



Women's Property Rights in India: some reflections

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ABSTRACT

This paper addresses the want to critically define the bases and lines of rights as created via law. Violation towards girls is omnipresent in developed in addition to developing countries. However, the dearth of belongings rights and the persistence of the inflexible social norms, that restricts girls' sports, is a particular characteristic in developing USA like India. Restricted assets rights avert economic improvement, especially for ladies. It's miles evident that advanced belongings rights for ladies may represent a development in welfare. This paper aims to look at the belonging's rights provided to girls in India via various personal legal guidelines. The vital laws regarding property proportion are the Indian succession act 1925, the Hindu succession act 2005 and the Muslim private regulation (Shariat) software act 1937. This text explores judicial tendencies within the Indian law of succession wherein laws have lately been interpreted through the courts to supply extra property rights to Indian ladies. Tribal women who have been denied inheritance rights beneath their commonplace legal guidelines have been judicially granted rights of their favour. Additionally, the applicability of coparcenary claims by Hindu daughters, granted under the Hindu succession (amendment) act, 2005, has now been finally settled through the preferred court of India. Greater than a decade after the passing of the charter, the courts continue to undertake a judicious technique when thinking about the constitutional validity of private laws.

- **KEYWORDS:** Intestate, coparcenary, property rights, the law of inheritance, testamentary

Introduction

Women throughout the globe have struggled for a long time to have rights over own family houses. In numerous societies, the philosophy behind frowning upon the notion of giving belongings rights to girls was that they do no longer completely live of their delivery circle of relatives. Once married, they flow into their marital families and turn out to be part of it. So, simplest the male participants had rights over their family homes. But women's property rights have significantly developed in the past couple of many years. Permit's try and understand women's assets legal guidelines and their rights in India. Assets rights of ladies' below Hindu law

roperty rights of women under Hindu Law

The Hindu succession act, 1956 and Hindu ladies' proper to belongings act, 1937 govern Hindu ladies' property rights in India. The Hindu ladies' right to belongings act, 1937 predominantly treated the property rights of Hindu widows. It allowed a Hindu widow to acquire an same share in her intestate husband's property as her sons. However, it did not deal with the problems referring to the property rights of women as an entire; additionally, it did not supply coparcenary rights to Hindu girls.

The Hindu succession (modification) act, 2005 (hereinafter known as the 2005 modification) introduced upon

the guidelines of the 174th law fee file, made sure impressive adjustments to the 1956 act, which can be discussed further. It's miles a step forward in the direction of putting off gender inequality in India.

The subsequent are the Hindu ladies' belongings rights in India, as furnished beneath the Hindu succession act of 1956.

Coparcenary hobby

Before understanding the hobby of a Hindu girl over any coparcenary belongings, it's far pertinent to first recognize its which means. A coparcenary belonging refers to any intestate ancestral belongings received through the participants of a Hindu undivided own family (huff). Before the 2005 amendment, most effective 3 male lineal descendants (son, grandson, and exquisite grandson) constituted the frame of coparceners and had been entitled to acquire any coparcenary property. This supposed that girls had no interest in the coparcenary property considering that they could not be coparceners. For instance, a son of a coparcener obtained a share inside the coparcenary belongings, however his sister didn't.

But the 2005 amendment amended section 6 of the Hindu succession act of 1956 (hereinafter known as the 1956 act) and eliminated the age-vintage discriminatory practice of keeping girls out of the coparcenary device. Segment 6(1) of the 1956 act affords that in any huff governed by means of Mitakshara regulation, the daughter of a coparcener shall by start emerge as a coparcener in her personal right, simply as a son of a coparcener.

So, now, a daughter of a coparcener is likewise a coparcener in a huff.

Identical coparcenary rights

Segment 6 of the 1956 act vests identical rights and liabilities on both the little children of a coparcener.

Segment 6(1) offers that the daughter of a coparcener:

- has the identical rights inside the coparcenary belongings as she might have had if she had been a son.
- has the identical liabilities in respect of the coparcenary assets as that of a son

Proportion in coparcenary assets

Segment 6(3) of the 1956 act provides that the interest of a deceased coparcener in the property of a huf shall devolve through testamentary or intestate succession. The devolution shall take place in this sort of manner that:

- The daughter has the equal percentage as that of a son.
- The proportion of a pre-deceased girl coparcener will be allotted to her surviving Baby inside the identical manner as she might have acquired if she had been alive.
- The share of a pre-deceased child (son or daughter) of a pre-deceased girl

coparcener shall be allotted to his/ her infant in the equal way as he/ she could have received if she were alive.

Complete possession

Under section 14 of the 1956 act, each Hindu female has full possession right over any moveable or immovable property she possesses via acquisition. She may have received it before or after her marriage in any of the subsequent ways:

- Inheritance
- Partition
- In lieu of maintenance or its arrears
- Gift from any relative or non-relative
- Own skill or exertion
- Buy or prescription
- Stridhana, etc.

So, phase 14 of the 1956 act offers any Hindu woman the right to use her belongings without consent or permission from her husband, father, etc. She can freely transfer her belongings and use the money won from such switch in any manner she wishes.

The proper to full ownership additionally lets in any Hindu woman the right to put off her property thru intestate or testamentary succession. That is reaffirmed below phase 30 of the 1956 act. It formerly allowed most effective Hindu males to dispose of their belongings by way of a will. However, way to the 2005 modification, now Hindu ladies have the identical right.

Proper over son, father and husband's assets

Section 8 of the 1956 act provides the overall rules as to the devolution of any intestate Hindu male's belongings. It states that the heirs laid out in class if the timetable are first of all entitled to receive stocks of the deceased male.

The subsequent are the magnificence I heirs:

- Son; daughter; widow; mom; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son 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; 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 distribution of such shares takes place as per the rules provided under Section 10 of the 1956 Act, as mentioned below:

Rule 1- The intestate's widow, or if there is more than one widow, all the widows together shall take one share.

Rule 2- The surviving sons and daughters and the mother of the intestate shall each take oneshare.

Rule 3- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4- The distribution of the share referred to in Rule 3—

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions, and the branch of his predeceased sons gets the same portion.

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

So, Sections 8 and 10 of the 1956 Act clearly specify that daughters, widows, and mothers have sufficient right over the property of their intestate fathers, husbands, and sons, respectively.

Sections 8 and 10 of the 1956 Act also clarify that a sister, who is one of the class II heirs, has right on her brother's property only in the absence of his class I heirs.

Further, a daughter's marriage is no restriction on her rights over her father's property. She has the same rights over the property as her brothers.

A divorced woman is entitled to receive maintenance or alimony from her husband after the divorce. However, she is not entitled to a share of his property if he dies intestate.

Right over daughter, mother, and wife's property

Section 15 of the 1956 Act deals with the general rules as to the devolution of property of an intestate Hindu woman. It provides that the devolution shall take place-

- *Firstly*— upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.
- *Secondly*— upon the heirs of the husband.
- *Thirdly*— upon the mother and father.
- *Fourthly*— upon the heirs of the father; and
- *Lastly*— upon the heirs of the mother.

So, Section 15 of the 1956 Act elucidates that daughters, mothers, and husbands have rights over the property of their intestate mothers, daughters, and wives, respectively.

Property rights of women under Christian Law

The Indian Succession Act, 1925 (hereinafter referred to as the 1925 Act) deals with Christian women's property rights in India. One of the best aspects of this Act is that it does not discriminate against women in any manner. It considers both male and female children as lineal descendants and entitles their equal share in the intestate parents' property. It also provides similar rights to widows and widowers over the property of their spouses.

Before getting into the property rights of Christian women in India, let's understand the meaning of two terms- lineal descendants and kindred. Section 23 of the 1925 Act defines *kindred* or *consanguinity* as the connection or relation of persons descended from the same stock or common ancestor. In simple terms,

kindred refer to distantly related persons. *Lineal consanguinity* is defined under Section 25 of the 1925 Act as descending in a direct line from the other. For example, son, grandson great-grandson, great-great-grandson, and so on may be the lineal descendants of any person.

The 1925 Act provides no exclusive provision for a Christian widow's right over her deceased intestate husband; it varies depending on the existence of any lineal descendants of her husband, as discussed below.

Right of a widow when left with or without lineal descendants or kindred

Section 33 of the 1925 Act elucidates how an intestate male's property would devolve if he left behind a widow with or without lineal descendants or kindred. It states that if the intestate male has left behind-

- A widow and any lineal descendants, one-third of his property shall be the widow's and the remaining two-thirds shall be his lineal descendants.
- A widow, no lineal descendants, but persons kindred to him, one half of his property shall be the widow's and the remaining one half shall be the kindred's.
- Only the widow, then his entire property shall be his widow's. Further, under section 35 of the 1925 Act, a husband (widower) has the same rights in respect of his intestate wife's property in a way like that provided for the widow under Section 33.

Right of daughter in intestate father's property

Section 36 of the 1925 Act provides that the property belonging to the lineal descendants after deducting the widow's share shall be equally divided among them.

So, Section 33 read with Section 36 of the 1925 Act impliedly clarifies that a daughter has an equal share as that of a son in intestate father's property.

Property rights of women under Muslim Law

Property rights are very complex under Muslim law. The concept of inheritance under it has four features:

- The Koran specifies precise shares to certain persons.
- The residue goes to the agnates (an *agnate* is a person related wholly through males either by blood or by adoption); in their absence, it goes to the uterine heirs (uterine heirs are the persons descended from a common mother but by different husbands).
- Maximum one-third of any Muslim's property can only be given away in the form of a will.
- Rights of inheritance begin only on the death of the person.

There are broadly two schools of thought in Muslim law- the Sunni and Shia. The Sunni school predominantly operates in India. It has four sub-schools, which are Hanafi, Shafi, Maliki, and Hanbali. The majority of Muslims in India follow the Hanafi school of thought.

Under the Hanafi school, there are seven categories of heirs (three principals and four subsidiaries). The principal heirs are Koranic, Agnatic and Uterine heirs. The subsidiaries are the successor by contract, the acknowledged relative, the sole legatee, and the state.

Given below are the Koranic heirs:

- Heirs by affinity- Husband and wife
- Blood relations- Father, Grandfather, mother, grandmother, daughter, son's daughter, full sister, consanguine sister, uterine brother, and uterine sister. The Koranic property rights of Muslim women include:
 - A widow has the right to receive one-fourth share of her husband's property if she has no children.
 - A widow has the right to receive a one-eighth share of her husband's property if she has children.
 - Female heirs get half the share of their parent's property compared to what the male heirs receive.
 - A single daughter has the right to receive half the share of her parent's property. However, in the case of more than one daughter, all the daughters get two-thirds of the share.

Property rights of women under Parsi Law

The 1925 Act applies not just to the Indian Christians, but also to Parsis in India. The Indian Parsi women's property rights are dealt with under Chapter III of the 1925 Act.

Dealing with the division of intestate's property, Section 51 of the 1925 Act lays down the same rules for the property of both Parsi men and women in India. It states that if the Parsi woman/ man dies intestate leaving behind-

- A widow/ widow and children, they shall receive equal shares in the property.
- Only children, they shall receive equal shares in the property.
- One or both parents, along with the widow/ widower and/ or children, the parent (or each parent) shall receive a share equal to half the share of each child.

So, Parsi daughters and wives have the right to equal shares in the property of their intestate fathers and husbands, respectively.

Section 50 of the 1925 Act deals with the general principles of intestate succession and provides that if the widow or widower of any relative of the intestate remarries during the lifespan of the intestate, then he/ she shall not be entitled to get any share in the intestate's property. At the outset, these rights are not gender discriminatory. However, on a closer inspection, one can find a few instances of unfairness. For example, a widow of a predeceased son who died childless has no share in the intestate's property (Section 53(a) of the 1925 Act).

Landmark cases on recognition of property rights of women in India

Through the following cases, let's understand the judicial journey of how the battle of recognizing women's property rights in India was finally won.

Mary Roy v. State of Kerala (1986)

In this case, Mary, a Christian widow staying at her father's house in Travancore was harassed and forced by her brothers to evacuate the property. As she had no other place to go, she refused to leave the house. Her refusal led her brothers to hire some goon to threaten her. The contention of the brothers was that the property belonged to them according to the Travancore Succession Act, 1916 (the Act). They relied on Section 24 of the Act which stated that a widowed mother has a life interest in the property and that a married daughter who received Stridhan has no right to it.

Mary's case against her brothers to get equal rights on her father's property was denied by the Lower Court. However, the High Court ruled in her favour and held that she has equal rights over the property.

Nevertheless, even after getting her right acknowledged, the harassment of her brothers did not stop. So, she approached the Supreme Court under Article 32 of Constitution of India the challenging the constitutionality of Section 24 of the Act.

Upholding Mary's rights, the Supreme Court held that-

- Section 24 of the Act violates Article 14 of the Constitution of India
 - No personal law is above the Constitution of India.
 - Any Act that invalidates the provisions of the Constitution of India is void.
 - The Indian Succession Act, 1925 will apply in the present case, instead of the Act.
 - One-third of the father's property will be Mary's.
- This case proves to be one of the breakthrough decisions relating to the equal rights of Indian Christian sons and daughters on the father's property.

Madhu Kishwar & Ors. v. State of Bihar & Ors. (1996)

In this case, the constitutionality of certain provisions of the Chota Nagpur Act, 1908 was challenged. It was contended that the provisions favoured males belonging to the Scheduled tribes in the succession to property. The court held a few of the impugned provisions unconstitutional; however, it also held that the tribals, who are governed by their customs and the custom vary from people to people and religion to religion, codified Hindu Law does not apply to them.

Prakash v. Phulavati (2016)

In this case, the respondent (Phulavati) had initially filed a partition suit before the Trial Court in 1992, after her father's death. She claimed 1/7th share in the properties that her father acquired from his mother. While the suit was still pending, the Hindu Succession (Amendment) Act, 2005 was made effective. The Amendment gave coparcenary rights to the daughters as well. Phulavati used the opportunity; she amended her previous claim as per the 2005 Amendment. The Trial Court only partly allowed her suit.

Following the Trial Court's order, Phulavati approached the High Court stating that she, being a coparcener as per the 2005 Amendment, has share equal to her brothers in the father's property. The appellant (Prakash, Phulavati's brother) contended that the 2005 Amendment will not apply in the present case, as the father died prior to 2005. The High Court ordered in Phulavati's favour and allowed the retrospective effect of the 2005 Amendment.

Aggrieved by the High Court's decision, Prakash approached the Supreme Court. Finally, the Supreme Court overruled the High Court's decision and held that the 2005 Amendment will not apply to any partition which was affected before its enactment.

Danamma v. Amar Singh (2018)

In this case, the appellants were the two daughters of Late Shri Gurulingappa Savadi and his widow, Sumitra. The couple also had two sons, Arun Kumar and Vijay. Amar Singh, the son of Arun Kumar, filed the partition suit claiming a one-fifteenth share in Savadi's property. His claim was since the property was in the possession of the two sons and the widow. He contended that the two daughters were not the coparceners, as they were born prior to the enactment of the Hindu Succession Act, 1956 as amended in 2005 (the Act). Following the Trial Court's decision favouring Arun Kumar, the

appellants approached the High Court challenging the decision. The High Court upheld the Trial Court's decision, following which the appellants approached the Supreme Court.

The Supreme Court, however, held that Section 6 of the Act has a retrospective effect on the devolution of coparcenary property. Daughters are coparceners, irrespective of whether the father died before or after the 2005 Amendment. Ultimately, the contended was equally divided into five shares, one each for the two sons, two daughters, and the widow.

Hence, this case established the retrospective effect of the Act on the coparcener ship of women with regards to the father's date of death.

Vineeta Sharma v. Rakesh Sharma (2020)

In this case, the appellant's father died in 1999. She had three brothers and a widowed mother. One of her brothers died unmarried in 2001, after which she filed a suit claiming coparcener ship and one-fourth share in her father's property. But the High Court rejected her claim stating the fact that her father died before the 2005 Amendment.

The High Court's decision brought confusion to the retrospective effect of the 2005 Amendment because of the two previous contradicting decisions in the cases *Danamma v. Amar Singh* (2018) and *Prakash v. Phulva* (2016).

Clarifying this chaos, a three-judge bench of the Supreme Court led by Justice Arun Mishra gave a landmark verdict on the 11th of August 2020. The bench upheld its decision in the case of *Danamma v. Amar Singh* and overruled *Prakash v. Phulavati*. It held that a daughter is considered a coparcener by birth, irrespective of whether her father is alive or not. Further, the retrospective effect of the 2005 Amendment was also upheld and well-settled in this case.

Conclusion

The arena is converting. Gone are the days while patriarchy dominated women's rights and needs. Women are becoming extra independent than ever before. Thanks to education and technology, nowadays ladies want now not depend upon the age-vintage tradition of Stridhan to meet their submit-marital wishes. And that's why Stridhan is slowly disappearing from the face of present-day Indian societies. The eradication of the archaic lifestyle is empowering girls to be entitled to property rights like that of their male counterparts. The latest judicial tendencies in the popularity of assets rights of Indian women that we mentioned above are an effective movement toward a gender-same India. Allows wish we obtain it quickly.

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