

## WOMEN'S PROPERTY RIGHTS IN INDIA

### Abstract

Women's Property Rights are property and inheritance rights that are always valued by women as a category within society. Property ownership patterns and rights vary across societies and are influenced by cultural, political, racial and legal factors. Like women's property rights in other countries, women's property rights in India have evolved from ongoing struggles between status quo and progressive forces. Hindu women's legal rights to property have long been restricted in Indian culture. Women's property rights are the property and inheritance rights enjoyed by women as a group within society and like women's property rights elsewhere, women's property rights in India are incompetent and unjust. Indian women have made great strides in the last century, but they still have less property rights than men, both in quality and quantity. The legitimacy of claims purportedly made in a legal context must be questioned in light of their legal, historical, political and cultural context. Voting and property rights have been recognized as a result of feminist movements around the world, but in many places such rights are only enshrined in statutes and serve no practical purpose. It is our duty to protect the rights of all people has the right to be treated equally in all areas of life. However, women's status in our society is lower than that of men and the inequality is particularly pronounced in property rights. The law recommends the harmonization of personal law in the form of a uniform civil code with fair, just and nondiscriminatory provisions. Elaboration of the Uniform Civil Code would go a long way in improving the status of women in India. A slight difference with respect to property rights for Indian women is that Indian women are highly divided among women regarding property rights, among

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many other moral rights. With so many laws coming out, it's clear that there should be no discrimination between men and women, but in reality no law is effective enough to bring about real change in society. Hindu women's property rights are changing and the current laws governing these rights are more lenient than those of ancient Hindu societies. Patriarchal Hindu societies provided women with property known as stridhan (literally "women's property or wealth"), which consisted mainly of wedding gifts (clothes, jewelry and rarely landed property). Women's movements around the world offer a comprehensive feminist account of society. In fact, what seems radical in contemporary feminist analysis corresponds to nineteenth century feminist criticism. Various property rights exist in India. Hindu law applies to Hindus, Buddhists, Jains and Sikhs. Islamic law applies to Muslims. Christian law applies to Christians and Parsi law applies to Parsis. Jews have their own property rights. But women's equality and freedom were denied. Because the turbulent history of mankind has shown that no matter how far apart in time and space, different cultures have one thing in common and that is the mockery of women.

**Keywords:** Property rights, Status of women, International instruments, Personal law, Legal reforms, Constitutional provisions.

## I. INTRODUCTION

Property rights for an Indian woman will soon become more difficult depending on what religion or denomination she belongs to, whether she is married or unmarried, what part of the country she is from, whether she is tribal or nontribal. India's patriarchal society ignores the property rights of Hindu women and views them as inferior in the social and economic aspects of human relationships. Women's property rights in India are very different from women's property rights in other countries. In addition to many other personal rights, Indian women themselves are also highly divided about what property rights are. In fact, even within various spiritual groups there are subgroups and local customs and norms, each with its own rules regarding property rights. Ironically, what unites them is that Indian women's property rights are not constitutionally protected across all these borders. Various property rights are certainly true in some ways, but they can be discriminatory and arbitrary despite constitutional guarantees of equality and justice. Recently, the idea of women's emancipation has received a lot of attention. The collective progress made possible by modern technology has awakened a new consciousness within humanity itself. The banquet of new ideas and ideologies has been made more modest by modern means of communication. In ancient times, Hindu women's property rights were subject to various restrictions. Each religious community therefore continues to be governed by its own personal law on several issues, property rights being one of them. Within various religious groups there are also subgroups and indigenous customs and norms with their own property rights. Thus, Hindus, Sikhs, Buddhists and Jains were subject to a property rights regime that was not codified until 1956, Christians were subject to additional laws, while Muslims, including Shiites and Sunnis, were subject to has not yet codified property rights. For Indian courts, with a few exceptions, have generally refused to consider personal law against constitutional touchstones in order to undermine it, which is clearly unconstitutional. It is up to the wisdom of the legislature to decide when to draft it. Uniform Civil Code (UCC) based on the mandate of the policy principles of Article 44 of the Constitution. The modern age, despite its negative aspects, all nuclear armament and wars waged in reverse to conquer each, seems more receptive to humanity's problems.

However, women were denied inheritance and ownership of marital property and their rights to inherit family property were restricted. With the rise of various Hindu legal schools, the concept of Stridhan began to expand in its precise and legal sense, giving women more rights to certain forms of property. To make matters worse, the Indian Constitution gives both the central and state governments the power to legislate on inheritance matters, allowing states to enact their own property laws within their respective personal laws and in fact some places have enacted. However, there have been attempts in India to improve the position of Hindu women in terms of inheritance and inheritance rights through various laws before and after Indian independence. The property rights of tribal women of various religions and states shall also continue to follow tribal customs and norms. Worse still, in the Indian Constitution, both the central and state governments have the power to legislate on inheritance matters, so each state can enact its own property laws within the personal statutes, and indeed enact them. Some do. Therefore, there is no uniform regulation of Indian women's property rights. An Indian woman's property rights are determined by what beliefs and sects she follows, whether she is married or single, which part of the country she is from and whether she is tribal or nontribal. Subsequently, from the 19th century to her 20th century, several laws were enacted aimed at removing further obstacles to Indian women's full and equal property

rights. Ironically, what unites Indian women is that across all these divisions, their property rights are protected from constitutional protection. Despite constitutional promises of equality for all, various property rights can be discriminatory & arbitrary and in practice are discriminatory in many ways. Indian courts have always dismissed the subject of personal law because of women's religious feelings. Choose the right time to involve communities, allow community leaders to legislate for all without restriction and formulate a uniform civil code, guided by the policy principles of Article 44 of the Constitution is left to the wisdom of the legislature.

## II. BELONGINGS RIGHTS OF INDIAN GIRLS

**1. Hindu Women's Belongings Rights:** Belongings rights of Hindu girls also evaluation depending at the reputation of the female inside the own family and her marital fame: whether the female is a daughter, married/single or deserted, wife/widow or mom. Hindu ladies's authorized right to inherit belongings has been limited from the earliest times in Indian lifestyle. The proprietary grade, which a lady occupied in Hindu regulation, was now not only an index of Hindu civilization but additionally a correct criterion of the tradition of the Hindu race. The Hindu Succession Act enacted in 1956 became the first law to come up with the money for a complete and uniform device of inheritance amongst Hindus and to address gender inequalities within the location of inheritance — it became therefore a system of codification in addition to a reform on the identical time. In concept, inside the ancient instances, the girl should maintain assets however in exercise, in assessment to guys's preserving, her right to remove the belongings was certified, the latter considered by using the patriarchal installation as important, lest she became too-independent and neglect her nuptial obligations and the management of household affairs. With the dawn of independence, the framers of the constitution took observe of the inequality which were perpetuated in opposition to ladies depriving them of social and monetary justice as envisaged within the Preface to the charter of India, essential Rights in part III (Articles 14, 15, 16), Directive principles of nation policy in part IV (Articles 38, 39, 39A, 44) and essential responsibilities in element IVA [Article 51 A (e)]. In spite of those constitutional mandates, ladies persisted to be subjugated and disadvantaged of her rights together with belongings rights consequently amidst strong resistance from orthodox Hindu sections, the Hindu Succession Act became enacted in 1956 and got here into force on seventeenth June 1956.

**The Hindu Women's Property Rights Act** of 1937 was the result of dissatisfaction expressed by large sections of society over the unsatisfactory position of women's property rights. According to the law, a widow was entitled to limited attention to her husband's property, the so called Hindu widow's property.

**This law was amended in her 1938** to forbid widows from having an interest in farmland.

**The Hindu Succession Act** of 1956 was the first law to create a comprehensive system of traditions for Hindus, Jains, Sikhs & Buddhists and to address gender inequality in the field of inheritance. This only applies in cases of inheritance without representatives and to converts to Hinduism and their children. Children of the deceased (married or unmarried daughters or sons), mothers and widows receive an equal share.

This does not apply to testamentary inheritance (if there is a will). This provision is retroactive in that it extended restricted property to absolute property, even if the property was inherited prior to the law or was held and entered into force by a woman as a limited partner. The only exceptions in the form of reservations are cases of acquisitions made pursuant to gifts, wills, other institutions or government decrees, orders or awards governing restricted property. Moreover, since the passage of the Hindu Succession Act in 1956, liberals have constantly grappled with the issue of joint ownership of daughters or married daughters in undivided Hindu families. Some of the states that have pioneered liberalization have passed state law amendments to grant joint ownership to unmarried daughters who marry after a designated date.

**2. Hindu Succession Act (Amendment), Section 6 of 2005:** In September 2005, the Supreme Court (SC) ruled in a radical ruling that Indian women had the same right to share in property as men and that women had the same rights to share in property as men. He also declared that he would give the right of inheritance to inherit the property along with male relatives. This law eliminated the distinction between female and male heirs. Now even a female heir (daughter) can claim a division of her ancestral property. Most recently, the recently enacted Hindu Succession Act (Amendment) Act, 2005 largely eliminated gender discrimination in Hindu succession rules. It provides for equal rights in shared ownership between male and female members of the Hindu common family. The daughter is entitled to a share of the inheritance and becomes coowner as if she were her son. Her two categories of exemptions to which the new Article 6 does not apply are:

- If the disposition or disposition, including division, occurred before December 20, 2004.
- If the disposition of the estate was made before December 20, 2004.

**3. Background of the Change:** The Law Commission's 174<sup>th</sup> report recommended changes to Hindu inheritance laws. Prior to the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made amendments to this law and Kerala abolished the Hindu joint family system in his 1975. This law applies to the legal succession of inheritance and personal property in the following order: Inheritance by law, not by will. The 2005 law gave women equal rights, but there are some questions, such as whether the law applies retroactively and whether women's rights depend on the living status of their heir father. There were conflicting views in various courts of the Supreme Court on this issue. There were also times when the Supreme Court held different views on the Supreme Court as a binding precedent.

In *Prakash v. Purwati* (2015), a two judge panel led by Judge AK Goel decided on 9 September 2005 (dated February 2018) that two Judges led by Judge AK Sikri a panel ruled that, contrary to a 2015 ruling, the daughters would remain co owners of the father's inheritance after he died in 2001. Then, in April of the same year, Judge R.K. another two judge collegial panel, led by the tribunal, reiterated the position it took in 2015. These conflicting views from equal powered courts prompted the case. It was entrusted to a collegial body of government officials. The ruling supersedes the rulings of 2015 and April 2018. The law "eliminates discrimination contained in Section 6 of the Hindu Succession Act, 1956 by giving daughters equal rights to sons in the property of the American Hindu Mitakshala Cooperative," her 2005 law which is an extension of the

intent of Under Section 15(2) of the Hindu Inheritance Act, 1956, the claim is given to the father's heirs, even if it comes from the mother. Applying the principle laid down in section 15(2) of the same law, even if a deceased Hindu woman was not involved in her development, only her father and her legal heirs can inherit the woman's inheritance prioritized as a person. The mother, if the marriage is dissolved prematurely, loses her right to inheritance as the legal heir of a Hindu woman, as well as her father's right to inheritance. Mothers were treated unfairly because they did not give them the same rights as fathers under Article 15(2) of the Act.

### **III. PROPERTY RIGHTS OF MUSLIM WOMEN**

A strict reading of the Koran provides women with far more extensive property rights than is commonly thought. The Quran emphasizes her four core values: Insurf, Esan, Rehem and Irma. Many Muslim countries, such as Tunisia, are speaking out against this liberalism, believing it too taxing on the people. Gender discrimination in Islam tends to favor men. Husband is responsible for everything. From a legal point of view, her husband is obliged to provide for the household & children and to look after her aging parents when necessary. Women and wives don't have to do that. Her money belongs to her and only to her. The man's money doesn't really belong to him, but to a large family. According to Islamic law, these rights help emancipate women, but keep men tied to the care of their families. Basic Principles of Islamic Inheritance: Until 1937, Muslims in India were subject to grossly unjust customary laws. Since the Shariah Law of 1937, Muslims in India have been governed by special Muslim law regarding personal matters, including property rights, giving precedence to personal law over custom. However, this does not imply a "reform" or "codification" of Islamic law, both of which have been rejected to this day by patriarchal enforcement under the guise of religion. Until the passage of Shariah law in 1937, Muslims in India were subjected to customary laws that were grossly excessive for women. Under the Shariah Law of 1937, Indian Muslims were subject to Muslim moral rights, including property rights, in personal matters. According to Islamic law, men and women have equal rights to tradition. When a Muslim man dies and his heirs include both a man and a woman, both inherit the property at the same time. But a man's share of inheritance is double that of a woman in the same relationship as the deceased. The proportion of property inherited by a female heir is half that of an equivalent male heir. This is a blatant example of the unequal treatment of women under Islamic law. Islamic law has provisions against poverty among families, stipulating that Muslims may not inherit more than one-third of their wealth. However, if he registers an existing marriage under the provisions of his Special Marriages Act, 1954, he has all the powers of a testator under his Indian Succession Act, 1925. In some cases, the sisters represented a clear reform of the existing patriarchal system, but from today's perspective, the reform did not go far enough. Traditional Islamic inheritance rules derive from the simple structure of the Quran and were subsequently devised and codified by numerous juristic schools through jurisprudence methods and interpretations. Many modern Muslim nationstates have adopted these rules from either the main Sunni or Shia schools of law.

### **IV. PROPERTY RIGHTS OF A CHRISTIAN WIFE, PARSI (ZOROASTRIAN)**

Under the Indian Succession Act 1925, a Christian widow is entitled to one third of her husband's property. Inheritance laws for Christians and Parsis are laid down in the Indian Inheritance Act, 1925 (ISA). Sections 31 to 49 are treated as Christian disciples and Sections

50 to 56 are treated as Parsi disciples. The rights of an Indian Christian widow are not exclusive rights and will be restricted if other heirs intervene. Only if the executor leaves no relatives, then all his property belongs to the widow. If the executor leaves a widow and lineal descendants, one third of the estate goes to the widow and the remaining two thirds to the lineal descendants. If he leaves no relatives other than his direct descendants, half of his property goes to his widow and the other half to his relatives. The rules for non representative succession among Christians apply only if the deceased has not signed the will, gift deed or settlement deed. In the absence of the above documents, the rules governing inheritance set out in Sections 29 to 49 of Part 5 of the Indian Inheritance Act, 1925 shall apply. However, if there is a will by the deceased, common law under sections 57 to 391 applies. Pursuant to this canon law, the Indian Succession Act of 1865 was enacted for territories under British rule. As a result, the current Indian Succession Act, 1925 was enacted by amending certain aspects of the Act. During this period, other common law applied to areas not covered by the above jurisdictions. One of these regions is Travancore. Prior to July 1949, Travancore was a monarchy and the law in force in its territory regarding the legal succession of property of members of the Indian Christian Community was the Travancore Christian Succession Act of 1092. By law, a widow's or mother's lifetime custody is only granted once and can be terminated by death or remarriage.

**Kerala High Court ruled in Mathu Phillip v. Mathu Usef** under the Travancore Christian Succession Act that daughters receiving Streedanam shall not be entitled to additional rights to property bequeathed by their fathers or mothers dropped. They relied on the bankwide decision in the Hariharasbramaniam v. Matu Suresia case.

**Madras Supreme Court decides in Solomon v. Madras.** Mr Muthiah said the Travancore Christian Succession Rule II of 1092 is the equivalent of Part V of the Indian Succession Act 1925. Therefore, Section 6 of the Part State Act 1951 (Act) abolished this system.

**Finally, in Mary Roy v. Kerala,** the Supreme Court of India held that Christians in the former state of Travancore (Kanyakumari district of Tamil Nadu and Kerala) were not subject to the same chapter since the addition of Part II. It was decided that it was subject to regulation. B State (Laws) Act 1951, 11 of Indian Succession Act 1925 Part V. This judgment retroactively repealed the aforementioned statute. As a result, Christians throughout India were subject to the provisions of Section 37 of the 1925 Act, which entailed the equal division of the property of unrepresented persons among their children after deducting one-third of the widow's share. It stipulates that at first glance, Parsis property rights are gender equal. Basically, a Parsi widow and all her children (both sons and daughters) receive an equal share of the property of the unrepresented, regardless of marital status, but each parent (father and both mothers) receive half of each child's share. But if you take a closer look, there are some notable features. For example, the widow of a son who has already died and died without incident receives no share at all. The case was upheld by the Supreme Court, on the grounds that the state law was repealed by the subsequent Indian Succession Act of 1925, which governed all Indian Christians and that the restriction of Christian women's property rights in Old Travancore was illegal/declared. However, the provision was not established. The provision was declared unconstitutional because the court found it excessive to address the question of the provision's constitutionality, but by virtue of the ISA's overriding effect it would not apply anyway.

## V. TRIBAL WOMEN'S RIGHTS

It is also worth noting here that tribal women's property rights are still governed by an even more antiquated system of common law, under which there is no right of succession or division. Tribal women do not even have the right to inherit farmland. Ironically, I oppose changing men's and women's property rights in the name of preserving tribal culture. Therefore, tribal women claim the property of their parents, brothers and husbands as heirs by legal inheritance, equal to the male heirs with absolute entitlement under the general principles of the Hindu Succession Act 1956. It was decided to take ownership of and as interpreted by the courts, the Indian Succession Act for Tribal Christians was similarly interpreted. They elaborated on this by recounting numerous incidents in which women were forced to relinquish interest in life, were subjected to violent attacks or were killed. Discrimination under customary inheritance law has therefore been contested as unconstitutional, unjust and illegal. In the judgment in this case the Supreme Court of India laid down some significant principles to uphold the rights of inheritance of the tribal women, basing its verdict on the broad philosophy of the Indian Constitution and said: "The public policy and Constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) & (3) and 14 is to accord social and economic democracy to women as assured in the preamble of the Constitution. They constitute core foundation for economic empowerment and social justice to women for solidity of political democracy.

"In other words, they do not recognize sex discrimination and aim to remove obstacles to the equal enjoyment of social, economic, political and cultural rights." It is also known to be based on international declaration obligations. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Universal Declaration of Human Rights. We call for gender equality legislation and equal rights for women.

## VI. JUDICIARY RESPONSE

From the above, it is clear that while property rights for Indian women have improved over time, they are far from being completely equal and fair. There are still many property rights for Indian women that are considered unconstitutional. On the one hand, the Supreme Court of India has held that the personal rights of a party are not governed by fundamental constitutional rights and therefore cannot be challenged on the grounds of infringement of fundamental rights, especially rights guaranteed by the Constitution made a judgment. Many court cases have ruled that this is not possible in relevance to Articles 14, 15 and 21 of the Constitution of India. On the other hand, in many other cases, the Supreme Court has held that individual rights are the touchstone of fundamental rights and the law has been downplayed or construed as compatible with fundamental rights. Another encouraging trend is that Indian courts are increasingly looking to international standards derived from various international declarations and treaties. The Supreme Court of India has explicitly referenced and relied on the Convention on the Elimination of All Forms of Discrimination against Women in many of its decisions. These rulings provide Indian women with a solid basis to demand gender justice and equality on par with international standards.



## VII. CONCLUSION

Women have been exploited for centuries. They were denied a fair place in society. The goal of any civilization is to overcome the prejudices of each stage, composition and segment. Traditional arguments about women's rights to men and their equality with men gain weight when questions of rights and status within the family arise in the context of property distribution. Women's silence and self denial according to unequal property rights further reinforce and perpetuate injustice. Modern women want the same rights as men. Only when individual rights are unified in the form of a Uniform Civil Code (UCC) with fair, just and nondiscriminatory provisions can women recognize their human rights in word and spirit. The introduction of a uniform civil law would go a long way in empowering women in India. Significant limitations have been observed in the ability of laws to ensure gender equality, depending on the nature of the law and how it operates. In this regard, it should be remembered that the law itself is not a monolith that is simply developed and then abolished. Historically, the development of law has been uneven. Although several constitutional, legislative and judicial measures have been taken to improve women's property rights, leading to fundamental changes in the position and status of women, the constitutional stipulation of women's equal opportunity and dignity, no commitments have yet been made to achieve the target in this regard. However, the challenges are many and varied. When women's property rights are socially recognized, it leads to women's rights. In a country where women continue to own property, the road ahead is likely to be long and arduous.

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