

# Women's Property Rights Being a Daughter under Hindu Law: Breaking Patriarchy and Improving Women's Rights

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## ABSTRACT

A wise man once observed that a country's treatment of its women might be used to gauge its overall health. This brief statement recognizes India's progress toward gender parity. Notwithstanding the point that women make major contributions to agriculture in numerous nations, they have low financial status because they do not own the property they work on. If women have access to land ownership, their level of economic independence and safety can be increased. The governments of India and other nations have put in place a number of programs to guarantee the protection of women in diverse contexts. It is not necessary to travel back in time to comprehend how estate ownership increases people's potential to enjoy full citizenship because the ancient Romans and Greeks created the right to cast a vote grounded on land ownership (age and gender). Anybody with the help of a basic understanding of European or American history can easily recognize the relationship between the franchise and property rights. In many countries in the Middle East, Sub-Saharan Africa, and Asia, men still have exclusive rights to land. Usually, women are seen as the "guardians" of their children, keeping valuables and other things in their custody. Is it a surprise that these are the same nations that consider women to be "minors" under the law, preventing them from signing contracts, opening bank accounts, or getting loans? Every legal dispute has a distinct history, from workplace sexual harassment to domestic animal abuse. For instance, unlike our traditional legislation, which solely protects the property rights of male descendants, the Hindu Undivided Family accords women with the same rights to their father's property. However, on August 11, 2020, our judicial system recognized a daughter's claim to her ancestors' property, granting daughters the same status as well as rights in the home and community and upholding the real meaning of Art. 14 of our Constitution of India. But is there a conclusion? How will this ruling touch the status of girls in Hindu undivided families (HUF) and why is it significant? The study's main objectives are to clarify the court decisions defending the daughter's property rights, point out legal voids, and further develop the concepts of equality and equity.

**Keywords:** Hindu law, Hindu undivided family, property rights, ancestral property.

## AN OVERVIEW

He stated that "liberation cannot be realized until all forms of injustice against women are abolished." Mandela, Nelson. It goes without saying that, historically and presently, women still struggle to find equality in society. Women have been attacked and oppressed for centuries because of the divided and patriarchal nature of society. Dowry, sati pratha, sexual assault, and injustice are just a few of the terrible cycles that affect women. But gradually, things began to shift. Women who have attained freedom today have done so because of the millions of offerings made by other women, whether in terms of independence, personal preferences, or professional goals, as well as being seen as autonomous people by the law and society. As the idea of equality took outline, the Indian legal system underwent changes.

Feminism, in the words of D. Anderson, "is not about empowering women. It is necessary to alter how the world sees women, who are currently more powerful than men. It is maintained that the objective is to give women the same rights, positions, and opportunities rather than to elevate them above men because Art. 14 ensures As well as outlaws discrimination centered on gender in every profession.

## HINDU UNDIVIDED FAMILY (HUF) AND HINDU LAW

India has upheld the idea of the outdated Hindu unified family since ancient times, an assembly of persons who are connected by blood, reside below the same roof, practice communal adoration, and who possess property jointly for the benefit of the family. Hindu culture places a strong emphasis on joint families. A Hindu joint family is not a business, the court ruled in the case of *Chotelal v. Jhandelal*<sup>1</sup>. Hindu joint families are made up of individuals and are not considered to be independent legal entities. Additionally, it is not a person that can be sued. Two well-known schools of Hindu law, Mitakshara and Dayabhaga, are fundamentally opposed to the idea of the joint family. How coparceners gain ancestral property after being born into the Hindu Undivided Family is where the two schools diverge. The term "coparcenary" was created by the Mitakshara law to describe a male ancestor (Karta) and three male lineal descendants, making up a total of four generations. According to Amarendra Man Singh Bhramarbhar & Anr<sup>2</sup>. The Court held in the case of *R. v. Sanatan Singh & Ors.* that "By birth and adoption, a male becomes a coparcener." Adoption has been a common practice since ancient times.

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<sup>1</sup> AIR 1972 All 424.

<sup>2</sup> AIR 1933 PC 155.

Terms like coparcenary and Hindu joint family were added to Indian laws after some aspects of Hindu law were codified after the country's independence.<sup>3</sup>

The Hindu Succession Act (HSA), which was passed in 1956, governs inheritance issues and clarifies and defines the coparcenary and its interest. It is important to remember that some laws governing the application of Hindu law were in effect prior to the HSA's passage.

## A COUNTRY'S LEGISLATIONS

1) Prior to the HSA, Hindus adhered to local customary laws. Many schools addressed succession and inheritance, including Mitakshara and Dayabhaga.

2) As a result, the Hindu Law of Inheritance Act of 1929 was passed, granting inheritance rights to up to three female heirs and allowing women to participate in inheritance disputes.

3) To attain equality in the rights granted to sons and daughters, the Indian government created the Hindu Succession Act in 1956. This act updated and modified the laws governing inheritance and succession. The property was divided into two types by this Act: ancestral and self-acquired. All Hindus, including Buddhists, Jains, and other Hindus, were covered by this Act. Those who were brought up as Hindus and whose parents were Hindus, Jain, Buddhists, or Sikhs have also been continued.

## LAW RELATING TO WOMEN

In order to ensure that no woman is left absolutely penniless, the Central Government established a "Committee on the Status of Women" in 1975 to assess the current provisions of the law relating to women. Various recommendations were made by the Committee addressing the rights of Christian, Muslim, and Hindu women. The Committee made the following recommendations about Hindu property rights to succession, among others:

1. Because only sons are eligible to be coparceners and inheritance is only passed down through the male line, Mitakshara Coparcenary supports son-daughter inequality. As such, the birthright should be canceled.<sup>4</sup>

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<sup>3</sup> Pradeep Kulshrestha and Huma Baga, THE HINDU SUCCESSION ACT, 1956 and the Amendment Act of 2005, 7(10) JOUR. OF CRITICAL REV. 1337-1341(2020), doi:10.31838/jcr.07.10.262.

<sup>4</sup> Paras Diwan, *Ancestral Property after Hindu Succession Act 1956—Joint Family Property or Separate Property? A Muddle under Tax Cases*, 25(1) JOUR. OF THE INDIAN LAW INSTI. 45 (1983).

2. It is necessary to eliminate the "tenancy devolution" exclusion found in Section 4(2) of the HAS (currently, this section rejects the decentralization of tenancy rights to unique State Laws outside the purview of the Act).

3. The HSA's Section 23's discrimination against daughters who are married and unmarried in regards to their capacity to inherit homes shall be repealed.

4. To prevent female beneficiaries from losing their inherited rights under the HSA, the privilege of testation should be limited.

5. Instead of using the archaic standard of true financial commitment, the wife's support provided through domestic labor should be legally recognized for its monetary value;

"The woman must be granted at least 33 percent of the assets accumulated during or at the time of the marriage when a couple files for divorce."<sup>5</sup>

The National Commission on Women (NCW) has suggested specific modifications to the laws governing women and property. The proposal was essentially as follows:

a) The deceased male's independent or self-procured property, as well as their undivided rights in coparcenary property, should be distributed equally;

b) In a Hindu joint family regulated by Mitakshara Law, a coparcener's daughter should be a coparcener by birth in the same way as her son;<sup>6</sup>

c) Daughters ought to enjoy the same rights to survivorship, responsibilities, and incapacities/disabilities as boys."

Before 1929, women were not permitted to inherit. The Hindu statute of Inheritance Act of 1929 was the first statute to achieve this. Three women were given the ability to inherit under this law: the sister, the young girl, and the child's girl (making survivorship rules more restrictive). Another notable law that gave women ownership rights was the "Hindu Women's Right to Property Act of 1937 (HWRPA)".

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<sup>5</sup><http://www.arvindguptatoys.com/arvindgupta/JP-59.pdf> at 52 – 56.

<sup>6</sup>Shital Prakash Kharat, Effect of the Hindu Succession (Amendment) Act 2005 Judicial Response, SSRN: Electronic Journal (2017), <http://www.ssrn.com/abstract=2912662> (last visited Apr 23, 2022).

Over time, all schools of Hindu law were influenced by this legislation. Along with the laws governing inheritance, property division, alienation, and adoption, it also changed the coparcenary legislation.<sup>7</sup>

### **GENDER EQUALITY AND THE RIGHT OF THE HINDU PEOPLE TO SUCCEED**

Hindu women's property rights are based on their marital status and relationship to their family, including whether they are unmarried, married, mothers, widows, or daughters. It also depends on whether the asset was gained through inheritance, marriage, or self-procurement. The act of Hindu was created to solve issues with gender inequality and inheritance.<sup>8</sup> Prior to this, the HWRPA was passed, which made great strides for women's property rights by first providing Hindu widows the ability to inherit. The Hindu Succession Statute was put into effect after independence to finish the change started by the prior statute. The key plans of the act are as follows:

- “The previously constrained estate of women became absolute.
- The status of a widow was elevated, and female heirs other than the widow were recognized.
- It was established that certain classes of heirs would succeed one another simultaneously.
- “The concept of survivorship still holds true in Mitakshara Coparcenary, but testamentary succession is used to make sure that no females are left out of the line.
- The inability to inherit will no longer be based on remarriage, conversion, or unchastity.
- A child (son or daughter) who was still in the womb at the time of the intestate's death or who was born after that date will be granted property rights.”

A Hindu feminine concept known as "Streedhan" describes a bride receiving gifts from both sides of her family when she gets married. "For a widow, Streedhan was the only form of absolute property; without Streedhan, any property acquired from her in-laws would be considered estate for life, with only restricted division rights. “The Women's Property Act of 1937” upheld the "restricted estate" premise. Contrarily, by Sec. 14,<sup>9</sup> women lost their ability to acquire and hold property in an absolute capacity, and their entitlement to whatever property they had previously been temporarily the owners of before the Act's inception was changed to absolute ownership. It soon became clear that even if a woman had

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<sup>7</sup>Family Law Research Paper - Family Law Research Paper PriyanshuTawer BA 2nd year 3rd sem. StuDocu, GGSIPU, <https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/family-law-i/family-law-research-paper/12564906> (last visited Apr 23, 2022).

<sup>8</sup>Arjun Pal, Transformation of Women's Rights under section 6 of the Hindu Succession Act, 1956, (2016), <http://rgdoi.net/10.13140/RG.2.1.4795.3522> (last visited Apr 22, 2022).

<sup>9</sup>Section 14, THE HINDU SUCSSION ACT, of 1956.

previously possessed or inherited the restricted estate before the Act was passed, it might be expanded into an absolute estate and she might then become the absolute owner.

Because a person's share may increase following the passing of a male member while decreasing upon the birth of a new male member, the amount of the share transferable upon the member of the coparcenary cannot be determined. Hindu families' daughters, whether they were married or not, had no coparcenary claim within the family, according to the HSA.

Section 6 of the HAS was consequently changed to read as follows: "Devolution of interest in coparcenary property. (1) As of the start of the Hindu Succession (Amendment) Act of 2005, the daughter of a coparcener in a Mitakshara-governed joint family has the same rights to the coparcenary property as she would have had if she had been a son, as well as the same obligations with regard to the coparcenary property as the son".

As shown by the case of *Pravat Chandra Pattnaik v. Sarat Chandra Pattnaik*,<sup>10</sup> Court upheld that "the Amendment was enacted to eliminate discrimination by giving daughters of the family equal rights to sons in the Hindu Mitakshara property through Section 6 of the Act," the amendment has encountered numerous difficulties since it was first introduced. As coparceners who are eligible for an equal share of the family's properties as the sons, as well as a daughter will also get the same share who was born before 2005<sup>11</sup>. Similar issues were addressed in *Sugalabai v. Gundappa A. Maradi and Others*<sup>12</sup>, which concluded that "as soon as the Amendment takes effect, daughters of coparceners will have the same property rights as their boys because she became a coparcener when she was born."

"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, will be held by her as full owner thereof and not as a limited owner," states Sec. 14.

### **THE CURRENT SITUATION:**

The term "property" includes both movable and immovable property acquired by a Hindu woman by gifting, inheritance, maintenance, partition, or other means as well as any other property she holds as "Streedhan." In the past, a woman's property rights were based on both her marital status and the type and source of the property. Women are unable to entirely distance themselves from their possessions. HWRPA has a lot of issues. As a result, Section 14 of the Hindu Succession Act was created to rectify the shortcomings of the earlier statute. As a result, a Hindu woman was granted the same rights to

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<sup>10</sup> AIR 2008 Ori 133.

<sup>11</sup> Section 6, THE HINDU SUCSSION ACT, 1956.

<sup>12</sup> ILR 2007 Karnataka 4790.

acquire, hold onto, and dispose of property as a Hindu man. In the case of *Eramma v. Veerupana*,<sup>13</sup> a Hindu woman's limited ownership was changed to full ownership by the words "as full owner thereof and not a limited owner" in sec. 14. As a result, she has the right to complete ownership, complete discretion over how to dispose of the property, and complete transfer of ownership to her heirs. The court gave this paragraph the broadest interpretation possible in the *V. Tulasamma v. SeshiReddi*<sup>14</sup> case, concluding that the amendments were done with the goal of enhancing the social and economic position of Hindu women.

### **IN THE SERIES OF JUDGMENTS, THERE WAS CHAOS AND CONFUSION**

- In *Parkash v. Phoolwati*,<sup>15</sup> the Hon. Supreme Court of India declared that "the 2005 amendment could only benefit 'living daughters of living coparceners' as of September 9, 2005, the date the amendment was passed."
- According to a "2018 ruling by the Apex court, contrary to the 2015 verdict, a father's share could go to his daughters as coparceners if he passed away in 2001". The 2015 situation was revised by a two-judge panel as well. The addition of a three-judge bench in the current case was necessary due to the divergent opinions of benches of equal strength and opposing and diverse ideas.<sup>16</sup>

### **A MODIFICATION FOR GENDER NEUTRALITY**

On September 9, 2005, the Hindu Succession Act (Amendment) of 2005 replaced the Hindu Succession Act of 1956. The Amending Act repealed the previous HSA Section 6. In order to give daughters and sons equal positions in the eyes of the coparceners, the Amendment of 2005 was revised. Women, however, were not given the same rights to the family's property as men were, nor were they even given the status of legal heirs. Such a prejudiced vision was based on the widely held traditional assumption that she would one day be married and join another family. This discriminatory mindset resulted in the oppression of women's fundamental rights, which prompted an amendment to the HSA.

The Act recognized Hindu women to be the sole proprietors of their belongings, regardless of how they were acquired and also removed property restrictions for them. All things a woman receives or retains in any legal capacity are her own property, and she has full control over how to dispose of them. The Act establishes general succession rules, such as giving preference to the heirs of an executor who is a woman or man over half-blood relatives if the nature of the link is otherwise the same. According to

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<sup>13</sup> AIR 1966 SC 1879.

<sup>14</sup> AIR 1977 SC 1944.

<sup>15</sup> (2016) 2 SCC 36.

<sup>16</sup> JOHN D MAYNE, MAYNE'S, TREATISE ON HINDU LAW AND USAGE §1065 (Bharat Law House, 14th ed. 1996).

another rule, "if two or more heirs succeed in obtaining the land of an intestate, they are not entitled to a per capita portion. These heirs regarded themselves as joint proprietors of the land rather than common owners.

Despite belonging to her spouse's unbroken family, Sec. 6 of the HAS regulations was amended in 2005 to grant her identical rights and obligations with regard to her father's assets. The most significant aspect of this modification is that, while it permits women to be coparceners, it also permits them to serve as the "Karta" of a joint Hindu family. Even though it was unclear as to how it applied prior to the 2005 Act, quite a few states, like Kerala, Andhra Pradesh, and others, have met state revisions by granting daughters similar rights under Hindu law as per the *Mistakshara* School. But what precisely is a coparcener? A coparcener is a person who has legal rights to their ancestors' property via birth. Hindus get their father's side of coparcenary property.

In *Prakash v. Phulanati*,<sup>17</sup> it was determined that "a daughter can only claim coparcenary rights if her father is a coparcener on the date of the 2005 amendment's implementation", while, in the case of *Danamina v. Amar* (2018)<sup>18</sup>, the hon'ble court reversed its earlier ruling as well as declared that on a coparcenary property, a daughter's right is absolute and it is immaterial that when her father died.

In *Vineeta Sharma v. Rakesh Sharma*,<sup>19</sup> a complete bench of the Supreme Court held on August 11, 2020, that "girls and boys have equal coparcenary rights under Hindu undivided family law (HUF)". This choice only affected coparceners because HUF makes a distinction between members and coparceners. The right to equality guaranteed by Chapter III of the Constitution<sup>20</sup> has been given real significance by the Supreme Court's ruling. Article 14's inclusion in the Indian Constitution has been ensured by its significance, history, and court interpretations in various circumstances. Art. 14 forbids the arbitrary action of the government and provides justice and equal behavior for all individuals. "Equality is a complex notion with numerous facets and dimensions that cannot be contained within traditional and doctrinaire boundaries." Article 15 of the Indian Constitution prohibits discrimination based on race, religion, or caste. The Indian Constitution is supreme above all other laws in the nation, notwithstanding the fact that our customary laws gave priority to male descendants over the right to ancestral property. As time goes on, the Supreme Court is reinterpreting customary law in accordance with the fundamental rights outlined in the Indian Constitution through its rulings. This landmark ruling

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<sup>17</sup> (2009) 6 SCC 99.

<sup>18</sup> (2018) 3 SCC 343.

<sup>19</sup> (2020) 9 SCC 1.

<sup>20</sup> CONSTITUTION OF INDIA, Article 14.



reinterprets both the Right to Equality and the Hindu persona laws. Making a contrast or differentiation that is unpleasant in relation to others is referred to as discrimination.

### **FOR DAUGHTERS, A CHANGE**

Efforts are being made to treat daughters of coparceners likewise to sons and to grant them "equal coparcenary rights in their father's property, at the time of their birth." No matter if they were conceived naturally or through adoption prior to the 2005 revision to the Hindu succession laws, this would apply to both adopted and normally born girls. Additionally, the 2005 amendment's benefits for a daughter are unaffected by the addition of a married status to her legal status. The female coparcener can purposely leave her portion of the property to whichever beneficiary she chooses in her will after receiving an equal share with the other coparceners.

### **ANY ADJUSTMENTS FOR WIVES?**

This choice will benefit the daughters of coparceners while maintaining the status quo for husbands. Members of a HUF's wives have certain restrictions on their rights, such as maintenance. They are prohibited from requesting other types of relief, such as the partition of their husband's possessions. However, the earlier issue over property rights has been resolved by this significant verdict. This choice has also enhanced and elevated the status of women in society. However, its applicability in the real world is constrained.

### **CONCLUSION**

According to a United Nations report from 1980, "women constitute a significant portion of the world's population, work for approximately 66 percent of the time, and only receive one-tenth of the world's wages and under one-hundredth of the property." The Hindu woman's viewpoint is quite alike to the statement that was made earlier. Hindu women have a reputable role in the family when it comes to rearing, but they have never been allowed to own their own unique properties. Due to the tight patriarchal structure and its conventional regulations, the daughter was never given due consideration in the first place, both inside her own household and outside of it. The Dharmashastras claim that Hindu women have historically had less status than their male counterparts. Nevertheless, our Indian constitution works toward gender equality using all available tools, opportunities, and resources, regardless of our culture or personal convictions. According to Lumma Watson, since Art. 14 of our constitution mirrors the "Equal Protection Clause of the United States and provides all people with equal legal protection", it is time to take gender as a totality rather than as two conflicting ideas.

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