



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME II, ISSUE I
OCTOBER, 2020

<https://journal.lexresearchhub.com>

Lex Research Hub
Publications

DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. JadavKumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. ParthaPratimMitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakraborty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. KoushikBagchi

Assistant Professor of law, NUSRL, Ranchi

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of GourBanga

Md. AammarZaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

WO'MEN' RIGHTS IN PROPERTY IN INDIA

Author –

Vasavi. L. S.

Student (LLM)

Christ (Deemed To Be University)

ABSTRACT

Women's economic stability and social security are determined by their control and ownership of immovable property. From ancient days, the formulation of all inheritance laws was solely for the benefit of the man. The devolution of property under family law is strongly influenced by significant histories, constitutional statutes, and personal laws, as is apparent in the evolution of India's laws of succession. While many notions of the English law of succession have become part of our country due to their continued colonial influence, these rules have started to change and depart from English law over time. This article outlines the developments of modern thinking on equality and positive discrimination in favor of women's right to property in India. It also analyses the ramifications of current constitutional and statutory principles, their judicial interpretations, and the desired improvements that could be made to enhance women's socio-economic conditions.

Keywords – *Women, Men, Property, Right to Property, Ancestral Property, Heirs, Shares, Equality, Article 14, Article 15, Positive Discrimination, Constitution, Fundamental Rights, Discrimination.*

INTRODUCTION:

"A Woman is protected by her father in her childhood, by her husband in youth and by son(s) in her old age, she is not fit for her independence."¹

The above quote is taken from one of the ancient texts of our land, Manusmriti. We can understand that from the time of this sacred text, the women of our land were deprived of their rights, mainly of independence. Our society was known for its Patriarchal system, and the tradition was followed down the lane. It is known to us that women were considered mere objects preserved by men of that family, and they did not have their own rights. This paper focuses mainly on one of her rights – The Right to Property.

¹ George Buhler, "*Manusmriti, The Laws of Manu- Part-I*", available at https://www.hinduwebsite.com/sacredscripts/hinduism/dharma/manusmriti_1.asp.

As per our traditions, women did not have any legal right to inherit ancestral property. They had their rights only on the property she obtains during her marriage, commonly known as 'Stridhan', meaning women's property. As time passed, human society evolved from this unsophisticated practice. It stressed that both men and women should have their rights, and the barriers of inequality were watered down the lane. The concept that men and women should be 'in - equality' terms, rather than women facing inequality compared to men.

India is known for its secularism and is home to diverse religions; we have different personal laws for each religion. The women are governed by their respective personal laws, and there is no uniform civil code. Therefore, Hindu women, including Jains, Buddhists, and Sikhs, follow one codified law. Similarly, Christians have their own code. However, Muslims have not codified their laws relating to property. On top of this, the Constitution has given authority to Central and State Governments to enact laws relating to property, and the States have passed their adaptation accordingly. There is no single governing body for women in our country concerning property matters. Even after several developments in our history's different phases, our country's women are continuing their struggle to claim what actually is theirs. One of the most significant reforms and a noble step is taken in the Supreme Court's recent judgment in "*Vineeta Sharma v. Rakesh Sharma* – decided on 11th August of 2020."²

In this article, the author tries to analyze and bring forward how the ideology of "where women were considered to be a property of the MAN, and she belonged to some man throughout her life" to a situation "where women have their own independence, strive more than men and they have their own rights". The author's aim in this article is to map the intriguing interaction between the socio-legal factors relating to the property rights of Indian women as they currently exist and the problems they may face in the future.

² Nandini Khaitan, Shreya Singh and Pratik Shanu, "*India: Supreme Court Clears The Air On Coparcenary Rights Of Daughters Under The Hindu Succession (Amendment) Act, 2005*", available at <https://www.mondaq.com/india/trials-appeals-compensation/977352/supreme-court-clears-the-air-on-coparcenary-rights-of-daughters-under-the-hindu-succession-amendment-act-2005>, accessed on 06-11-2020.

CONSTITUTIONAL FRAMEWORK –

Indian Constitution is known as the most extensively written and lengthiest Constitution in the whole world. The provisions uphold the secularism aspect and also allow its citizens to follow their personal laws. However, it also provides that there should be equality, and no one should be discriminated against on the grounds of sex, religion, race, caste, etc.

Article 14 of the Indian Constitution provides for equality before the law and equal protection of the law. This Article infers "substantial" equality, rather than a formal one. This article talks about how equals should be treated equally, and unequals should be treated unequally.³ This expansive paradigm allows for creating positive discrimination through special laws that generate the rights on the grounds of reservations in favor of society's weaker groups.

Positive discrimination can be clearly seen in Article 15(4) of the Constitution. The Article provides that no one should be discriminated against on the grounds of religion, sex, race, caste, place of birth, etc.⁴ Clause (4) of Article states that the State can make any special laws in favor of women and children.⁵ From this Article, we can conclude that as women are the most vulnerable sect in society, they are prone to discrimination in all aspects of life.-Like the reservation for the minorities and backward classes, women are also given protective discrimination under our Constitution to compensate for their vulnerability of social disadvantage affected on the ground of sex alone in historic times.

The next important Article that deals with freedom and equality is Article 21, which provides that to make one's life meaningful and beautiful, each and every person has a right to everything, rather than his/her mere existence.⁶ This Right includes the right to clean water, food, air, roads, health, and notably the right to housing.⁷ For availing this protective discrimination, the help of Directive Principles of State Policy is essential to obtain social justice, equality, and also to empower the women. The scope of the DPSPs is to interpret the fundamental rights, guide the State, and remove any unfair discrimination against women.

³ INDIA CONST. art. 14.

⁴ INDIA CONST. art. 15.

⁵ INDIA CONST. art. 15, cl. 4.

⁶ INDIA CONST. art. 21.

⁷ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161 (India); *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666 (India); and *Unnikrishnan JP v. State of Andhra Pradesh & Union of India* (1993) 1 SCC 645 (India).

Even though we have Constitutional provisions for protecting women, there is still gender bias in society, especially in property matters. Let us look into the property rights of Indian women guaranteed by law and how our courts have tried their best to overcome this inequality against women.

PROPERTY RIGHTS OF WOMEN IN INDIA IN HINDU LAW –

During the Ancient Period, women were considered unfit to be independent and were objects belonging to men. The ancient society was following the belief of '*Na stri swatantramarhati – Swatrantam Na Kachit Striyah*', which means that women cannot be allowed to be independent.⁸ Apart from Stridhan, there was no concept of property; still, she was not given the absolute right for stridhan. However, with the emergence of the various schools based on Yagnavalkya Smriti, this position was evolved. The Dayabhaga (eastern part of India followed this school) and Mitakshara (rest of the country followed this school) schools were prominent. The rules of these schools were considered the governing principles of the inheritance laws in the country. In a nutshell, women's legal rights were not clear; however, they were limited to Stridhan only, even where she was not considered as the absolute owner of the property. If she could not give birth to a male child for the family, social evils like remarriage of her husband, female infanticide, and bigamy practices were followed.⁹

In the Medieval period, women faced many problems, and the concept of stridhan was wholly changed. The property was given during the girl's marriage, not to her but to the bridegroom in the form of dowry, commonly called Vara Dakshina. Asking for dowry became a forceful act, where the girls were tortured if the groom's family did not get the payment (to eradicate this socio-economic crime, Dowry Prohibition Act was passed in 1961.) When we observe the rules and changes of this period, we can opine that they were treated as mere caretakers for the sake of the family, especially the males. This change was not to identify the women's rights, but just to save their ancestral properties from the invaders like Mughals. The belief of doing Sati (asking the

⁸ Debarati Halder and K. Jaishankar, "*Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India*, *Journal of Law and Religion*", Vol. 24 No.2, pp.663-687, 2008-2009, <http://www.jstor.org/stable/25654333?seq=3>, accessed on 06-11-2020.

⁹ Dwarka Nath Mitter, "*The position of women in Hindu Law*", New Delhi : Inter-India Publications, 1984.

young widows to jump to the pyre of her dead husband) became prominent and was being done forcefully. Just because they were born as girl children, they were tortured for dowry in the name of societal norms.¹⁰

The next phase in history was during the British invasion. We shall call it the Modern period. Britishers introduced various uniform laws but also allowed many customary laws to be practiced. As a result, the inheritance and succession laws were continued to be governed by the Mitakshara and Dayabhaga Schools. The Mitakshara School recognized the difference between self-acquired property and ancestral property. It also acknowledged the concept of 'coparcenary' – a legal institution with male heirs of three generations of that family. Therefore, there was no fixed share in the property for them. The first step towards recognizing women's rights in the property was done by passing the Hindu Women's Right to Property in 1937, which ended the controversial debate of stridhan. One of the good features was that she was given a share in the landed property, and the situation of young widows improved; however, the rights were still limited. Dr. BR Ambedkar took the foremost step in making the limited ownership to an absolute one during his speech in the legislative debate in 1948. His contention was there were many disadvantages in the old laws, and the country needs a new Hindu code Bill. Accordingly, the suggestions were taken into consideration, and the Hindu Succession Act of 1956 was enacted.¹¹

The 1956 Act brought about uniformity in the Hindu inheritance laws and addressed the gender inequalities in the inheritance laws. This Act applied to the whole country irrespective of Mitakshara, Dayabhaga systems, or the Matriarchal system, prominent in South India. Some of the main features of the Act are – (i) as per Section 14 of the Act, the women's estate was to be converted to stridhan¹²; (ii) the Act aimed to abolish the practice of not allowing the females to inherit the property from the male heirs of the family¹³; (iii) the property acquired by a woman, post 17th July 1956, it will be considered as an absolute property¹⁴; (iv) a daughter should be given

¹⁰ id at 8.

¹¹ Debarati Halder and K. Jaishankar, “Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India”, Journal of Law and Religion, Vol. 24 No.2, pp.101-122, 2015, https://www.researchgate.net/publication/279060382_Halder_D_Jaishankar_K_2008_Property_Rights_of_Hindu_Women_A_feminist_review_of_succession_laws_of_Ancient_Medieval_and_Modern_India_Journal_of_Law_and_Religion_25th_Anniversary_issue_Vol_XXIV_No_2_101, accessed on 06-11-2020.

¹² The Hindu Succession Act, No. 30 of 1956, § 14.

¹³ The Hindu Succession Act, No. 30 of 1956, Ch. 1-Statement of Objects and Reasons.

¹⁴ id at 12.

equal share in her father's property, same as that of the son's share; (v) when a daughter inherits the stridhan property, the son was allowed to have some rights in it; (vi) the principle of survivorship of the Mitakshara school was to be continued. However, in the case of a girl child born in between the male lineage, she would be included in the inheritance by applying the principle of testamentary succession; (vii) female heirs, other than widows, were recognized for the property inheritance.¹⁵ However, the Act was not flawless. One of the major flaws was the discrimination between the female and male heirs in the family in case of partition of a dwelling house (Section 23) - this section does not give the daughter of a coparcener a birthright to become a coparcener, as provided to the male heirs in the Hindu joint families.¹⁶

An amendment to the Hindu Succession Act was passed in 2005, known as The Hindu Succession (Amendment) Act. This Amendment was based on the 174th Law Commission's recommendations. This amendment gave rights to the women to become the coparceners to the ancestral property. A significant change was done to Section 6, where the daughters got equal rights as sons over their ancestors' property, as the birthrights cannot be taken away from them. The result of this change was that, from then onwards, females could also become the Karta of the family and can enjoy all the benefits.¹⁷

The interpretation of Section 6, after the amendment, raised many questions. This led to the question of the enforcement of the Amendment Act. The problem was when and how the daughter could claim her share or the benefits of the ancestral property. The Apex Court has tried to address the issue in 3 different cases. In *Prakash & Ors v. Phulavati & Ors*¹⁸, the Division Bench of the Apex Court held that for a daughter to claim her right in the property, her father (coparcener) has to be alive on the date of the enforcement of the Act; his death after the enforcement date would not affect her right. Therefore, Section 6 is not retrospective in nature. Later in 2018, the division bench of the Supreme Court, in the case of *Danamma v. Amar Singh*¹⁹, held that the daughter has a right to her father's property and can claim it even if her father may have passed away before

¹⁵ Milind Rajratnam, “*Hindu Succession Act: Demystifying Stridhan and Women’s Estate*”, available at <https://www.latestlaws.com/articles/hindu-succession-act-demystifying-stridhan-and-women-s-estate-by-milind-rajratnam/#:~:text=Stridhan%20is%20the%20property%20that,the%20time%20of%20bridal%20procession>, accessed on 07-11-2020.

¹⁶ The Hindu Succession Act, No. 30 of 1956, § 23.

¹⁷ id at 11.

¹⁸ *Prakash & Ors v. Phulavati & Ors*, (2016) 2 SCC 36.

¹⁹ *Danamma v. Amar Singh*, (2018) 3 SCC 343.

2005, meaning, Section 6 confers full rights to the daughter of the father coparcener in the ancestral property.

After this judgment was passed, there was a lot of chaos in society as to which decision to be followed, since two-judge benches delivered both of them. Finally, on 17th August 2020, the Supreme Court, in the landmark case of *Vineeta Sharma v. Rakesh Sharma*, settled the long-debated controversy. The Apex Court held that Section 6 is to be applied retrospectively. It means the daughter has the right to become a coparcener in her father's share since her birth and is entitled to that property, irrespective of her father being alive or not in 2005.²⁰

MUSLIM LAW –

As stated at the beginning of the article, it is clear that there are different personal laws for different religions. There is no proper codified law regarding property rights, as the patriarchal forces are resisting it in the name of religion. In similar to Hindu women, Muslim women also faced gender-based discrimination. One of the influential bodies of the Islamic community is the All India Muslim Personal Law Board.

In Islamic law, there are two schools of thought under which Indian Muslims are divided into – Sunni and Shia Schools. India's prominent school is the Sunnite school, which has Hanafis, Shafis, Malikis, and Hanbalis as the sub-categories. We all know that Muslim personal laws, especially the property laws, are not codified, neither the Sunnis nor the Shias.²¹ Up until 1937, Muslims were governed by the customary laws alone, which were extremely unfair towards women. With the passing of the Shariat Act of 1937, Muslim personal laws were somewhat governed; however, it did not mean codification.

The concept of "Mahr" is essential and is related to property rights. Mahr is essentially considered a present from a Muslim husband to his wife for marriage as a gesture of respect, symbolizing his sincerity and affection. For Mehr to be valid, the wife should accept the gift; it should be of money

²⁰ Apoorva Mandhani, "Daughter's equal right to ancestral property — here's what landmark SC judgment says", The Print, August 11 2020, <https://theprint.in/judiciary/daughters-equal-right-to-ancestral-property-heres-what-landmark-sc-judgment-says/479728/>, accessed on 07-11-2020.

²¹ <http://www.muslimpersonallaw.co.za/inheritedocs/Property%20Rights%20of%20India> (last visited on Nov 07, 2020).

or something of value. The ownership of the property or object lies with the women exclusively. In the case of *Kapore Chand v. Kadar Unnissa*, the Apex Court held that mahr is considered a debt. Usually, she has no priority over the other creditors of her deceased husband. However, in the case of mahr, it has priority over the claims of the other heirs.²² One of the revolutionary changes brought can be that Muslim wives are granted absolute ownership of mahr property.

The doctrine of survivorship is not found in Muslim Law, unlike the Hindu law. Here, each heir's share is definite and known before the partition itself, and it arises only with the death of a particular person. There is no concept of relinquishing the right of inheritance, except in the case of valid family settlement or a reasonable consideration.

CHRISTIAN LAWS –

Sections 31 to 49 of the Indian Succession Act, 1925, deal with succession laws for Christians. In this article, we will restrict ourselves only to the widow of the deceased husband. The widows do not have an exclusive property right. In case of a husband's death, the devolution of the property is as follows -

- (i) if there are no heirs and is left intestate, the whole property belongs to the widow;
- (ii) if he has heirs, then 1/3rd of it goes to the widow and 2/3rd to his heirs;
- (iii) if he has family members, only half of the property goes to the widow.

In *Mary Roy v. State of Kerala & Ors*, they had challenged the 1095's Travancore Christian Succession Act's provisions, as it restricted women's rights in the property. The Court held that the Act was invalid as it curtailed the rights. However, the Court did not go into the constitutionality aspect since the Indian Succession Act, 1925, overrode it.²³

²² *Kapore Chand v. Kadar Unnissa*, (1950) SCR 747.

²³ *Mary Roy v. State of Kerala & Ors*, (AIR 1986 SC 1011).

CONCLUSION

The struggle for equality, especially for property rights, has a long history of its own. Women have been subjected to various socio-economic problems and have been treated as mere objects. They were tortured just because they were born as daughters. Yet, as time went on, the socio-economic issues were understood and worked on, resulting in equal treatment between men and women. The Hindu Succession (Amendment) Act, 2005, brought about a progressive shift in the history of inheritance and succession laws by making women a family Karta and putting an end to long-standing inequality. The Courts have played an essential role in bringing a progressive change in the mindset of the people. But it is very far from getting the gender-neutral laws, which is the Uniform Civil Code, as there is resistance from the patriarchal religious groups, stating that it is against secularism and would be against their religion.

There are still instances of high demand for Stridhan (in the form of dowry), female infanticide, and other social problems of this kind, irrespective of the prevalence of various criminal laws. Many of these issues, whether directly or indirectly, are relevant to property issues. The penalty for the crimes referred to above should be harsher, and we should also look for means of implementing a more robust moral approach for women that could help reduce the crimes against women referred to above.

When we talk about the Supreme Court's role, we can say that there are two sides to the coin. On one side of the coin, through its various judgments, the Supreme Court has decided that personal laws are not subjected to fundamental rights; hence, they cannot be challenged under Articles 14, 15, and 21 of the Indian Constitution.²⁴ On the flip side, we have also seen in many cases where the Supreme Court has categorically held that personal laws do come under fundamental rights purview. Even if the personal laws were violating the rights, we see in the merits of the cases that there is a need for legislative intervention to enact the uniform civil code. Still, the discriminatory aspects of the personal laws can be struck down, which violate Articles 14 and 15 and are against women.²⁵ The Apex Court has clear-cut held that any of the personal laws violating Part III can be

²⁴ Krishna Singh v. Mathura Ahir (AIR 1980 SC 707), Maharshi Avdhesh v. Union of India (1994 Supp (1) SCC 713), Ahmedabad Women Action Group & Ors. v. Union of India (1997 3 SCC 573), Pannalal Pitti v. State of AP (1996 2 SCC 498).

²⁵ Anil Kumar Mhasi v. Union of India (1994 5 SCC 704), Madhu Kishwar v. State of Bihar (1996 5 SCC 125), Githa Hariharan v. Reserve Bank of India (1999 2 SCC 228), Daniel Latifi v. Union of India (2001 7 SCC 740), N

made void.²⁶ The Supreme Court has also recommended that the Government bring out the Uniform Civil Code under Article 44 of the Indian Constitution.²⁷

In a country where women, themselves, were considered property, for them to get property rights is a tedious process. The author believes that India is progressing towards the point where women are getting back their rights. There is social acceptance to treat men and women equally.

BIBLIOGRAPHY –

Books:

1. M P Jain, (2015), Constitution of India.
2. https://www.hinduwebsite.com/sacredsceipts/hinduism/dharma/manusmriti_1.asp - George Buhler, “*Manusmriti, The Laws of Manu- Part-I*”.
3. <https://www.mondaq.com/india/trials-appeals-compensation/977352/supreme-court-clears-the-air-on-coparcenary-rights-of-daughters-under-the-hindu-succession-amendment-act-2005> - Nandini Khaitan, Shreya Singh and Pratik Shanu, “*India: Supreme Court Clears The Air On Coparcenary Rights Of Daughters Under The Hindu Succession (Amendment) Act, 2005*”.
4. <http://www.jstor.org/stable/25654333?seq=3> - Debarati Halder and K. Jaishankar, “*Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval and Modern India, Journal of Law and Religion*”, Vol. 24 No.2, pp.663-687, 2008-2009.
5. <https://www.latestlaws.com/articles/hindu-succession-act-demystifying-stridhan-and-women-s-estate-by-milind-rajratnam/#:~:text=Stridhan%20is%20the%20property%20that,the%20time%20of%20bridal%20procession> - Milind Rajratnam, “*Hindu Succession Act: Demystifying Stridhan and Women’s Estate*”.

Adithyan v. Travancore Devaswom Board & Ors. (2002 8 SCC 106), John Vallamattom v. Union of India (2003 6 SCC 611).

²⁶ Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil, (1996 8 SCC 525).

²⁷ Mohd. Ahmed Khan v. Shah Bano Begum (1985 2 SCC 556), Sarla Mudgal v. Union of India (1995 3 SCC 635), Lily Thomas v. Union of India (2000 6 SCC 224), John Vallamattom v. Union of India (2003 6 SCC 611).

6. <http://www.muslimpersonallaw.co.za/inheritancedocs/Property%20Rights%20of%20India> – Muslim Personal Law.
7. <https://theprint.in/judiciary/daughters-equal-right-to-ancestral-property-heres-what-landmark-sc-judgment-says/479728/> - Apoorva Mandhani, *“Daughter’s equal right to ancestral property — here’s what landmark SC judgment says”*.