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Gender Bias in Indian Law: Examining the Inequities in Hindu Women's Property Rights

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ABSTRACT

The aim of this paper is to critically examine the persistent gender bias rooted in the Indian legal framework, particularly in the context of Hindu women's property rights. Despite progressive reforms like the Hindu Succession (Amendment) Act, 2005, which aimed to provide Hindu women equal rights in ancestral property, Indian society's deep-rooted patriarchal norms continue to hinder its implementation in real life. Through an analysis of historical and contemporary legal provisions—including Section 15 of the Hindu Succession Act—and judicial responses to women's property claims, the paper exposes how both law and society perpetuate economic disempowerment of women. The judiciary's frequent moralizing tone, societal stigma surrounding working women, and legal loopholes further marginalize women's access to property, especially in cases involving widows. The paper argues for systemic reforms, including legal awareness, improved access to justice through affordable and efficient legal aid, and expansion of women-centric courts like Nari Adalats. By highlighting the gap between constitutional guarantees and lived realities, this study calls for urgent attention to the socio-legal mechanisms that deny nearly half the population their rightful agency and economic independence.

I. INTRODUCTION

To say that the Indian society is a patriarchal one would be an understatement and given the fact that our lawmakers and judicial officers are a product of this very society, it ultimately leads to the law of the land looking like the replica of our country's misogynist ideals. While there is no doubt that the country has made significant progress in bringing out socio-legal change concerning women's rights, it would not be wrong to say that most of these rights exist just on paper. The majority of the time this disparity is a result of the lethal combination of the rigid unequal societal norms that continue to persist in the Indian state and the judicial mind's perseverance to continue to follow age-old problematic rituals despite them being the anchors of justice.

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When it comes to the property rights of Hindu women, I believe it acts as a perfect example of this disparity between the law on paper and its applicability in real life. Property rights lay down the foundation of economic independence for Indian women, especially because even in the 21st century working, ambitious women who aim to have an existence that is separate from the male figures in their lives, are looked down upon. Having ownership over a piece of land, thus, for the majority of the women in this country, whether belonging from a rich or poor background, becomes the only thing that saves them from complete destitution and poverty, especially when it comes to widows.²

Ultimately, it's this consideration that serves as the basis for the reason why through this paper, I will be focusing on answering the question of whether the Indian legal system and lawmakers, who act as an extension of the ideals promulgated by the Indian society, display gender bias in the context of Hindu women's property rights. While there is an acknowledgement that this is an issue faced by women of all religions, with the intersectional identities of women making this issue more complex, due to external limitations, the scope of my paper shall be limited to Hindu women only.

I would also like to point out that the reason why it is necessary to discuss this particular issue in contemporary times is that even though this is a glaring and alarming issue, one whose addressal is the need of the hour, the majority of the people in the Indian state turn a blind eye to it while many refuse to acknowledge its existence altogether. Women make up 48.5 percent of the Indian population, by ignoring this issue we are treating a large part of our population as second-class citizens.

II. EVOLUTION OF HINDU WOMEN'S RIGHT TO PROPERTY

Before Independence, when it came to Hindu women's right to ownership of property, the laws that governed them were the local customs which used to vary based on region, caste, community and even families. However, except for a few communities like the Nayers of Kerela, one thing that always remained common amongst all these groups was the extremely limited scope women had when it came to owning property.³ Given this limited scope and the stringent restrictions that existed when it came to employment rights of women, the only ways through which a Hindu woman could get any kind of hold over property was if she received it

² Bina Aggarwal, 'Widows versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India' Cambridge University Press (1998) 32(1) <https://www.jstor.org/stable/312968> accessed on 4 October 2024

³ Debarati Halder & K. Jaishankar 'Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India' (2008-2009) 24(2) <https://www.jstor.org/stable/25654333> accessed 8 October 2024

in the form of Stridhan, which refers to immovable or movable property a woman receives from her family at the time of marriage or the one she inherited from her male family members. However, the nature of the latter was only limited and not absolute and was given only if no male heir was present.⁴

This practice ultimately changed minutely after independence, with the enactment of the Hindu Succession Act, 1956 (HSA), which legally allowed Hindu widows and daughters to become equal heirs with sons when it came to the ancestral property and separate property of a husband/father respectively by allowing all women to become an absolute owner of all the property in their possession. However, the discrimination continued to persist as daughters were not considered equal to sons when it came to coparcenary property, ultimately sending out the message that not all Indians garnered independence back in 1947.⁵

It was only in 2005 that there came a realization that the discrimination faced by Hindu women was an unbounded one and thus came the Hindu Succession (Amendment) Act, 2005 which tried to ratify thousands of years of oppression by finally providing women equal rights in ancestral property.⁶ Now, not only were women allowed to own and inherit property, as per the case *Sujata Sharma vs. Manu Gupta*, but they were also able to hold positions of managers in the family in the form of a Karta when it comes to coparcenary property, ultimately being the first time in centuries where the Indian state and the judicial mind treated women more than an extension of the men in their lives.⁷

III. PROBLEMATIC NATURE OF HSA

The new amendment, although a significant change, was not the grand game-changer that many scholars believe it to be. The reason for this is mostly due to the unchanged nature of Section 15 of the HSA which deals with female succession and provides us with a list of heirs set to inherit from a deceased woman. As also pointed out in the Bombay High Court Judgement, *Mamta Dinesh Vakil v Bansi S. Wadhwa*, Section 15 makes a woman's existence entirely about her matrimonial relationship.⁸ As per Section 15(1) after a woman passes away, if she was married but issueless and her husband was pre-deceased, instead of property going to her parents, which is the case for a man as per Section 8 of HSA, the property is given to husband's heirs.⁹

⁴ Ibid.

⁵ Hindu Succession Act, 1956

⁶ Hindu Succession (Amendment) Act, 2005

⁷ (2016) 226 DLT 647

⁸ T.S. 86/2000-T.P. 917/2000

⁹ Hindu Succession Act, 1956

To say that this clause is highly problematic is an understatement, and this was seen in the case *Om Prakash vs. Radhacharan* in which after a woman died intestate, her property devolved to her in-laws rather than her parents despite the fact that they had abused and later driven her out of her matrimonial home.¹⁰ Given the fact that we live in a common law country, even if it's highly frowned upon, we have witnessed judicial law-making in situations where the lawmakers had promoted regressive legislation, an example of this was the famous case, *Vishakha vs State of Rajasthan*.¹¹ I believe in this case; the court had a similar opportunity to undo the mistakes of the bizarre legislation. Instead, they, just like our lawmakers, decided that it was more important to respect the Indian tradition of 'ladki paraya dhan hoti hai' which roughly means that a daughter never truly belongs with her parents as after marriage she becomes the property of her husband, clearly showcasing their disregard for women's issues if it goes against the hard-line ideals of the society.

IV. ATTAINING PROPERTY

It is common knowledge that most women in India don't own land, some reports even suggest that if we remove the properties where wives and daughters are treated as proxy owners by male family members, less than 10 percent of women own land.¹² When it comes to Hindu women, even after the 2005 amendment the rise in the number of land-owning women was minuscule.¹³ One reason for this drastically smaller number is that only 25 percent of Indian women are employed in the workforce given how Indian societies continue to frown upon working women, especially when it comes to married women and mothers¹⁴. Couple this with the high gender pay gap, and it ultimately has become extremely difficult for women to buy property.¹⁵

However, the bigger issue is the mentality of Indian society concerning ownership of property, most Indian women themselves forgo their property rights as they believe it goes against the ideals of righteous Hindu women who put their brothers, husbands and fathers' needs before their own. Another practice which has skyrocketed since the 2005 amendment is more people making wills, specifically in favour of their sons or gifting property to them so that later on

¹⁰ *Om Prakash*, 2009 (7) S.C.A.L.E. 5: (2009) 15 S.C.C. 66

¹¹ AIR 1997 SUPREME COURT 3011

¹² Ashil Varghese, 'Setting the record straight: Less than 10% of Indian women may own land' (2024) *Business Standard* https://www.business-standard.com/india-news/setting-the-record-straight-less-than-10-of-indian-women-may-own-land-124042600447_1.html accessed 6 October 2024

¹³ Shruthi Naik & Bina Aggarwal 'Do courts grant women their inheritance shares? An analysis of case law in India' (2024) *Elsevier* <https://www.sciencedirect.com/science/article/pii/S0305750X2400158X?via%3Dihub> accessed 6 October 2024

¹⁴ Aljazeera 'As India's population soars, number of women in workforce shrinks' (2023) <https://www.aljazeera.com/gallery/2023/4/10/as-indias-population-soars-number-of-women-in-workforce-shrinks> accessed 7 October 2024

¹⁵ *Ibid*.

property does not devolve to their daughters. This is done to keep the property 'in the family' since daughters are no longer part of the said family after they get married. This mentality has ultimately led to in-laws several times forcing their widowed daughter-in-law to marry her deceased husband's brother so that she does not 'run away' with their property. Some parents even adopt a male child for the same reasons.¹⁶

After all this, if a woman does gain the courage to claim property by approaching the courts, something only 16 percent of Indian women did, it had been reported that while 77 percent were able to get paternal property, only 52 percent were able to get a share in ancestral property.¹⁷ Not only is there a high chance that they will be denied their legal rights, majority of the time they are also given a 'moral' lesson by the courts.

For example, in *Smt. Ramakka vs. Smt. Thanamma*, the Karnataka High Court proclaimed that women should not ask for their share in property simply because it is the duty of their father and then their husband to take care of her financially, thus, during their lifetime asking for a partition is blasphemous¹⁸. In *Rajinder Kaur vs Rameshwar Dass*, the Delhi High Court denied a woman's claim while calling her a 'disgruntled' sister who was unfaithful to her brother by dragging him to court.¹⁹ In another case, *Archna v. Dy. Director of Consolidation*, the Allahabad High Court, denied the claim of a woman while reiterating the fact that the Indian society is built on patriarchal principles, where the daughter is said to have left her home and built a new family after she marries and it was based on that ideals that are forefathers made the laws that exist even today.²⁰

If the courts are not taking the regressive route, then they opt to treat the woman as a victim, without any reasonable justification. As seen in *S. Sai Reddy v. S. Narayana Reddy*, the Court granted the woman her rightful share in the property, however, also deemed it fit to add a comment about how given that women are a vulnerable section of society they need to be specially protected by courts.²¹ Judgements like these in the name of progress ultimately harm the cause of women more as these judgements seem as if the courts are donating the weak, helpless woman property out of pity rather than the fact that they are equal citizens of the country who by law deserve what they are asking for.

¹⁶ Shruthi Naik & Bina Aggarwal 'Do courts grant women their inheritance shares? An analysis of case law in India' (2024) Elsevier <https://www.sciencedirect.com/science/article/pii/S0305750X2400158X?via%3Dihub> accessed 6 October 2024

¹⁷ Ibid.

¹⁸ ILR 2014 Kar 1335

¹⁹ RSA No. 4254 of 2016

²⁰ Writ – B No. - 64999 of 2014

²¹ 3 SCC 647

V. SOLUTIONS

To say that we need to find ways to bring change is an understatement and the most effective and obvious way to change this is by spreading awareness of the principles of feminism, equality and justice and educating women about their legal rights. It's not like we are completely doomed, we have made significant progress as mentioned above and it is all thanks to people becoming more aware and the judiciary sometimes taking a stand, however, we have a long way to go. Secondly, we need to implement policies through which more women can approach the legal system. Litigation is an expensive affair, and this acts as one of the major reasons why many women don't approach courts to fight for their rights as they are simply not economically independent.²² While the right to free legal aid exists under Article 39A, it is not a secret that those who end up taking the aid usually end up getting deprived of their rights due to the highly unorganized and exploitative way it is provided in the country.²³ Thus, measures must be taken to provide effective legal aid free of cost. Lastly, we need to invest more in Nari Adalats, which are courts specifically designed to resolve issues related to women. A few can be found in areas like Assam and Jammu and Kashmir.²⁴ While they mostly tend to deal with marital issues and domestic violence cases, the state must focus on encouraging them to open their ambit to property issues as well and set up at least one such court in each state.

VI. CONCLUSION

One would believe that in the 21st century, as the world becomes more globalized, diverse, and reaching heights of technological advancements, the question of whether women deserve basic human rights is not something that would even be up for discussion, however, the reality of the Indian state disappoints us on that front. The right to own property is a basic human right, which although no longer finds place in Part III of the Indian Constitution is still protected under Article 300A of the Constitution.²⁵ Coupling this with the 2005 amendment, the courts and the society hold no grounds when it comes to denying women their rights, yet, unfortunately, we are so blindly by our thousands of years old 'culture' that we continue to treat almost 50 percent of the population as second-class citizens. India takes massive pride in being the world's largest

²² Shruthi Naik & Bina Aggarwal 'Do courts grant women their inheritance shares? An analysis of case law in India' (2024) Elsevier <https://www.sciencedirect.com/science/article/pii/S0305750X2400158X?via%3Dihub> accessed 6 October 2024

²³ Akarshita Singh 'Legal Aid in India: current scenario and future challenges' (2023) <https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges> accessed 7 October 2024

²⁴ Sreeparana Chakrabarty 'Coming, women-only courts for alternative dispute resolution' (2023) <https://www.thehindu.com/news/national/coming-women-only-courts-for-alternative-dispute-resolution/article67053956.ece>

²⁵ Constitution of India, 1950

democracy, one that was built on the principles of justice, equality, and fraternity, yet it is high time we realize that this tag means nothing if all of our progress is only limited to a piece of paper.
