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# Property Rights of Women in India: An Analysis Through Personal Laws

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## ABSTRACT

*Violation against women is omnipresent both in developed as well as developing countries. However, the lack of property rights and the persistence of the rigid social norms, that restricts women's activities, is a particular feature in developing country like India. Limited property rights hinder economic development, especially for women. It is evident that improved property rights for women may represent an improvement in welfare. This paper aims to study the property rights provided to women in India through various personal laws. The important laws in regards to property share are the Indian Succession Act 1925, the Hindu Succession Act 2005 and the Muslim Personal Law (Shariat) Application Act 1937. This article explores judicial developments in the Indian law of succession whereby laws have recently been interpreted by the courts to grant more property rights to Indian women. Tribal women who had been denied inheritance rights under their customary laws have been judicially granted rights in their favour. Also, the applicability of coparcenary claims by Hindu daughters, granted under the Hindu Succession (Amendment) Act, 2005, has now been finally settled by the Supreme Court of India. More than a decade after the passing of the Constitution, the courts continue to adopt a judicious approach when considering the constitutional validity of personal laws.*

**Keywords:** *Intestate, coparcenary, property rights, the law of inheritance, testamentary.*

## I. INTRODUCTION

Like many other women of various countries, property rights for Indian women evolves from the continuing struggle between existing status and progressing forces. Property rights for Indian women are too unfair and unequal. Although we are in the twenty-first century, women continue to get fewer rights in property than men, both in quantity and quality. India, being a diverse country fails to bring a uniform civil code in this respect. Therefore, every religion is governed by its respective personal laws in many matters and property rights are one of them. In fact, with various religious groups, there are sub-groups and local customs and norms with their respective property rights. The Hindus, Buddhists, Jains and the Sikhs are governed by

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one codified law, while the Muslims and Christians are governed by their respective personal laws which are not codified. The tribal women of various regions and religions continue to be governed by their own customs and norms. According to the Indian Constitution, both the Centre as well as the State can formulate respective laws on the matters of succession. Hence, some of the states have enacted their own property rights within each personal law. As such, there is no single body in India dealing with property rights for women. The property rights of women in India is determined by ascribed factors such as her religion, status, her place of origin, her tribe and so on.

The Hindu Succession Act as of 1956<sup>2</sup> was amended several times and reduced the inequality between sons and daughters. Thus, gender inequalities that would previously exclude women from inheritance were abolished. Applying legal maxims for recognising the right of a Hindu widow to claim partition of her deceased husband's share in coparcenary property, in the absence of a definite statutory right, is another judicial development, while the interpretation of Hanafi law to grant inheritance rights to a sister in the presence of daughters of the deceased shows a judicial approach of uplifting the position of women even under uncodified Muslim personal law. However, at the same time, restricting the right of a Hindu daughter to claim her coparcenary right only after a certain date, when no such limitation has been fixed for a male coparcener and the courts' affirmation of granting preferential rights to agnates over cognates under Hindu inheritance law, appear to promote gender inequality without any justification. More than a decade after the passing of the Constitution, the courts continue to adopt a cautious approach when considering the constitutional validity of personal laws. With the increase in social integration, economic independence and reform movements, there needs to be a further call for the improvement of the woman's position in Indian society with respect to equal property rights.

### **(A) Methodology**

The qualitative research for this paper has been based on secondary data which has been collected from journals, websites, online resources.

### **(B) Literature Review**

The Indian Constitution has an elaborate framework to ensure equality among its citizens. It not only guarantees equality to all persons, under Article 14 of the Fundamental Rights, but it

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<sup>2</sup> Property rights of women in India and maintenance, *Vikaspedia*, available at: <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/meera-didi-se-poocho/property-rights-of-women-in-india-and-maintenance>

also expands on this in various articles subsequently in order to assure affirmative action. Article 14 of the Constitution of India states: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Further, Article 15 lays down the "Prohibition of discrimination on the grounds of religion, race, caste, sex, place of birth or any one of them"<sup>3</sup>. However, it can be seen that firstly, women are one of the identified sections who are prone to discrimination and hence expressly protected from any form of discrimination. Secondly, women are also entitled to special protection or special rights through legislation, towards making up for the historical and social disadvantage suffered by them on the ground of sex alone. However, notwithstanding the repeated and strong Constitutional guarantees of equality to women, the property rights of Indian women are far from gender, though many inequalities have been ironed out in courts.

Property Rights for women in India is not a new concept, rather it has been there since the Vedic period. During the Vedic period, the woman was considered a goddess and was adored. The only disability from which she suffered is that she didn't have the right of inheritance. Vedic literature prescribed inheritance to the unmarried daughter and to a brother-less married daughter. The widow was not given any right of inheritance in her husband's property but the childless widow was entitled to succeed to her husband's estate. The Indian woman's position in society deteriorated during the medieval period when sati, child marriages and a ban on widow remarriages became part of social life. The Muslim invaders brought the purdah to practise in Indian society. Among the Rajput of Rajasthan, the Jauhar was practised. Polygamy was widely practised especially among Hindu Kshatriya rulers. Women had no property rights during this period. In the Smriti period, the widow, the daughter and the mother were expressly named as heirs. But they could succeed to the property of a man only in the absence of male heirs. In theory, in the ancient times, the woman could hold property but in practice, in comparison to men's holding, her right to dispose of the property was qualified, the latter considered by the patriarchal set up as necessary, lest she became self-determining and neglect her marital duties and the management of household affairs. This was the situation prior to 1937 when there was no codified law.

The Hindu Women's Right to Property Act, 1937 was the outcome of discontent expressed by a substantial section of society against the unsatisfactory affairs of the women's rights to property. Under the said Act a widow was entitled to a limited interest over the property of her husband - which was to be termed as Hindu widow's estate. However, this Act was amended

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<sup>3</sup> Gjo\_article\_India\_caseC. Masilamani

in 1938 to exclude women from the interest of agricultural lands. The Hindu Succession Act, 1956, was the first law to provide a comprehensive system of inheritance among Hindus, Jains, Sikhs and Buddhists and address gender inequalities in the area of inheritance. It applies only in the case of intestate (one who dies without leaving a will) succession and to anyone who converts to Hinduism and their children. The intestate's children (married or unmarried daughter or son), mother and widow get an equal share. It has no application in the case of testamentary succession (where there is a will). The Act confers absolute rights, including unfettered rights of disposal of property, on the female in any property—movable and immovable—acquired by inheritance, demise, partition, in lieu of maintenance, arrears of maintenance, gift, property acquired by her own skill, purchase, prescription or in any other manner, and also 'stridhana', which includes ornaments, apparel, gift received at the time of the wedding, property acquired out of her savings. In September 2005, the Supreme Court (SC) in a landmark judgment declared that Indian women would have an equal right to a share in property as men, granting daughters the right to inherit ancestral property along with male relatives. So, under this Act, the difference between the female and male inheritor has been abolished. Now even a female inheritor (daughter) can claim partition of the ancestral property. Section 6 of this enactment provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family. The daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son. However, Section 6 is not applicable under two circumstances: i) where the disposition or alienation including any partition which took place before 20-12-2004 and ii) where the testamentary disposition of the property was made before 20-12-2004.

**Property Rights of Women under Muslim Law:** A strict reading of the Quran provides far more liberal rights for women in terms of property than is normally believed. Quran emphasizes four core values that are Insaaf, Ehsaan, Rehem and Ilma. Many Islamic states, such as Tunisia, have legislated against this liberalism since they hold that it places too high of a burden on men.<sup>4</sup> The Muslim woman has all rights to the dowry. If this dowry money is invested, the women are entitled to all profits, and there is no legal obligation to share with the man. The dowry, in other words, creates the basis of all female property rights. Division among the sexes in Islam, if anything, is biased against the male. The husband has all the obligations. Legally, the husband must care for the home and children, and any aged parents if applicable. The woman, the wife, need not do any of these things. Her money is hers and hers alone. The man's

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<sup>4</sup> Property Rights of Women as per Hindu Law, NRI Legal Services, available at: <https://www.nrilegalservices.com/property-rights-of-women-as-per-hindu-law/>

money is never really his but belongs to the extended family. These rights serve to liberate women under Islamic law but bind the man to family support. According to Dr Nahid Angha, a woman can buy and sell in the marketplace, own her own business and, in the case of divorce, receive all her contributed property, including the dowry. Since the woman has full control over her dowry money and wealth, it follows that Islam cannot legislate negatively against her in any other property matter without falling into contradiction.

## II. FINDING

The international human rights law requires equal protection of property rights of both men and women. Property rights are actually human rights. Women's right to land and property, being the inalienable human right, is also related to adequate standards of living, right to housing and freedom from forced evictions. These rights are guaranteed in the following international instruments:

International Conventions	Relevant Articles	Article Text
Universal Declaration of Human Rights	17	Everyone has the right to own property alone as well as in association with others.  No one shall be arbitrarily deprived of his/her property.
Convention on the Elimination of All Forms of Discrimination against Women	13-16	States to ensure that men and women are treated equally in their right to family benefits; are treated equally in land and agrarian reforms as well as inland resettlement schemes; enjoy adequate living conditions, particularly in relation to housing; have equal rights to conclude contracts and to administer property; have the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charges or for valuable consideration. <sup>5</sup>

<sup>5</sup> Property Rights of Men and Women, paycheck.in, available at: <https://paycheck.in/labour-law-india/fair->

Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights requires that there will be no discrimination based on the property of a person. The Beijing Platform for Action (1995) has also required that women's right to inheritance and ownership of land and property should be recognized and governments should take legislative measures and reforms to remove disparities. Women's property rights are also implicit in Millennium Development, specifically on eradicating extreme poverty and on gender equality. The goals to reduce or eradicate poverty and achieve gender equality will remain distant if women are not granted property rights. India doesn't have a Uniform Civil Code, which means the law in matters pertaining to inheritance and sharing of property differs for people from different faiths. The two important laws in regard to property share are the Hindu Succession Act, 2005 and the Indian Succession Act, 1925. According to Section 6 of the Hindu Succession Act, equal status was granted only to daughters whose fathers were alive when the amendment came into force on September 9 2005. However, in the *Vineeta Sharma vs Rakesh Sharma* judgement (August 11 2020), the apex court held that daughters whose fathers died intestate before the amendment date also have equal rights over the property. The apex court had held that the daughter has an equal share of the father's property in her own right by birth. The judgement is welcomed by women across all quarters, as one of the biggest obstacles to the gender equality movement, is considered to have been thus cleared. In the case of *V. Tulasamma & Others. vs V. Sessa Reddi*<sup>6</sup>, the Supreme Court of India clearly laid down the scope and ambit of Sections 14(1) and (2) of the Hindu Succession Act, in which a fine distinction was made by the court recognizing the woman's right to property through her pre-existing right to be maintained. The Court applied the exception only for the cases where an instrument created an independent and new title in favour of females for the first time and ruled it out where the instrument concerned merely confirmed, approved, declared or recognized pre-existing rights, like the right to maintenance.

### III. DISCUSSION

Women, under international law, have equal property rights. It applies to both movable and immovable (or tangible and intangible) properties. However, in many countries of the world, women's property rights are limited by norms, religious traditions, social customs and legislation. Violations of such rights make women dependent on men. They remain poor and are not treated equally at par with men. They have to live in abject misery and are always at

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treatment/property-rights

<sup>6</sup> India's Supreme Court bolsters inheritance rights for Hindu women, available at: <https://www.dw.com/en/indias-supreme-court-bolsters-inheritance-rights-for-hindu-women/a-54534390>

the risk of violence both in their parent's home and in-laws. The main consequence of these abuses is that the country remains underdeveloped. Unless women are granted property rights, a country can't develop. Women's property rights promote gender equality, which eventually leads to development. Lack of these rights causes underemployment of women and keeps them impoverished. According to UN-Habitat, every 1 in 4 developing countries have laws that retard women from owning property. As argued by World Bank, countries with unequal inheritance laws have also unequal property rights regimes. Hence, women's property rights are important, as these are fundamental to women's economic security, social and legal status, and sometimes their survival. Land and property ownership empowers women and provides income and security. Without property rights, women have limited say in household decision-making and no recourse to the assets during crises (be it divorce or death of a husband or any other difficult situation). The lack of property rights also results in domestic violence.

The Constitution of India provides equal rights to both men and women. Many states have taken initiatives to ensure gender justice around land rights. Various property rights regimes prevailing in different states and the succession Acts of various religious groups like Hindu, Muslim and Christian determine a woman's right to property and inheritance. The Sixth Scheduled areas of Northeast India have different customary tribal laws on women's property rights and inheritance which also varies among specific indigenous community laws. Similarly, in Fifth Scheduled and other tribal areas, the customary laws determine the rules of woman's rights to property and inheritance. Women's land rights have been strengthened in many states under land grant initiatives and provision of joint titling and amendments to religious acts. However, gender disparities continue in land ownership. Women's access to land is largely through inheritance, and inheritance is predominately governed by customs that are highly biased against women even their regional variations within the States. The Hindu Succession Amendment Act, 2005 brought Hindu women's inheritance laws on agricultural land on par with men, overriding State laws that discriminated against women. It conferred daughters including married daughters, birth-right over the family property but only with non-retrospective effect. In India, almost a third of all cultivators are women, but women own and manage less than 12 per cent of land as per Agriculture Census, 2010-11, while 75 per cent of the female workforce, largely marginal and landless, depends on agriculture for survival. Southern states like Andhra Pradesh, Karnataka, Tamil Nadu, Maharashtra have created a comparatively better situation for women's land rights, which may be due to their relatively early amendments to the Hindu Succession Act 1956, which recognized daughters as coparceners. In these states, women are allowed to inherit agricultural land, whether owned or



under the tenancy.

The mainstream patriarchy and the social customs relating to the women's location in the gender social matrix are the real barriers against the rights of the woman over land. Land institutions often discriminate against women in access and ownership of land resources. Property rights confer many benefits on women and their families including increased bargaining power, social protection and economic autonomy. Women's property rights increase the bargaining power of women both in and outside the household and views are heard. While in developing countries, parents are usually dependent on their children. Children take care of their parents if parents retain control over their productive assets and are enjoying property rights. Strong property rights give women the much-needed economy whether they are living with their parents or husband. If they lack access to property rights, they remain dependent and their household work and other activities remain invisible and unaccounted for. It promotes women empowerment and the effects of the improved economic condition of women on intrahousehold welfare can be better analysed. The effect of legal amendments on women's inheritance rights reduced the reported violence committed against women. It also induces an external effect since it reduces the non-family related types of violence women are subject to. Another aspect to consider is that tolerance towards violence may change as a result of improved property rights. Hence, economic empowerment can also improve women's tolerance of violence decreasing the acceptance of violence against them and increasing reporting.

#### **IV. CONCLUSION**

Like other human rights issues, women's property rights are linked to discriminatory inheritance practices, agriculture, gendered control over economic resources, right to work and domestic violence or violence against women. Granting women equal property rights means decreased threat of discrimination, domestic violence and other human rights violations. It also has a positive impact on political participation and women's empowerment. The fundamental factors for violations include discriminatory laws and traditional customs, prejudiced attitudes towards women's property rights, indifferent authorities and an inefficient court system. Those women who assert their rights are termed as 'greedy'. This leads to the violation of Women's property rights. It is evident that female inheritance legislation has important implications for women's well-being. The amendments of the law allowed female daughters to have the same inheritance rights as sons. Apart from the ongoing struggle for a uniform civil code in accordance with the Constitutional framework, today Indian women are fighting for rights in

marital property, that is denied to them across all religious boundaries. There is also a significant movement in some of the hill states, towards community ownership of land by women by creating group titles and promoting group production and management of land and natural resources by landless women for joint cultivation or related farm activity. Land rights would be linked directly to the residence and working on land under this approach being lobbied for under the Beijing Platform for Action. However, the challenges are social acceptance of women's rights in the property. In a country where women continue to be property themselves the road ahead promises to be long and bumpy.

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**V. REFERENCES**

1. <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/meera-didi-se-poocho/property-rights-of-women-in-india-and-maintenance>
2. Gjo\_article\_India\_caseC. Masilamani
3. <https://www.nrilegalservices.com/property-rights-of-women-as-per-hindu-law/>
4. <https://paycheck.in/labour-law-india/fair-treatment/property-rights>
5. <https://www.dw.com/en/indias-supreme-court-bolsters-inheritance-rights-for-hindu-women/a-54534390>.

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