> JOHN LOCKE, SECOND TREATISE OF GOVERNEMENT § 27 (C.B. Macpherson ed., Hackett Publ'g Co. 1980) (1690).

<sup>2</sup> Akanksha Baibhav, Gender Equality and Right of Succession, Manupatra (May 23, 2023), <https://articles.manupatra.com/>.

those who are unfairly treated by society.

Social change and law are interlinked. The law establishes the new norms and values that abolish the outdated and customary (discriminatory) practices. The Supreme Court has brought changes in the social behavior by progressively interpreting the law in the landmark cases such as *Sabrimala Case*<sup>3</sup>, *Vishaka v. State of Rajasthan*<sup>4</sup>, *Shah Bano Begum v. Mohd. Ahmed Khan*<sup>5</sup>.

## EVOLUTION OF INDIAN SUCCESSION LAWS

Earlier, the Joint Hindu family concept was the core structure of Indian families. With diverse dialects, different parts of the country followed different succession laws based on the customs, equity, and beliefs of the time. With the arrival of the Britishers, beliefs among Indian families changed. English inheritance laws were more oriented toward individual rights, while Indian laws were based on patrilineal inheritance, in which property distribution was purely dependent on the will of the parents.

Codification took place in the year 1865, when obscurity was observed regarding the succession laws among communities other than the Hindus and the Muslims. They were governed as per their own succession laws. The obscurity among the other communities was also marked by Sir Henry Maine during the introduction of a bill which eventually led to the enactment of the Succession law of 1865. The draft of the 1865 act was submitted by the Third Law commission, and it dealt with both the intestate and testamentary succession, but the scope of this act exempted the Hindus and the Muslims.

But certain amendments took place, which forced the British Parliament to consolidate the succession laws, and finally, the Indian Succession Act, 1925, was enacted. And it included the Hindus and the Muslims also. The act included both the intestate and the testamentary succession laws. But the rules of the intestate succession are based on the personal laws. For Hindus, Jains, Buddhists, and Sikhs, the rules of the Hindu Succession Act will be applied, and for Muslims, Sharia laws will be applicable.<sup>6</sup>

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<sup>3</sup> Indian Young Lawyers Association v. The State of Kerala ,( 2019) 11 S.C.C. 1 (India).

<sup>4</sup> Vishaka & ors. v. state of Rajasthan & ors. ,(1997) 6 S.C.C. 241 (India).

<sup>5</sup> Shah Bano Begum v. Mohd. Ahmed Khan, (1985) 2 S.C.C. 556 (India).

<sup>6</sup> Justice Arindam Mukherjee, *SESSION 1: Intricacies in Intestate and Testamentary Succession under Personal Laws and Succession Act, 1925* , SIKKIM JUDICIAL ACADEMY, <https://sikkimjudicialacademy.nic.in/>

## **EVOLUTION OF HINDU SUCCESSION LAWS<sup>7</sup>**

Earlier, the Hindu succession laws were based on two major schools-

1. Mitakshara School – it was written by Vijnaneshwara, and originated from the Yagnavalkya Smriti which is also a source of Hindu law. The school was applicable in most parts of India, except Bengal and Assam. Under this, the ancestral property was passed to the surviving coparceners.
2. Dayabhaga School – written by Jimutvahana, the school was applicable in Bengal and Assam.

This diverse system was creating confusion regarding the laws, following which the Hindu Succession Act, 1956, was enacted.

### **HINDU SUCCESSION ACT, 1956**

The act extends to the whole of India. It was enacted to consolidate and amend the inheritance among the Hindus. This act is a successful attempt by the makers towards clarifying the position regarding joint family and ancestral property.

Though the Indian Succession Act provides the general basis for inheritance, the Hindu Succession Act lays down the specific rules regarding the distribution of property and the eligibility criteria for members to succeed to property.

### **GENDER BIASNESS TO SOCIAL EMPOWERMENT**

Originally, the Hindu Succession Act reflected a male-dominated approach, but following several judicial pronouncements, the Act was amended in 2005 to remove gender-based discrimination.

Succession laws are based on coparcenary system (under Mitakshara School), where the property is inherited by the heirs. Earlier, the coparceners were the male members, but after the above stated amendment, now females are also coparceners (getting their right by birth to

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<https://sikkimjudicialacademy.nic.in/sites/default/files/PPTs/Session%201.pdf> .

<sup>7</sup> Aishwarya Agarwal, *Hindu Succession Act, 1956*, LAW BHOOMI , <https://lawbhoomi.com/> .

inherit the property).

## THE AMENDMENT OF 2005

The Hindu Succession Act, 1956, was passed in adherence with Articles 14 and 15 of the Indian Constitution. But the act continued with many features of the traditional Mitakshara coparcenary system.

Originally, it was considered that only male members were coparceners by birth, and that daughters were excluded from the distribution of ancestral property. This gender-biased system was conflating the principles of equality and social justice. In a Joint Hindu family, women had only maintenance rights. They were not allowed to use their property in order to dominate men over them. Since the son is a coparcener, he is given the birthright over the family property. And this is how the male domination legacy continued.<sup>8</sup> This was stated under section 6 of the act which talks about the Devolution of interest in coparcenary property.

Originally, section 6 of the Hindu Succession Act, 1956

### **<sup>9</sup>Section 6 – Devolution of interest in coparcenary property”**

Under the original Section 6 of the Hindu Succession Act, 1956:

1. When a male Hindu, who was a member of a Mitakshara coparcenary, died after the commencement of the Act, his interest in the coparcenary property devolved by survivorship upon the surviving members of the coparcenary.
2. Exception – Notional Partition: If the deceased left behind any female heirs listed in Class I of the Schedule (such as widow, daughter, mother), or a male relative claiming through such female (e.g., son of a predeceased daughter), his interest did not pass by survivorship. Instead, it devolved by intestate succession under the Act as if a notional partition had occurred immediately before his death.
3. The notional partition meant that the deceased's share was first calculated as if he were

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<sup>8</sup> Ayush Bagrodia , *Hindu Succession Amendment Act, 2005*, Ipleaders, October 1 ,2022 , <https://blog.ipleaders.in/critical-analysis-hindu-succession-amendment-act-2005/> .

<sup>9</sup> The Hindu Succession Act, 1956 , No. 38, Acts of Parliament, 1956 (India) .

alive at partition, and that share then devolved upon his heirs.

States like Tamil Nadu, Andhra Pradesh, Karnataka, and Maharashtra enacted state-level reforms, Granting Daughters coparcenary rights. These reforms were showing a natural consensus that daughters should be treated equally in matters of inheritance.

### **State of Maharashtra v. Narayan Rao Sham Rao Deshmukh (1985)<sup>10</sup>**

In this case, the 1/3rd share of the deceased in a coparcenary property was divided among his son, his wife, and his mother, but the three of them were living jointly. The family held 304.5 acres of agricultural land in the state of Maharashtra. After the enactment of the Maharashtra Agricultural Land (Ceiling on holdings ) Act, 1961, the family claimed separate units. But the Sub-divisional officer considered them as a single unit and declared 222.2 acres as surplus land. The High Court declared them as a single unit. Finally, the appeal was filed in the Supreme Court and raised the question of whether a female heir's fixed share via notional partition after the death of a male member can take away her joint family membership and entitle her to a separate unit under the ceiling act? The apex court gave its verdict that the female heir's fixed right through notional partition (U/S 6 of the Hindu Succession Act,1956) does not terminate her as a member of the joint family except her own free will. The family will remain as a single unit for legal purposes, as they are not separated through legal action.

### **Thota Sesharathamma v. Thota Manikyamma (1991)<sup>11</sup>**

In this case, the defendant( a Hindu widow) was granted a life estate in her late husband's property through a will executed in the year 1932, and later the property belonged to the plaintiff (foster child of the defendant and her late husband). However, in the year 1969, on the basis of section 14(1) of the Hindu Succession Act,1956 (where a female's limited interest can be converted into her absolute interest), the defendant executed a will to bequeath her property to her nephew. Plaintiff challenged her right to execute a new will based on her limited interest in the property. The apex court held that a woman's maintenance right is her pre-existing right. It was not the first time she had received the property through will; she had the maintenance support, so her limited estate in the will got automatically converted into an

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<sup>10</sup> State of Maharashtra and others v. Narayan Rao Sham Rao Deshmukh , A.I.R. 1985 SC 716 (India).

<sup>11</sup> Thota Sesharathamma v. Thota Manikyamma, (1991) 4 S.C.C. 312 (India).

absolute right.

### **Madhu Kishwar v. State of Bihar (1996)<sup>12</sup>**

In this case, the Adivasi customary laws – the Chhota Nagpur tenancy act, 1908, denied the ST women rights of inheritance in the state of Bihar. But the Supreme Court criticized this custom, and it was held that under Article 21 of the Indian Constitution, all women have the right to livelihood, and hence the provisions of the Chhota Nagpur Tenancy Act, 1908, were discriminatory. Simultaneously, the Law Commission in its 174<sup>th</sup> report (2000) recommended changes under section 6 of the act. The commission urged the Central Government to make changes in the act and to remove the gender biasness in Hindu Inheritance laws.

In the year 2005, Parliament came with the Hindu Succession (Amendment) Act, 2005, and made some changes under Section 6 of the Hindu Succession Act, 1956.

### **Section 6 of the Hindu Succession Act, 1956 (After Amendment)**

- A daughter of a coparcener becomes a coparcener by birth, just like a son.
- She has the same rights and liabilities in the coparcenary property as a son.
- She can demand partition and dispose of her share by will.
- When a Hindu dies after the amendment, his interest in coparcenary property devolves by succession (not survivorship).
- The share of the deceased is calculated as if a notional partition occurred immediately before his death.
- A daughter's marriage does not affect her coparcenary rights.
- Any partition validly done before this date remains undisturbed.

The Supreme Court then tried to strengthen the operations of newly amended section in pending cases.

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<sup>12</sup> Madhu Kishwar v. State of Bihar, A.I.R. 1996, SC 1864 (India)

**Prakash v. Phulavati (2015)<sup>13</sup>**

In this case, the respondent, who was the original plaintiff, claimed her 1/7th share in a joint family property and 1/28th share in other properties in the year 1992. She asserted that she had the right to acquire after her father died in 1988. But the appellants contended that she only had the right to acquire her father's self-acquired property and not as a coparcener. But after the Hindu Succession (Amendment) Act, 2005, the respondent again amended her plaint and claimed her right as a coparcener. The Karnataka High Court ruled that, under S.6(5) of the 2005 act, though the partitions which had taken place before 20th December, 2004, through registered deeds are excluded, still the plaintiff is entitled to the benefit of the 2005 amendment, as the suit for the partition was still pending. As the partition which took place was a notional partition and not a registered one, the plaintiff is entitled to an equal share. But later, the decision was struck down by the Supreme Court, stating that the amendment is prospective and for a daughter to claim as a coparcener, the father had to be alive on September 9, 2005 (date of enforcement of the amendment).

**Danamma v. Amar (2018)<sup>14</sup>**

In this case, a propositus of a joint Hindu family had two daughters and two sons. Propositus died in the year 2001, leaving behind his widow, two daughters, and two sons. A suit was filed by one of the son's sons stating that the widow and her two sons were in joint possession of the deceased's property. The case set up by him stated that the other 2 daughters of the deceased would not be treated as coparceners as they were born before the enactment of the Hindu Succession Act, 1956, and when they got married, their share had already been given to them as gold and money; hence, it was relinquished. Appellants (two daughters of the deceased) contended that they are entitled to their share as their father died after the enforcement of the act. Aligning with the previous decision in Prakash v. Phulavati, the trial court and the High Court rejected the appellant's contentions. But, the Supreme Court held that even though the father died before the amendment act, the daughters are entitled to their share, as, after the amendment act was enacted, they are treated as the coparceners. The apex court also upheld its decision that the amendment has a prospective effect and not a retrospective effect.

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<sup>13</sup> Prakash v. Phulavati, A.I.R. 2016 SC 729 (India).

<sup>14</sup> Danamma v. Amar, A.I.R. 2018 SC 721 (India).

**Mangammal v. T.B. Raju (2018)<sup>15</sup>**

The Supreme Court interpreted S.29 A of the Hindu Succession (Tamil Nadu amendment ) Act, 1989, where the daughters who were unmarried at the time of the commencement of the said act were restricted from exercising the coparcenary rights. To exercise the coparcenary rights, either the father had to be alive at the time of the amendment or the daughters had to be unmarried at the time of the amendment. Based on this section, the apex court rejected the appeal seeking partition U/S 29 A of the said act.

Phulavati ruled that, for a daughter to be a coparcener, father had to be alive before the amendment took place. Whereas, Danamma ruled that, daughters can exercise their coparcenary rights even though the father died before the amendment of 2006. This confusion was cleared by the supreme Court in the case of Vineeta Sharma v. Rakesh Sharma (2020).

**Vineeta Sharma v. Rakesh Sharma (2020)<sup>16</sup>**

In this case, section 23 of the Hindu Succession Act, 1956 was considered, under which the female heir was barred from claiming the partition in the dwelling house if the male heirs had denied. The Supreme Court gave the judgment and also cleared the confusion created by previously decided cases, by stating that Section 6 is based on the unobstructed heritage (meaning the right created by birth) and hence the daughters are the coparceners by birth. It also stated that the notional partition U/S 6 (3) is just a legal fiction and it does not affect the coparcener's rights when the actual partition takes place. The apex court also stated that for a daughter to exercise her coparcenary rights, there is no need for her father to be alive before the amendment took place.

**CONCLUSION**

Hindu succession has experienced transformation due to the traditionally conservative ethos of Hindu society. Subsequently, with the evolution of legal frameworks, ambiguities regarding the status of other communities were addressed by their inclusion under the Hindu Succession Act. Initially, succession laws applicable to Hindus demonstrated significant bias; however, constitutional developments and statutory amendments have progressively reduced gender

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<sup>15</sup> Mangammal v. T.B. Raju, (2018) 15 S.C.C. 662 (India).

<sup>16</sup> Vineeta Sharma v. Rakesh Sharma ,2020 INSC 487 (India).

discrimination within inheritance rights. Succession law reform has thus paralleled social evolution, as legal systems adapt to shifting societal paradigms.