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# An Analysis of Women's Inheritance Rights in Light of the Hindu Succession Act

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## ABSTRACT

*Women were deprived of the inheritance of the ancestral property but the Hindu Succession Act, 1956 which was a landmark legislation gave women legal recognition in matters of property and inheritance. However, the Act originally gave sons and daughters unequal rights in ancestral property, reflecting the deep-rooted patriarchy of Indian society. Over the years, amendments and judicial decisions have played a key role in strengthening women's inheritance rights. The most important reform came through the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights in joint family property. Despite these reforms, women still face challenges in claiming their rightful inheritance due to social stigma, lack of awareness, and resistance from family members. This paper discusses all those changes that were brought through the amendments in India, explains all the landmark judgements which helped in amendments and also all the challenges that women still face in inheriting the ancestral property.*

**Keywords:** *Inheritance, Ancestral property, Hindu Succession Act, 1956, Hindu Succession (Amendment) Act, 2005, Coparcenary*

## I. HISTORICAL BACKGROUND

The earliest mention of a Hindu woman's right to inheritance can be traced back to the Rigveda, marking the initial recognition of such rights in ancient Hindu society.<sup>3</sup> The inheritance of women in India is a matter connected to socio-economic factors, influenced more by culture and religion than by the true spirit of law and its enforcement. It is well known that inheritance serves as one of the primary means for women to acquire property ownership. Possession of assets of any kind ensures greater respect and recognition within the family and society.<sup>4</sup> Women's property rights can be defined as the rights to own, acquire (whether through purchase, inheritance, or gift), enjoy, manage, administer, and dispose of both tangible and

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<sup>3</sup> Tausif Fatima & Tousif Fatima, WOMEN'S RIGHTS AND HINDU LAW OF INHERITANCE: THE APPROACH OF RAMMOHUN ROY, 70 Proceedings of the Indian Hist. Cong. 643, 643-48 (2009), <http://www.jstor.org/stable/44147711>.

<sup>4</sup> Sona Khan, Inheritance of Indian Women: A Perspective, 27(2) India Int'l Centre Q. 139, 139-54 (2000), <http://www.jstor.org/stable/23005497>.

intangible property.<sup>5</sup>

The inheritance rights of Hindu women continue to be governed by the age-old customs of Hindu law, which hinder progress and development concerning the fairer gender.<sup>6</sup> Women's right to property was extensively discussed in the ancient legal treatises known as the Dharmashastras, along with the subsequent commentaries on them, the most significant among which are the Mitakshara and Dayabhaga legal doctrines.<sup>7</sup> Before the enactment of the Hindu Succession Act, 1956, two distinct systems of inheritance prevailed among the Hindus, namely, the Mitakshara and Dayabhaga schools of law.<sup>8</sup> According to the Mitakshara School, the right to ancestral property is acquired by birth; hence, the son becomes a co-owner of the property with rights equal to those of his father. Under the Dayabhaga School of succession, however, the right to ancestral property arises only upon the death of the previous owner. In the Mitakshara system, females were not eligible for inheritance, and agnates were given precedence over cognates in matters of succession.<sup>9</sup>

Throughout the history of Hindu law, a woman's right to hold and dispose of property has been acknowledged. The two types of property she could possess were Stridhana and Women's Estate. Among these, Stridhana was regarded as the absolute property of a Hindu woman. In contrast, with respect to a woman's estate or widow's estate, the Hindu female owner possessed only limited powers of disposal over the property<sup>10</sup>.

## **II. IMPACT AND IMPLICATIONS OF THE HINDU SUCCESSION ACT, 1956 AND ITS 2005 AMENDMENT**

Over time, the restrictions on Hindu women's property rights have evolved, and the present laws governing these rights are far more progressive than those that existed in ancient Hindu society. In patriarchal Hindu society, women were granted property known as Stridhan, which literally means "woman's property" or "fortune." This mainly consisted of marriage gifts such as clothes, jewellery, and, in rare instances, land.<sup>11</sup> The Hindu Succession Act, 1956, was the

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<sup>5</sup> Dipti Gabriel, Women's Inheritance Rights Reform and the Preference of Sons in India, 2 Int'l J.L. Mgmt. & Humanities 93, 93–99 (2019), <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs2&i=1580>.

<sup>6</sup> Sukanya Mukherjee, An Overview of Hindu Women's Right to Property, 8 NUJS J. Regul. Stud. 116, 116 (2023), <https://heinonline.org/HOL/P?h=hein.journals/nujsjlry8&i=208>.

<sup>7</sup> Id. (citing Proceedings of the Indian Hist. Cong., supra note 2).

<sup>8</sup> J. N. Saxena, Widow's Right of Succession in India, 11 Am. J. Comp. L. 574, 574–85 (1962), <https://doi.org/10.2307/838221>.

<sup>9</sup> Saubhagya, Evolution of Coparcenary Rights under Hindu Law, 2 Jus Corpus L.J. 487, 487–94 (2022), <https://heinonline.org/HOL/P?h=hein.journals/juscrp2&i=5491>.

<sup>10</sup> Women's Right to Succession and Inheritance in Hindu Law, Allahabad Univ., [lc2.du.ac.in/DATA/Women,sRight2SuccessionInheritanceHinduLaw](http://lc2.du.ac.in/DATA/Women,sRight2SuccessionInheritanceHinduLaw).

<sup>11</sup> Debarati Halder & K. Jaishankar, Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India, 24 J.L. & Religion 663, 663–87 (2008), <http://www.jstor.org/stable/25>

first legislation to establish a comprehensive and uniform system of inheritance among Hindus.<sup>12</sup> The Hindu Succession Act, 1956, which grants daughters equal coparcenary birth rights in joint family property—rights they were previously denied—can be evaluated across three generations. Section 6 of the Act specifies that in a Joint Hindu Family governed by Mitakshara law, a daughter of a coparcener shall: (a) by birth, become a coparcener in her own right, in the same manner as a son; and (b) possess the same rights in the coparcenary property as she would have had if she were a son<sup>13</sup>.

The 2005 amendment led to a significant increase in the likelihood of daughters inheriting land.<sup>14</sup> Under section 6 of the Hindu Succession Act,<sup>15</sup> equal status was granted only to daughters whose fathers were alive when the amendment came into effect on September 9, 2005. Before this amendment, under the Hindu Succession Act, 1956, female members of a joint family were not recognized as coparceners and were therefore denied ownership in coparcenary property. However, during the actual partition of property, female members were entitled to receive their respective shares<sup>16</sup>.

Following the amendment, daughters born to any coparcener of a joint family were recognized as coparceners and were granted equal rights and responsibilities under the law. Consequently, after September 9, 2005, when the Hindu Succession Act, 1956 was amended by the Hindu Succession (Amendment) Act, 2005, every daughter, whether married or unmarried, was regarded as a member of her father's Hindu Undivided Family (HUF) and could even be appointed as the Karta of the property. This amendment ensured that daughters enjoyed the same rights that were previously exclusive to sons.<sup>17</sup>

Vaishali Satish Ganorkar and anr. v. Satish Kesharao and ors (2012)(5) Bom CR 210<sup>18</sup> had upheld the prospective operation of the Hindu Succession (Amendment) Act, 2005 which in effect disentitled all daughters born before 9 September 2005 to claim their equal interest in the Joint HUF.<sup>19</sup> In case of Prakash vs Phulavati (2015) 2 SCC 36<sup>20</sup>, there arose the major question

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<sup>12</sup>Durba Chowdhury, Property Rights of Women in India: An Analysis through Personal Laws, 5 *Int'l J.L. Mgmt. & Humanities* 225 (2022), <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs16&i=262>.

<sup>13</sup> Hindu Succession Act, No. 30 of 1956, § 6 (India).

<sup>14</sup> Gabriel, *supra* note 4.

<sup>15</sup> Hindu Succession Act, No. 30 of 1956, § 6 (India).

<sup>16</sup> Mukherjee, *supra* note 5.

<sup>17</sup> Supreme Court: Equal Birth Right in Coparcenary Property for a daughter, India Law Offices LLP, [www.indialawoffices.com/legal-articles/supreme-court-equal-birth-right-in-coparcenary-property-for-a-daughter](http://www.indialawoffices.com/legal-articles/supreme-court-equal-birth-right-in-coparcenary-property-for-a-daughter).

<sup>18</sup> Vaishali Satish Ganorkar v. Satish Kesharao, AIR 2012 Bom. 101 (India).

<sup>19</sup> Married Daughters Born Before 2005 Have Equal Rights on Ancestral Property, SCC Times, [www.scconline.com/blog/post/2014/08/26/married-daughters-born-before-2005-have-equal-rights-on-ancestral-property](http://www.scconline.com/blog/post/2014/08/26/married-daughters-born-before-2005-have-equal-rights-on-ancestral-property).

<sup>20</sup> Smt Phulavati W/O Manohar Upadhye v. Prakash, AIR 2011 Karn. 78 (India).

which was if this amendment had retrospective or prospective application.<sup>21</sup> The Supreme Court held that, although the Amendment Act is social legislation, it cannot be applied retrospectively unless the legislature explicitly intends and provides for such application within the law.<sup>22</sup> However, in the *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1<sup>23</sup> judgement the Apex Court held that daughters whose fathers died intestate before the amendment date also possess equal rights over the property. The Court affirmed that a daughter has an equal share of her father's property by birth, in her own right. Ultimately, the Apex Court concluded that the verdict in *Prakash vs Phulavati* (2015) 2 SCC 36 had misinterpreted the law and clarified that the 2005 Amendment Act is applicable retrospectively.<sup>24</sup>

### III. CONTEMPORARY ISSUES AND IMPLEMENTATION CHALLENGES

While the inheritance law has been reformed to grant women the right to a defined share in the estate, the general rule whereby a daughter inherits half the share of a son still continues<sup>25</sup>. Although Act 39 of 2005 represents a significant advancement toward gender equality and the economic security of daughters under Hindu law, other female members, such as mothers and widows, have not been recognized as coparceners. Without such recognition, property acquired by a Hindu female cannot be treated as coparcenary property with respect to her children, as her status in such circumstances is regarded primarily as that of a mother<sup>26</sup>.

The HSA prescribes different rules of devolution for property belonging to men (given under Section 8<sup>27</sup>) and property belonging to women (given under Section 15<sup>28</sup>). The Bombay High Court in a single-bench judgment in *Mamta Dinesh Vakil v. Bansi S. Wadhwa* (2012) 6 Bom CR 767,<sup>29</sup> has ruled it to be unconstitutional, but since it conflicts with a previous single-judge bench's ruling in *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav*, AIR 1983 BOM 156<sup>30</sup>, the matter has been referred to a division bench. The division bench has not resolved this matter as of date. While the unconstitutionality of the discrimination may not be a settled question,

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<sup>21</sup> K. N. Prateeksha, *Critical Analysis of the Changes Brought by 2005 Amendment of Hindu Succession Act*, 4 Int'l J.L. Mgmt. & Humanities 3921 (2021), <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs12&i=3959>.

<sup>22</sup> *Prakash and Ors v. Phulawati & Ors—Inheritance Rights of a daughter over Coparcenary Property*, Indian Law, [www.indialaw.in/blog/real-estate/prakash-ors-v-phulawati-ors-inheritance-rights-of-daughter-over-coparcenary-property](http://www.indialaw.in/blog/real-estate/prakash-ors-v-phulawati-ors-inheritance-rights-of-daughter-over-coparcenary-property).

<sup>23</sup> *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India).

<sup>24</sup> Prateeksha, *supra* note 20.

<sup>25</sup> Rahil Setia & Ajay Pal Singh, *Emerging Gender Equations in the Realm of Contemporary Personal Laws: A Legal Conspectus*, 1 Jus Corpus L.J. 161, 161–77 (2020), <https://heinonline.org/HOL/P?h=hein.journals/juscrp1&i=176>.

<sup>26</sup> J. Starli, *Critical Analysis of Disparity in Property Rights of Women in India: A Glimpse*, Tamil Nadu State Judicial Academy, [www.tnsja.tn.gov.in/article](http://www.tnsja.tn.gov.in/article).

<sup>27</sup> Hindu Succession Act, No. 30 of 1956, § 8 (India).

<sup>28</sup> Hindu Succession Act, No. 30 of 1956, § 15 (India).

<sup>29</sup> *Mamta Dinesh Vakil v. Bansi S. Wadhwa*, (2012) 6 Bom. C.R. 767 (India).

<sup>30</sup> *Sonubhai Yeshwant Jadhav v. Bala Govinda Yadav*, AIR 1983 Bom. 156 (India).

several judgments such as *Om Prakash v. Radhacharan* AIR 2009 SC (SUPP) 2060<sup>31</sup> highlight the fact that the discrimination is, in the least, extremely unfair to women.

Although women were granted the right to hold property and even become coparceners, they could also assume the position of Karta of the family if they were the eldest member. However, a widow can never be appointed as the Karta of a family, as highlighted in the case of *Income Tax v. G. S. Mills* 1966 AIR 24, 1965 SCR (3) 488<sup>32</sup>, the Supreme Court considered whether a woman can become the Karta of a family. The Court held that while a widow cannot serve as the Karta, this does not imply that women, in general, are barred from becoming the Karta of a joint family.<sup>33</sup>

However, like a coin, this Act has two sides. While it uplifts the social status of women, it has also inadvertently contributed to an increase in issues such as dowry demands, female feticide, and other inequalities in inheritance rights. Therefore, although the legislature has conferred these rights upon women, grassroots-level efforts are essential to address challenges in the Act's implementation, and serious measures must be undertaken to achieve the intended positive outcomes.<sup>34</sup>

#### IV. CONCLUSION

The evolution of Hindu women's inheritance rights reflects a significant shift from religiously sanctioned inequality to constitutional equality. In ancient India, patriarchal customs enshrined in the Dharmashastras, and reflected in texts like the Manusmriti, restricted women's property rights, limiting their ownership primarily to forms such as Stridhan or temporary widow's estates.<sup>35</sup> The evolution of the Mitakshara and Dayabhaga schools further reinforced this inequality, with the former denying women any share in ancestral property by giving priority to male agnates over female cognates, and the latter granting inheritance rights to women only upon the death of a male member.<sup>36</sup> The Hindu Succession Act of 1956 established the first legal framework for reform by codifying inheritance and succession laws for all Hindus into a uniform system aimed at promoting gender equity.<sup>37</sup>

Nonetheless, the Act continued to exclude daughters from coparcenary rights, upholding the

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<sup>31</sup> *Om Prakash v. Radhacharan*, AIR 2009 SC (Supp.) 2060 (India).

<sup>32</sup> *Commissioner of Income-Tax, Madhya Pradesh, Nagpur v. Seth Govindram Sugar Mills Ltd.*, 1966 AIR 24, 1965 SCR (3) 488 (India).

<sup>33</sup> Prateeksha, *supra* note 20.

<sup>34</sup> Mukherjee, *supra* note 5.

<sup>35</sup> Fatima & Fatima, *supra* note 2.

<sup>36</sup> Saubhagya, *supra* note 8.

<sup>37</sup> Chowdhury, *supra* note 11.

patriarchal principle that only males could possess joint ownership of ancestral property.<sup>38</sup> The enactment of the Hindu Succession (Amendment) Act, 2005, addressed this inequality and represented a landmark move toward gender parity. By granting daughters coparcenary status by birth, the amendment provided them with equal legal rights alongside sons in the ownership and management of property within a Hindu Undivided Family (HUF)<sup>39</sup>.

Judicial interpretation has been crucial in reinforcing these rights. In *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1, the Supreme Court ruled that a daughter's right to be a coparcener arises by birth, regardless of whether her father was alive when the amendment was enacted<sup>40</sup>. This ruling overruled earlier restrictive interpretations, such as *Prakash vs Phulavati* (2015) 2 SCC 36, and brought inheritance laws in line with the constitutional principles of equality enshrined in Articles 14 and 15 of the Indian Constitution<sup>41</sup>.

Despite these legal advancements, the practical implementation of these rights is still hindered by persistent social barriers and limited awareness. In rural and semi-urban areas, patriarchal pressures and traditional norms often prevent women from asserting their legal entitlements, whether due to coercion or voluntary relinquishment<sup>42</sup>. Moreover, the ongoing exclusion of widows and mothers from coparcenary status constitutes a structural limitation, perpetuating economic dependency and reinforcing gender asymmetry within families<sup>43</sup>.

The evolution of Hindu women's property rights thus reflects both progress and paradox. While legislative and judicial milestones have created a strong legal framework for gender justice, the actual realization of these rights relies on societal transformation. Effective enforcement, widespread legal awareness, and empowerment-driven social initiatives are essential to convert statutory reforms into substantive equality. Ultimately, genuine gender equity in property succession will be achieved only when legal entitlements become accessible, enforceable, and socially recognized for all Hindu women<sup>44</sup>.

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<sup>38</sup> Mukherjee, supra note 5.

<sup>39</sup> Prateeksha, supra note 20.

<sup>40</sup> *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India).

<sup>41</sup> *Daughter as a Coparcener: A Step Towards Gender Equality*, Prime Legal Journal (2024), <https://www.linkedin.com/pulse/daughter-coparcener-step-towards-gender-equality-primelegal1-kxdtf>.

<sup>42</sup> *Indian Women's Rights to Property: Implementation of the Hindu Succession (Amendment) Act 2005*, Natural Justice Org. (2017), <https://naturaljustice.org/indian-womens-rights-to-property-implementation-of-the-hindu-succession-amendment-act-2005>.

<sup>43</sup> Starli, supra note 25.

<sup>44</sup> Somlata Sharma, *Hindu Women's Property Rights from Past to Present*, 8 J. Legal Stud. & Res. 393 (2022), <https://jlsr.thelawbrigade.com/wp-content/uploads/sites/5/2024/02/Dr-Somlata-Sharma-JLSR.pdf>.