



Hindu Law's Protection of Women's Property Rights and Gender Equality ¹

Arjun Deswal

BA LLB, Department of Law
University Maharshi Dayanand University Rohtak

Abstract

Women have fought for their most basic rights in India and around the world from the beginning of civilization. Property rights are one example of these rights. It was expected in ancient Hindu custom that the daughter would marry and go to live with a new family. Therefore, only male Hindu family members would receive a portion in the event of a partition or property division. Only after marriage (stridhan) and on other auspicious occasions during public assemblies did women obtain property. Women were not allowed to own a portion of the property because they had no other source of income. Women have moved closer to equality with males over time. They are self-sufficient both materially and financially. In this case, laws would have to change to keep up with society. Consequently, a number of laws, such as the 1937 Hindu Women's Right to Property Act, the 1956 Hindu Succession Act (HSA), and the 2005 Hindu Succession (Amendment) Act, were passed in recent decades. A number of court rulings have also been made with the intention of resolving legal issues and determining the accurate interpretation. In this article, each of these laws and decisions has been carefully reviewed. In addition, there are still conflicting federal and state personal property laws pertaining to agricultural land inheritance. In this regard, there are regressive inheritance limitations in Delhi, Haryana, Uttar Pradesh, and Punjab. Indeed, married daughters are no longer considered major heirs in Uttar Pradesh as of 2016, and Haryana has repeatedly attempted to reverse the progressive privileges provided to women under the Hindu Succession Act. In several north Indian states, there is also grassroots opposition against land registration for women. Property rights and women's empowerment are thus still unresolved issues.

Keywords: Property Rights, Hindu Law, Gender Equality, Succession

OVERVIEW

Women are always recognized as Devi in Hinduism, and in ancient Hinduism, women were granted the same social privileges as men. Lord Krishna told Arjuna that "women are just as deserving and capable of achieving liberation, or moksha, as men" in the Holy Scripture through the "Bhagavad Gita." Women in India enjoyed far greater independence in the Vedic era than they did in later times. She was more in charge of choosing her spouse than traditional marital arrangements would suggest. She openly took part in religious sacrifice alongside men and attended feasts and ceremonies. Like Gargi, she could conduct research and participate in thoughtful discussion. If she were widowed, she might marry again without restrictions. Because Hinduism does not view women as having less dignity, there aren't many specific quotes that uphold women's dignity. Nonetheless, a few verses in older and secondary Hindu texts uphold the dignity of women. The accounts of several female Upanishad scholars, including Maitreyi, Grg, Lopmudr, and Jbl's narrative, show how much respect is given to women.²

"Women account for approximately half of the world's population, work over two-thirds of all hours worked, earn one-tenth of global income, and possess less than one-tenth of global property," according to a 2020 BBC report on women's empowerment in the global arena. In all communities, established

¹ Arjun Deswal Student Law Department MDU Rohtak

² Bhattacharjee, Debanjali, Hinduism and Women: Perspectives from a Feminist Angle, Welsh Women's Aid, January 31, 2020, <https://www.welshwomensaid.org.uk/2020/01/hinduism-and-women-views-from-a-feminist-angle/> (accessed April 9, 2022).



and developing alike, women hold a unique position. This is especially true considering the range of occupations. Throughout their life, they assume many roles, such as that of mother, wife, daughter, and sister. Whatever her influence on each person's life may be. Due to many cultural constraints and obstacles, she continues to belong to an unfavorable sociological group or class as an individual. The people in charge of society have oppressed her with tyranny. The status of Indian women is essentially the same as that of women across the globe. She is, on the one hand, loved by all people and regarded as the model of morality and tolerance. In contrast, women have experienced numerous misfortunes, illnesses, and atrocities at the hands of a society ruled by men. A woman has not only been denied real social, economic, and political justice, but she has also experienced ignorance at every turn, been mistreated, and been fully subjugated by a male-dominated society. The class of women is vulnerable for reasons unrelated to their financial security. That woman has been a victim, no matter how wealthy she is. Both the wealthy and the poor face a variety of social obstacles and drawbacks. In the lives of all people, women are essential. Ensuring her enhanced birth rights will lead to a more promising future for our community, families, and each person.³

There are many ways that gender inequality manifests itself, but the most heinous one is when women's property rights are violated. Property rights differences between men and women date all the way back to ancient times. In India, women are treated unfairly and oppressed by the male-dominated culture despite being respected and revered as the embodiment of all virtues. Even after all the revolutions in civilization and culture, women still do not have the stature and place in society that they deserve. Most of the country still tolerates the exploitation of women both at home and in public. Male domination and unfavorable circumstances for women are still prevalent. National success, which depends on social and familial stability, requires full personality development, fundamental freedoms, and equal participation of women in political, social, economic, and cultural spheres. Gender discrimination elicits strong feelings of fury. In ancient Hindu culture, women were viewed as dependents with limited property rights and a poor social position. As per the ancient Mitakshara Law, a son is entitled to a claim in the Hindu undivided family property from birth, and no female can become a coparcenary member of a joint Hindu family property. Furthermore, based on familial births, a son, grandson, and great-grandson constitute a coparcener class. The "Hindu Law of Inheritance Act, 1929" was the first statute to include women, allowing female heirs the right to inherit. During this period, the Hindu Women's ability to Property Act was a significant legal framework that granted women the ability to own property.

1937." The 1937 Act gave the widow the same portion as the son and permitted her to inherit alongside him.⁴ A widow was not regarded as a coparcener, even though she was a joint family member and had a right to the deceased's property comparable to that of a coparcener.⁵

Asra Shifaya presents a critical analysis of the property rights of women under Hindu law.

Indian Women's Identity

Women are praised in the Vedas, where they are referred to as Dharma Patni, or "one who promotes and preserves the rightful conduct of life." Hinduism has traditionally seen a woman's job as being to support her family and life as well as actively engage in religious activities. But throughout time, due

³ Available at: <https://www.cfdra.in/evolution-of-womens-right-over-inheritance/>, Navonita Mallick, EVOLUTION OF WOMEN'S RIGHT OVER INHERITANCE, CFDRA.

⁴ 174th Report (MAY, 2000), <https://lawcommissionofindia.nic.in/kerala.htm>.



to a variety of circumstances, including urbanization and the influence of Western cultures, the role of a Hindu woman in the home has changed significantly. In today's Hindu society, a large number of people think that men and women are equally important. Consequently, a Hindu woman may choose to go after employment and take on the position of primary breadwinner in her home. Notably, in Hinduism, mothers have always been highly esteemed and deserving of great respect. That being said, each woman has a different function due to her "varnashrama dharma," or obligations based on her life stage.

Prior to the implementation of the HSA, a Hindu woman's property was divided into two categories, "Stridhan and Hindu Women's Estate." Numerous organizations have worked tirelessly to increase awareness and advance women's well-being, inclusion, and rights. Numerous Hindu women have spoken out in favor of women's rights throughout history. It became the exclusive and absolute property of her heirs upon her death. The latter was seen as her restricted estate, which she could only alienate to a limited extent. With the passing of HSA, all Hindus were forced to adhere to Mitakshara coparcenary, a single type of coparcenary system in joint families. The purpose of this statute was to establish a succession plan that would grant sons and daughters equal rights to inheritance. But there were still stark disparities in gender that seriously harmed daughters.

Daughters were not entitled to a distinct share of joint family property from birth, whereas sons were. Each has equal access to the wealth left by their father. Daughters shared property they had personally acquired, whereas sons shared coparcenary property. In India, women's rights have been curtailed due to the assumption of shared ownership of land and other assets, especially in rural areas. If a "Hindu" man passed away intestate—that is, without a will—his daughters would inherit equally with his sons, but they would only receive his separate property and his "notional" share of the joint family property. There would be no direct inheritance. Sons, on the other hand, inherit not only their father's personal property but also a direct claim to a piece of the jointly owned family property.

The 'Hindu coparcenary' was an inheritance unavailable to women, exclusive to men.

Women's Property Rights During the Vedic Era

The Brahmins, who occupied the highest echelon of the socio-religious hierarchy during the Vedic era, used the "Dharmasastras" to defend their status. These Dharmasastras were said to have been based on authorized practises, a pure conscience, and Hindu sacred texts like the Smritis and Vedas. Dayabhaga gained great popularity in Bengal since it is a comprehensive collection of all the Smritis penned by Jimutvahana in the 12th century. Rewritten in the twelfth century, the Mitakshara is a commentary on a Smriti by Vijnaneshwara called Yajñavalkya, which was widely recognized in India. Subsequently, the digest and commentary developed into two distinct schools of thought, Mitakshara and Dayabhaga. These two philosophical traditions have different views on inheritance. During the Vedic era, the husband and wife jointly owned the family business. At the time of marriage, the husband was expected to sign an oath promising never to violate his wife's economic rights and interests. The wife was permitted to incur regular household expenses when her husband was away, according to the Apastamba Dharmasutra, on the basis of the shared ownership principle between the husband and wife in the family. In addition to this presumption of joint ownership, women were also allowed to inherit due to another important illusion, specifically the sense of identity between a husband and wife. Based on this fiction, Brihaspati decided that a widow was entitled to inherit a sonless husband's fortune before any other successor. Therefore, it begs the question of how Hindu law denied the wife her right to ownership and inheritance after her husband's death if the husband and wife are acknowledged as having a single legal



personality and joint ownership. According to Kane's answer to this question, Apastamba suggested having a wife and husband inside a religious framework. But the ancient sages did not recognize this identity of husband and wife for legal or religious reasons.

Changes made in accordance with Hindu law:

In order to examine present laws pertaining to women and make sure that no woman is left absolutely penniless, the Indian government formed a "Committee on the Status of Women" in 1975. The Committee made a number of recommendations for women who identify as Christian, Muslim, or Hindu. In addition to other recommendations, the Committee made the following about Hindu succession rights:

1. The elimination of birth rights and the modification of Mitakshara Coparcenery in accordance with Dayabhaga are necessary to maintain the inequality among descendants because coparceners inherit exclusively via the male line, which is the reason behind Mitakshara's continued existence.
2. The HAS's "tenancy devolution" exception in Section 4 clause (2) ought to be removed.⁶
3. It is necessary to remove Section 23 of the HSA, which discriminates against married and single daughters in terms of their inheritance rights to real estate.
4. The testation power granted by the HSA should be limited in order to protect the inherited rights of female beneficiaries.
5. When it comes to marital property, the value of the wife's earnings from domestic work should be recognized legally instead of the antiquated standard of actual financial involvement.
6. At least thirty-three percent of the marital property obtained during or at the time of the marriage shall be awarded to the woman upon divorce.”¹¹

In addition, the National Commission for Women (NCW) provided particular recommendations about laws impacting women and property. The recommendation was as follows:

- a) The male decedent's undivided rights in coparcenary property and any independent or self-procured property shall be distributed equally;
- b) In an undivided Hindu household governed by Mitakshara Law, a daughter ought to be considered a coparcener by birth, just like her son.
- c) Daughters ought to have the same rights, responsibilities, restrictions, and limits as sons as survivors.

GENDER EQUITY AND THE HINDU SUCCESSION ACT

According to Section 14 of HAS, Hindu women's property rights are determined by their marital and familial status, which includes whether or not they are married, whether or not they are mothers, widows, or daughters. "Any property purchased by a female Hindu before to or subsequent to the commencement of this Act will be kept by her in her capacity as a full owner, not as a limited owner." It also depends on whether the asset was acquired independently, through inheritance, or during the marriage. In order to address issues with inheritance and gender inequity, the HSA was passed. Previous to this, the HWRPA was passed, which significantly improved women's property rights by granting Hindu widows inheritance rights for the first time. The Hindu Succession Statute was enacted after independence in order to carry out the changes made to the previous statute.

The principal provisions of the act are as follows:

⁶ Arjun Pal, The Hindu Succession Act, 1956, Section 6: The Transformation of Women's Rights (2016), 10.13140/RG.2.1.4795.3522.



Widows enjoyed a higher social standing, and female heirs were acknowledged aside from the widow.

A system was developed to allow heirs of a certain class to succeed simultaneously.

Testamentary succession is used in Mitakshara Coparcenary to guarantee that no female is left out of the line, even if the concept of survivorship is retained.

Remarrying, being chaste, or being unfaithful will no longer prevent someone from inheriting.

Property rights extend to any unborn child (son or daughter) who is still in the womb at the time of the intestate's death or who is born subsequently.

A Hindu feminine concept known as "Streedhan" holds that on her wedding day, the bride receives presents from both sides of her family. The widow's only absolute property was Stradhan, and her only other ancestral property was a life estate with restricted alienation rights. While Section 14 of the HSA prohibited Hindu women from acquiring and holding property as absolute owners, the 1937 Women's Property Act preserved the idea of a "limited estate" and gave women the right to absolute ownership of any estate they had previously held as a limited owner on the Act's effective date. It should have been obvious that even if the lady had inherited or possessed land before to the Act's passage, her restricted estate may grow into an absolute estate and she could eventually become the only owner.

Because a person's share may increase or decrease upon the death of a male member, it is impossible to establish how much of a share can be handed to a coparcenary member. The Hindu Settlement Act (HSA) stated that daughters in Hindu families, whether married or not, had no coparcenary claim within the family. Since the amendment's inception, it has faced many obstacles, as evidenced by the Pravat Chandra Pattnaik v. Sarat Chandra Pattnaik case, where the Court found that "the Amendment was enacted to eliminate discrimination by granting daughters of the family equal rights to sons in Hindu Mitakshara property under Section 6 of the Act." Additionally, Section 6 will confer coparcener rights on females born before 2005, as they are entitled to the same part of the family property as the sons. Sugalabai v. Gundappa A. Maradi addressed a similar issue, declaring that "as soon as the Amendment becomes effective, daughters will have the same rights as sons."

Summary

Women in today's world face many challenges, including where to place themselves against the vast and complex Hindu style of life. How can they draw strength from Hinduism and all that it has to offer to strengthen our resolve to end gender-based violence? We speak out against the objectification of women in the media and its biased reporting; we confront everyday sexism and misogyny and demand strict legal penalties for atrocities against women; and we stand shoulder to shoulder with our sisters of other faiths, just as Indian women are doing right now in one of the biggest political uprisings in the nation.

discrimination at every sphere of their life and the government machinery are totally flailed to maintain the equality for women. Half of the population of the world is possessed by the women and still they are discriminated on the name of custom, traditions and religion. As it is provided in the World Bank Report of 2021 that out of 196 countries only 10 countries are successful in providing equal rights to the women in which India stands on the 90th rank, it means that India still so far from its goal to provide



equal rights to the women in India. The main reason behind the failure of India to provide equal rights to the women is the prevailing patriarchal system in the North West India. Therefore in India only 33% women are possessing immovable property out of this the majority is the rural women in comparison of urban women. Thus, Hindu women have come a long way from the traditional Hindu legislation that granted them very restricted rights to the 2005 Hindu Succession (Amendment) Act. They also obtained absolute ownership of the property they held as a result of the restricted ownership that previously hampered their absolute enjoyment of property. Additionally, they have been designated as co-parents in the Hindu Joint Family. They also gained the right to petition for division and dispose of such coparcenary property in accordance with their own will or via a testamentary disposition. Additionally, the judiciary's participation in this respect is laudable, since without it, the right would have existed only in formal legislation but not in practise in Hindu society. To summarise, considerable progress has been made in terms of the rights of Hindu women to own and dispose of property. Finally, it is only through the proactive participation of the court that Hindu women have achieved actual rights.