

Property Right of Women in Various Personal Laws; Indian Perception

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INTRODUCTION

Women around the world have struggled throughout the ages to gain rights to family property. In many societies, the philosophy behind resentment against the idea of granting property rights to women was that they did not remain permanently in their family of origin. Once married, they move into their marital family and become a part of it. Therefore, only male members had rights over their family property. However, women's property rights have developed significantly in the past two decades. Let us try to understand women's property laws and rights in India.

PROPERTY RIGHTS OF WOMEN UNDER HINDU LAW

The Hindu Succession Act, 1956 and the Hindu Women's Right to Property Act, 1937 govern the property rights of Hindu women in India. The Hindu Women's Right to Property Act, 1937 mostly dealt with the property rights of Hindu widows. A Hindu widow was allowed to have an equal share of her children in the property of her intestate husband. However, it fails to address issues related to women's property rights as a whole; It also did not grant demonstrative rights to Hindu women.¹

The Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as the 2005 Amendment) based on the recommendations of the 174th Law Commission Report, made some remarkable changes to the 1956 Act, which will be discussed in more detail. It is a major achievement towards eliminating gender inequality in India.

¹ Available at <https://www.basichomeloan.com/blog/home-loans/womens-rights-to-property-in-india#:~:text=What%20are%20the%20property%20rights,sons%20to%20inherit%20parental%20property.>

The following are the property rights of Hindu women in India, as provided under the Hindu Succession Act, 1956;

COPARCENARY INTEREST

Before knowing the interest of a Hindu woman in any partner's property, it is pertinent to first understand its meaning. Co-ownership refers to any intestate ancestral property acquired by members of a Hindu Undivided Family (HUF). Before the 2005 amendment, only three male descendants (son, grandson and great grandchild) constituted the body of partner partners and were entitled to any partner property. This meant that women had no interest in partner property because they could not become co-partners. For example, a partner's son received a share in the partner's property, but his sister did not.

However, the 2005 amendment amended Section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as the 1956 Act) and eliminated the long-standing discriminatory practice of keeping women outside the common patrimonial system. Section 6(1) of the 1956 Act provides that in any HUF governed by the Mitakshara Act, the daughter of a partner becomes a partner by birth in her own right, just like the son of a partner becomes a partner by birth.

So, now, the daughter of one of the participants is also a partner in HUF.²

EQUAL COPARCENER RIGHTS

Section 6 of the 1956 Act gives equal rights and obligations to both sons and daughters of a partner. Article 6(1) states that a partner's daughter:

- She has the same rights to the co-ownership property that she would have had if she were a child;
- She has the same obligations in relation to the partner's property as a son.

SHARE IN COPARCENARY PROPERTY

Section 6(3) of the 1956 Act provides that a deceased partner's interest in the HUF property devolves by will or intestate succession. The transfer takes place as follows:

²Available at <https://www.tnsja.tn.gov.in/article/11%20Starli%20female%20property%20rights%20article%20-%20corrected.pdf>

- A girl has the same luck as a son.
- The deceased woman's share is allocated to her surviving child in the same way as she would have received if she were alive.
- The share of the deceased child (son or daughter) of the deceased woman is allocated to his child in the same way as he would have been if she were alive.

Full Ownership

Under Section 14 of the 1956 Act, every Hindu woman enjoys full ownership rights over any movable or immovable property that she owns by acquisition. It may be acquired before or after marriage in one of the following ways:

- Inheritance
- Partition
- In lieu of alimony or its arrears
- A gift from any relative or non-relative
- Special skills or effort
- Purchase or prescription
- Stridhan, etc.

So, Section 14 of the 1956 Act gives any Hindu woman the right to use her property without the consent or permission of her husband, father, etc. She can freely transfer her property and use the money earned from that transfer in any way she wants.³

The right to full property also allows any Hindu woman the right to dispose of her property through inheritance without a will or intestacy. This is confirmed by Section 30 of the 1956 Act. Previously, only Hindu males were allowed to dispose of their property through a will. However, thanks to the 2005 amendment, Hindu females now have the same right.

Right over son, father and husband's property Section 8 of the 1956 Act provides the general rules regarding devolution of property of any intestate Hindu male. It stipulates that the heirs identified in the first category of the schedule are first entitled to the shares of the deceased male.⁴

³ Ibid 1

The following are the heirs of the first category:

- Son. girl; widow; the mom; Son of deceased son; Daughter of deceased son; son of a deceased daughter; Daughter of a deceased daughter; widow of a deceased son; Son of a deceased son of a previously deceased son; Daughter of a deceased son by a deceased son; widow of a predeceased son of a predeceased son; son of a predeceased daughter of a predeceased daughter; Daughter of a deceased daughter by a deceased daughter; Daughter of the deceased son of a previously deceased daughter; Daughter of a pre-deceased son's daughter.

These shares are distributed in accordance with the rules stipulated in Article 10 of the 1956 Law, as stated below:

- ❖ Rule 1 - The widow of someone who has no will, or if there is more than one widow, all the widows together take one share.
- ❖ Rule 2: Each of the surviving sons and daughters and the mother of the person who has no will has one share.
- ❖ Rule 3 - The heirs in the descendants of each dead son or daughter who died without a will may take one share between them.
- ❖ Rule 4 - Distribution of the share referred to in Rule 3 -

(i) Among the heirs in the line of the deceased son, his widow (or widows together) and the surviving sons and daughters shall be made to receive equal shares, and the branch of his deceased sons shall receive the same share;

(ii) Among the heirs in the line of the deceased daughter, the surviving sons and daughters shall receive equal shares.

Therefore, Sections 8 and 10 of the 1956 Act clearly specify that daughters, widows and mothers have sufficient rights to the property of their fathers, husbands and intestate sons, respectively. Sections 8 and 10 of the 1956 Act also clarify that a sister, who is a second-degree heir, has no right to her brother's property except in the absence of his first-degree heirs.

⁴ Available at <https://ijcrt.org/papers/IJCRT1705305.pdf>

Furthermore, the daughter's marriage does not constitute a restriction on her rights to her father's property. She has the same rights to the property as her siblings.

A divorced woman has the right to receive alimony or alimony from her husband after the divorce. However, she is not entitled to a share of his property if he dies without a will.⁵

Right over daughter, mother, and wife's property

Section 15 of the 1956 Act deals with the general rules regarding transfer of property to intestate Hindu women. It stipulates that power shall be transferred -

- First - on the sons and daughters (including the children of any deceased son or daughter) and the husband.
- Secondly - on the husband's heirs.
- Third - on the mother and father.
- Fourth - on the father's heirs. and
- Finally – on the mother's heirs.

Therefore, Section 15 of the 1956 Act makes it clear that daughters, mothers and husbands have rights to 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 the property rights of Christian women in India. One of the best aspects of this law is that it does not discriminate against women in any way. It considers both male and female children to be direct descendants and gives them an equal share in the property of the intestate parents. It also provides similar rights to widows and widowers over their husbands' property.⁶

Before delving into the property rights of Christian women in India, let us understand the meaning of two terms: direct descendants and relatives. Article 23 of the 1925 Law defines kinship or consanguinity as a connection or kinship between persons descending from the same origin or common ancestor.

⁵ Ibid 4

⁶ 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>

In simple terms, the word “relatives” refers to people who are distantly related. Consanguinity is defined under Section 25 of the 1925 Act as descending in a direct line from another. For example, a son, great-grandchild, great-grandchild, etc. may be descendants of any person.

The 1925 law does not make any exclusive provision for the right of a Christian widow over her deceased intestate husband; It varies depending on the presence of any of her husband's descendants, as explained below.⁷

The right of a widow if she is left with or without descendants or relatives

Section 33 of the 1925 Act explains how the property of an intestate man is transferred if he leaves behind a widow with or without grandchildren or relatives. It stipulates that if a male is left without a will -

- The widow and any direct descendants, one-third of his property shall go to the widow and the remaining two-thirds to his direct descendants;
- The widow, who has no direct descendants, but relatives, half of his property goes to the widow and the remaining half goes to the clan.
- The widow only, so his entire property goes to his widow.

Furthermore, under section 35 of the 1925 Act, a husband (widower) has the same rights in relation to the property of his intestate wife in a manner similar to those provided for a widow under section 33.⁸

The daughter's right to her father's property

Article 36 of the 1925 Law stipulates that property belonging to direct descendants, after deducting the widow’s share, shall be divided equally among them.

Therefore, Section 33, read with Section 36 of the 1925 Act, implies that the daughter has a share equal to that of the son in the property of the intestate father.

PROPERTY RIGHTS OF WOMEN UNDER ISLAMIC LAW

Property rights are very complex under Islamic law. The concept of inheritance in its framework has four features:

⁷ Ibid 2

⁸ Available at <https://cleartax.in/s/hindu-succession-act>



- The Qur'an specifies specific quotas for specific people.
- The rest goes to the asabit (an asabi is a person who is completely related to males either by blood or adoption). In their absence, it goes to the heirs of the family (the heirs of the family are people who are descended from a common mother but from different spouses);
- A maximum of one-third of any Muslim's property can only be transferred in the form of a will.
- Inheritance rights do not begin until the person dies.

There are two broadly based schools of thought in Islamic law: Sunni and Shiite. Sunni school mostly operates in India. It has four sub-sects: Hanafi, Shafi'i, Maliki, and Hanbali. The majority of Muslims in India follow the Hanafi school of thought.

In the Hanafi school of thought, there are seven categories of heirs (three ascendants and four descendants). The main heirs are the heirs of the Qur'an, the spider, and the wombs. Subsidiaries are the successor in contract, the recognized relative, the sole legatee, and the state.⁹

The following are the heirs of the Qur'an:

- Heirs by marriage – husband and wife
- Blood kinship: father, grandfather, mother, grandmother, daughter, son's daughter, full sister, paternal sister, maternal brother, and maternal sister.

The Quranic property rights of Muslim women include:

- A widow has the right to a quarter of her husband's property if she has no children.
- A widow has the right to receive the price of her husband's property if she has children.
- Female heirs receive half of their parents' share compared to what male heirs receive.
- A single daughter is entitled to half of her parents' share. If there is more than one girl, all girls get two-thirds of the share.¹⁰

PROPERTY RIGHTS OF WOMEN UNDER PARSILAW

⁹ Available at

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4541215#:~:text=Both%20are%20entitled%20to%20the,ancestral%20property%20and%20acquired%20property.

¹⁰ Available at <https://districts.ecourts.gov.in/sites/default/files/icj%20palakondawrkshp1.pdf>

The 1925 Act applies not only to Indian Christians but also to Parsis in India. The property rights of Indian Persian women are dealt with under Chapter III of the 1925 Act.

When dealing with the division of intestate property, Section 51 of the 1925 Act lays down the same rules for the property of Parsi men and women in India. It states that if a Parsi woman/man dies without a will and leaves-

- The widow/widow and children will receive equal shares in the property.
- Children only, will receive equal shares in the property.
- One or both parents, in addition to the widow/widower and/or children, the parent (or each parent) receives a share equal to half of each child's share.

Therefore, Parsi daughters and wives are entitled to equal shares in the property of their fathers and intestate husbands, respectively.

Section 50 of the 1925 Act deals with the general principles of intestate succession and states that if a widow or widower of any relative marries an intestate during the life of the intestate, he is not entitled to any share in the inheritance. Intestate property. To begin with, these rights do not discriminate between genders. However, upon closer examination, one can find some instances of injustice.

SALIENT ISSUES REGARDING RECOGNITION OF WOMEN'S PROPERTY RIGHTS IN INDIA

Through the following cases, let us understand the legal journey of how to finally win the battle for recognition of women's property rights in India.

MARY ROY V STATE OF KERALA (1986)¹¹

In this case, Mary, a Christian widow residing in her father's house in Travancore, was harassed and forced to vacate the house by her brothers. Since she had nowhere else to go, she refused to leave the house. Her refusal led to her brothers hiring some goons to threaten her. The brothers' claim was that the property belonged to them as per the Travancore Succession Act, 1916 (the Act). They relied on Section 24 of the Act which states that a widowed mother has a lifelong interest in the property and that a married daughter who has acquired a stridhan has no right to it.

The lower court dismissed Mary's case against her brothers for equal rights to her father's property. However, the Supreme Court ruled in her favor and held that she had equal rights to the property.

¹¹ Available at <https://indiankanoon.org/doc/1143189/>

However, even after her right was recognized, the harassment to which her brothers were subjected did not stop. So, I approached the Supreme Court under Article 32 of the Constitution of India challenging the constitutionality of Section 24 of the Act.

In support of Mary's rights, the Supreme Court ruled that:

- Section 24 of the Act violates Article 14 of the Constitution of India
- There is no personal status law above the Indian Constitution.
- Any law that invalidates the provisions of the Constitution of India is invalid;
- The Indian Succession Act, 1925 will apply in this case in lieu of the Act;
- One-third of the father's property will belong to Mary.

This case proves to be one of the pioneering decisions regarding the equal rights of Indian Christian sons and daughters to paternal property.

MADHU KISHWAR AND ORS. V. STATE OF BIHAR AND ORS. (1996)¹²

In this case, the constitutionality of some provisions of the Chota Nagpur Act, 1908 was challenged. The provisions were said to favor males belonging to Scheduled Tribes in inheriting property. The court considered that some of the contested provisions were unconstitutional. However, it also held that tribals, who were governed by their own customs and whose customs varied from one people to another and from religion to religion, were not subject to codified Hindu law.

PRAKASH V. PHULAVATI (2016)¹³

In this case, the defendant had initially filed a partition suit before the Court of First Instance in 1992, following the death of her father. She claimed seven properties that her father had acquired from his mother. While the suit was still pending, the Hindu Succession (Amendment) Act, 2005 came into effect. The amendment gave partner rights to girls as well. Phulvati seized the opportunity. She amended her prior claim pursuant to the 2005 amendment. The trial court allowed her claim only partially.

Following the lower court's order, Phulvati approached the High Court arguing that, being a co-owner of the property as per the 2005 amendment, she had an equal share with her siblings in the father's property. The appellant (Prakash, Phulvati's brother) contended that the 2005 amendment would not

¹² Available at <https://indiankanoon.org/doc/1216671/>

¹³ Available at <https://indiankanoon.org/doc/143363828/>

apply in this case, as the father died before 2005. The Supreme Court ruled in favor of Phulvati and allowed the retrospective effect of the 2005 amendment.

Angered by the Supreme Court's decision, Prakash approached the Supreme Court. Finally, the Supreme Court overturned the Supreme Court's decision and held that the 2005 amendment would not apply to any subdivision implemented prior to its enactment.

DHANAMA V. AMAR SINGH (2018)¹⁴

In the present case, the appellants were the two daughters of late Shri Gurulinappa Savadi and his widow Sumitra. The couple also had two sons, Arun Kumar and Vijay. Amar Singh, son of Arun Kumar, filed the partition suit claiming fifteenth share in the Savadi property. His claim was based on the fact that the property was in Possession of the two sons and the widow. He claimed that the two daughters were not partners, as they were born before the enactment of the Hindu Succession Act, 1956, as amended in 2005 (the Act). Following the decision of the lower court in favor of Arun Kumar, the appellants approached the Supreme Court to challenge the decision. The Supreme Court upheld the decision of the lower court, after which the appellants went to the Supreme Court.

However, the Supreme Court held that Section 6 of the Act has a retrospective effect on the devolution of joint property. Daughters share custody, regardless of whether the father died before or after the 2005 amendment. Ultimately, the dispute was divided equally into five shares, one each for the two sons, two daughters, and the widow.

Hence, this case demonstrated the retroactive effect of the law on women's partnerships in relation to the date of the father's death.

VINEETA SHARMA VS RAKESH SHARMA (2020)¹⁵

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 lawsuit seeking partnership and a one-quarter share in her father's estate. But the Supreme Court rejected her claim, saying her father died before the 2005 amendment.

¹⁴ Available at <https://indiankanoon.org/doc/88759498/>

¹⁵ Available at <https://indiankanoon.org/doc/67965481/>

Clarifying this mess, a three-judge bench of the Supreme Court led by Justice Arun Mishra delivered a landmark judgment on August 11, 2020. The bench upheld its decision in *Dhanama v. Amar Singh* and overturned *Prakash v. Phulvati*. The daughter was considered a partner by birth, regardless of whether her father was alive or not. Moreover, the retroactivity of the 2005 amendment was also upheld and well settled in this case.

CONCLUSION

The world is changing. Gone are the days when patriarchy governed women's rights and desires. Women are more independent than ever before. Thanks to education and technology, women today no longer need to depend on the ancient tradition of *Stridhan* to meet their needs after marriage. This is why *Stridhan* is slowly disappearing from the face of modern Indian societies. Eliminating the ancient tradition enables women to enjoy property rights similar to those enjoyed by their male counterparts. The recent judicial developments in recognizing property rights of Indian women which we have discussed above are a positive movement towards achieving gender equality in India. Let's hope we achieve that soon.

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