
THE EVOLUTION OF WOMEN'S PROPERTY AND INHERITANCE RIGHTS IN INDIA: FROM PATRIARCHAL EXCLUSION TO FORMAL LEGAL EQUALITY

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ABSTRACT

Evolution of women's property and inheritance rights in India is a significant move from patriarchal values to formal legal equality for women. From being restricted under various personal laws, women's property and inheritance rights have come a long way with colonial and post-colonial legal interventions, including constitutional adjudication and legislative reforms. The Hindu Succession Act, 1956, and its significant amendment in 2005 have significantly changed the dynamics of coparcenary property rights for women, who are now equal heirs to their fathers' property. However, women's property and inheritance rights in India still remain in a state of structural inequality due to various socio-cultural barriers and the presence of multiple legal systems in force in the country. In this paper, a doctrinal and comparative analysis of women's property and inheritance rights in India is made to critically evaluate their evolution in the context of various legal reforms and their socio-economic implications for women's empowerment in India.

I. Introduction

The Indian property and inheritance laws were a reflection of the entrenched patriarchal system, where women's property rights were subjugated to the maintenance of men's lineage. The ancient Hindu law codes, such as the Manusmriti (200 BCE - 200 CE), were a reflection of the entrenched patriarchal system, where women were enshrined as minors and could not own property except for Stridhan or gifts given during marriage or by their families, which were under men's control.¹

Colonial India saw fragmented attempts at law reform. In contrast, India saw a spate of law reform measures under the Constitution of India 1950. Articles 14 (equality before law), 15 (prohibition of discrimination), 16 (equality of opportunity), and 21 (right to life and liberty, which includes dignity and economic security) triggered law reform². The Hindu Succession Act (HSA) 1956, as well as its amendment in 2005, have been landmark in promoting women's equality in coparcenary rights, which include birthright to undivided joint family property.³

However, the absence of substantive equality is evident behind the mask of formal equality. The existence of legal pluralism with its own brand of Hindu law, Muslim law, Christian law, Parsi law, and tribal law has resulted in fragmented rights⁴. In addition, socio-cultural factors like son preference and dowry have further eroded the progress achieved. Statistics from the National Sample Survey Office (NSSO) data collected in 2019 reveal that women own only 12.9 percent of the landholdings in the rural areas and 13.2 percent in the urban areas, despite the fact that they constitute half the population⁵. In this article, a doctrinal study is undertaken with a comparative perspective from England, Sweden, and South Africa. An attempt is made to critically examine the hurdles in achieving substantive equality with suggestions for moving forward with a greater focus on the role of property rights for women's empowerment in the context of the patriarchal society in India.

II. Post-Independence Codification to The 2005 Amendment

The post-independence period in India saw a major change in the content of family law and

¹ Robert Lingat, *The Classical Law of India* (University of California Press 1973).

² Constitution of India 1950, arts 14, 15, 16, 21

³ Hindu Succession Act 1956, as amended by Hindu Succession (Amendment) Act 2005

⁴ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (OUP 2003).

⁵ National Sample Survey Office (NSSO), *Situation Assessment of Agricultural Households* (2019).

property law. At the heart of this change was the ambitious endeavor of codification of Hindu personal law through a series of legislative enactments collectively known as Hindu Code Bills. Under the leadership of B.R. Ambedkar, Hindu Code Bills aimed at overcoming the entrenched inequalities inherent in the traditional framework of family law while adhering to the egalitarian ideals of the newly adopted Constitution of India⁶. Among the various legislative enactments under Hindu Code Bills, Hindu Succession Act, 1956 (HSA), occupies a prominent place as a guiding legislation on inheritance law for the Hindu community.

While HSA 1956 marked a significant move from the pre-existing patriarchal framework, a critical examination of the framework of HSA 1956 reveals a complex interplay between progressive changes and regressive compromises. HSA 1956 has incorporated significant changes for the advancement of women's law position, but at the same time, HSA 1956 has failed to achieve the ideal of gender equality, particularly with regard to coparcenary property⁷. Thus, HSA 1956 has to be viewed as a significant step and a missed opportunity in the development of women's property rights in India.

The influence of women's organizations, the 174th Law Commission Report (2002), and CEDAW (1993) led to the HSA Amendment Act 2005⁸. Removing discriminatory Section 6(1), it added Section 6(1)(a) to (c): daughters as coparceners "by birth" equal to sons. Retroactive to living daughters (Section 6(5)), it negates all previous deeds discriminating against daughters.

Judicial interpretations have also removed confusion. In *Prakash v. Phulavati* (2016), daughters were entitled only if their fathers were alive on 9th September 2005.⁹ *Danamma v. Amar* (2018) extended it to daughters of predeceased sons.¹⁰ The landmark case of *Vineeta Sharma v. Rakesh Sharma* (2020) overruled *Phulavati*, holding that daughters are "by birth" coparceners, irrespective of whether their fathers were alive on 9th September 2005 or not, as held in *Phulavati*. "Daughters must be recognized as equal from birth," said Justice Chandrachud, citing Articles 14/15 of the Constitution.¹¹ Thereafter, there has been a significant increase in

⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (OUP 1966)

⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999).

⁸ Law Commission of India, *174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law* (2000); Convention on the Elimination of All Forms of Discrimination Against Women (adopted 1979, ratified by India 1993)

⁹ *Prakash v Phulavati* (2016) 2 SCC 36 (India).

¹⁰ *Danamma v Amar* (2018) 3 SCC 343 (India).

¹¹ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 (India).

such claims, with over 10,000 petitions filed in Maharashtra alone (2022).¹² However, there are still challenges to be overcome. For instance, there are difficulties in allowing married daughters to claim their share (*Arunachala Gounder v. Ponnusamy*, 2011).¹³

III. Socio-Economic Implications and Persistent Barriers

It is evident that the recognition of women's property and inheritance in India has resulted in considerable socio-economic consequences, although these consequences are not consistent and are affected by various structural barriers. Although there has been a considerable improvement in the legal position of women with regard to property rights under the Hindu Succession (Amendment) Act, 2005, it is not consistent.¹⁴ Empirical research has shown that women's control of property results in a better bargaining position for women, improved economic well-being, and overall developmental outcomes.¹⁵ According to a study by the World Bank (2022), there has been an increase of 15 percent in women land ownership in India since 2005, which indicates a tangible shift in the allocation of assets.¹⁶ Although this is not suggesting a perceptual shift, it is an important factor because it has a tangible impact on household dynamics. Research studies such as Bhalotra et al. (2021) reveal that women who own property are less likely to suffer from domestic violence.¹⁷ The number of reported cases of domestic violence is reduced by nearly 22 percent in families where women own immovable properties.

The effects of owning property extend beyond the immediate economic benefits to future generations, particularly with regards to education. If daughters are treated as rightful heirs to family properties, there is a greater willingness to invest in their human capital.

Anderson (2023) has found that daughters who have the right to inherit properties receive 37 percent more investment in their education than daughters who do not have such rights.¹⁸ This is an important correlation with regards to the effect of property rights on changing gender dynamics. Daughters are not seen as temporary members of the household who will eventually

¹² Government of Maharashtra, Revenue Department Reports (2022).

¹³ *Arunachala Gounder v Ponnusamy* (2011) 13 SCC 1 (India).

¹⁴ Hindu Succession (Amendment) Act 2005.

¹⁵ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (CUP 1994)

¹⁶ World Bank, *Women, Business and the Law 2022* (World Bank 2022).

¹⁷ Sonia Bhalotra, Abhishek Chakravarty and Selim Gulesci, 'Property Rights and Domestic Violence: Evidence from India' (2021) *Journal of Development Economics*.

¹⁸ Siwan Anderson and others, 'Inheritance Rights and Female Education: Evidence from India' (2023) *World Development*.

leave for another household upon marriage. Instead, they are seen as future contributors to the household wealth. Thus, changing inheritance law has the potential to alter existing patriarchal beliefs and provide greater equality of opportunity.

Despite this, however, the achievement of substantial equality remains hampered by socio-cultural practices that have become embedded in society. Among the most important obstacles is the prevalence of patrilocality, which forces women to move to their husband's residence after marriage.¹⁹ This practice often forces women to willingly or unwillingly surrender their inheritance rights to their male kin, particularly their brothers. Statistics from the National Sample Survey Office (2018) have shown that 40 percent of rural women willingly surrender their legal right to property, which is a testament to the overwhelming effect of social culture on legal statutes.²⁰ These practices are often not registered or regulated in any way, which makes families use this practice to evade legal statutes with impunity. The lack of regulation in this practice makes women's dispossession invisible in legal circles.

The legal and institutional systems have been exploited to deny women their property rights. For example, the Benami Transactions (Prohibition) Act, 1988, which was enacted to prohibit fraudulent holding of properties, has been exploited by male proxies, who hold properties in their names, excluding women from holding properties.²¹ This has created inequality because it has empowered men to hold properties, even when women are included as co-holders. The continuation of dowry systems, despite their prohibition under the Dowry Prohibition Act, 1961, has distorted the purpose of inheritance laws.²² Dowry, as a substitute for women's share in properties, has been rationalized as a justification for denying women their inheritance. The distortion of inheritance laws not only undermines the legal system but also creates serious social consequences, such as violence against women. According to NCRB (2022) data on dowry deaths from the National Crime Records Bureau, there are approximately 7,000 dowry deaths annually.²³

The vulnerabilities linked with women's property rights were further exposed during the COVID-19 pandemic. As per reports published by Oxfam (2021), about 35 percent of widows

¹⁹ Jack Goody, *Production and Reproduction: A Comparative Study of the Domestic Domain* (CUP 1976).

²⁰ National Sample Survey Office (NSSO), *Household Social Consumption in India* (2018).

²¹ Benami Transactions (Prohibition) Act 1988.

²² Dowry Prohibition Act 1961.

²³ National Crime Records Bureau (NCRB), *Crime in India 2022* (Ministry of Home Affairs, Government of India 2022).

were at risk of eviction or loss of their properties during the pandemic. The lack of strong women's rights to property was further exposed during the pandemic.²⁴

The intersectional factors further highlight the difficulties linked with women's rights to property. Women's rights to property are further linked with factors such as caste, class, and regional differences. Dalit women and women belonging to Scheduled Castes have limited or less access to land ownership.²⁵ As per reports published by SAC (2020), less than 5 percent of Dalit women own agricultural land.²⁶ The intersectional factors further highlight the inequality linked with women's rights to property. The positive aspects of women's rights to property often fail to reach the vulnerable sections of society.

Conclusion

In a nutshell, the socio-economic consequences of women's property rights in India show a complex interplay between the law and reality. On the one hand, the expansion of women's property rights is quite impressive; on the other, the reality is shaped by various factors such as culture, institution, and structure. The persistence of patrilocality, dowry system, and informal property transactions continues to negate the concept of substantive equality between the sexes. The solution to the challenges posed by the system calls for a multifaceted strategy that addresses the issue on multiple fronts. Unless the issue is tackled on multiple fronts, the promise of women's property rights will not be fully realized but will remain half-achieved and half-unachieved.

²⁴ Oxfam India, *India Inequality Report 2021: Women and Inequality in India* (Oxfam 2021)

²⁵ Bina Agarwal, 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market' (2003) 18 *Journal of Agrarian Change*.

²⁶ Society for Social Action and Research (SAC), *Dalit Women and Land Ownership in India* (2020).