

INHERITANCE RIGHTS OF WOMEN UNDER HINDU SUCCESSION ACT: A CRITICAL STUDY

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BEST CITATION – PRAGYA MATHUR, INHERITANCE RIGHTS OF WOMEN UNDER HINDU SUCCESSION ACT: A CRITICAL STUDY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (9) OF 2025, PG. 276-283, APIS – 3920 – 0001 & ISSN – 2583-2344.

This article is published in the collaborated special issue of Amity Law School, Amity University, Mumbai and the Institute of Legal Education (ILE), titled “Emerging Trends in Law: Exploring Recent Developments and Reforms” (ISBN: 978-81-986345-1-1).

ABSTRACT

The present paper critically analyzes the development of property rights of Hindu women in India with special emphasis on the effects of the Hindu Succession Act, 1956 (HSA) and the Hindu Succession (Amendment) Act, 2005 (HSAA). In the past, Hindu women enjoyed very limited rights of inheritance, being socially and economically inferior to men. The institution of coparcenary property, a special category of joint family property, classically limited inheritance by birth to male lineal descendants. The Hindu Women's Right to Property Act of 1937 granted limited rights, mostly to widows. The passing of the HSA in 1956 was a turning point by acknowledging the property rights of Hindu women and instituting ideas such as testamentary and intestate succession, and absolute ownership under Section 14, instead of limited estates. The 1956 Act did not initially confer coparcenary rights by birth on daughters over ancestral property. Realizing that this gender bias had to be eliminated and in accordance with principles of constitutional equality, the HSAA 2005 was introduced. This historic amendment granted daughters the status of coparceners by birth, with rights and liabilities being the same as sons in coparcenary property. Despite these progressive legal changes, challenges in implementation and interpretation persist, including issues regarding the retrospective effect of the amendment, the impact of partition, and societal resistance rooted in patriarchal norms. In addition, the provisions of intestate succession of a Hindu woman under Section 15 of the HSA 1956 have been criticized on grounds of discrimination, and the husband's heirs usually take preference over her family of birth, even for self-acquired property. This article critically discusses these pressing issues and concerns by examining the pertinent provisions, landmark judicial decisions such as *Vineeta Sharma v. Rakesh Sharma* and *Arunachala Gounder (dead) By Lrs v. Ponnusamy*, and throwing light on the ongoing struggle for gender justice and social reform towards realizing real equality in Hindu succession laws.

Keywords: Female Coparcenary, Female Inheritance, Judicial Interpretation, Gender Discrimination, Hindu Succession Act 1956, HSAA 2005, Intestate Succession, Property Rights, Social Reform.

INTRODUCTION

The debate on property rights of women in India is a long and intricate one with centuries of societal mores and legal structures pitting them against men in an unfavorable position. Women's property rights in ancient India were

limited, usually restricted by religious practices and patriarchal systems that held them as incapable of participation in some rites or control of property. The classic Hindu law, especially the Mitakshara school dominated in much of India, acknowledged a distinctive form of joint family property called coparcenary in

which the rights were mainly invested in male descendants by birth. Early legislative efforts, including the Hindu Women's Right to Property Act of 1937, granted some recognition, primarily in the form of limited rights to widows, but notably left daughters out of inheriting parental land.

After India gained independence, the necessity to tackle gender inequality in personal laws became more and more evident with the goal of conforming to the constitutional mandate of equality. The Hindu Succession Act, 1956, was a major welfare act which codified and reformed Hindu law and provided for Hindu women's rights in property and for the first time introduced the principle of women as absolute owners of property under Section 14 and thus removed the principle of limited estate. In spite of these developments, the 1956 Act continued to exclude daughters from coparcenary rights by birth, establishing an unequal status in relation to sons in inheritance of ancestral property.

The increasing awareness of this inequality resulted in calls for further reform. Some states passed their own amendments to deal with this problem. Lastly, the Hindu Succession (Amendment) Act, 2005, was enacted with the clear intention of eliminating discrimination against women in succession legislation and bestowing daughters the same coparcenary rights by birth as sons. This amendment had the aim of giving strength to women in the area of inheritance and placing Hindu law on par with the ideals of gender justice and social reform.

Although the 2005 Amendment is hailed as a milestone law that has tremendously enhanced the position of Hindu women in relation to ancestral property, its enforcement and interpretation have also raised a number of intricate problems and issues. Judicial rulings have played an essential role in establishing the retrospective aspect of the amendment and daughters' rights in diverse situations, such as inheriting their father's self-acquired property. Nevertheless, strong patriarchal mindsets,

cultural constraints, and difficulties in the enforcement of legal rights persist in hindering women from being able to realize their rights fully. Additionally, provisions regarding intestate succession of Hindu women under Section 15 of the 1956 Act are still subject to critical analysis as they are felt to be gender discriminatory in their approach and have a tendency to disfavor the natal family of a woman. This article attempts to critically evaluate the existing legal framework controlling Hindu women's property rights, review the critical role of judicial interpretation in addressing uncertainties, and explore the continuing challenges and the continued need for reform to bring about complete gender equality in succession laws.

ROLES OF MITAKSHARA AND DAYABHAGA SCHOOLS UNDER FEMALE INHERITANCE

The Mitakshara and Dayabhaga schools were two important schools of thought under conventional Hindu law that deeply impacted property partition and inheritance patterns in various parts of India before the coming into force of the Hindu Succession Act, 1956 (HSA).

Mitakshara School:

- This school dominated in most of India except for eastern India.
- Its core philosophy towards property was that the family belonged to the family by birth or as a rightful beneficiary.
- One of the important concepts in Mitakshara law was the coparcenary, in which sons, grandsons, and great-grandsons gained rights and interests in the property of the family by birth. The ownership pattern in the joint family under Mitakshara was one of survivorship and varied with deaths and births of male members. For instance, in a family with one father and two sons, each had a one-third share; when another son was born, the share came down to one-fourth per male.
- Most importantly, the Mitakshara school did not, in general, treat women as coparceners. Prior to amendments, only a narrow group of female relatives such as the widow, daughter,

and mother were considered potential heirs, and their right to inheritance was subject to the absence of male heirs. A widow of a deceased coparcener could not receive his share or utilize a portion against his brothers.

Dayabhaga School:

• This school was practiced mainly in eastern India, i.e., Bengal and Assam.

• The rights to the family property under Dayabhaga were obtained through the death of the earlier possessor (last holder), unlike Mitakshara.

• Independent and coparcenary property had no difference between them; anything that a person obtained as property was by succession.

• Dayabhaga school was held to be more liberal towards women than Mitakshara. Women were granted inheritance of property and widows enjoyed more significant property rights. A widow was able to acquire her late husband's share and appoint a segment in favor of a portion against his brothers. Daughters got the same share of the property as their brothers in case of the father's death. Under Dayabhaga law, if the widow expired without a son, her property would go to her nearest male heir.

Influence and Shift towards the Hindu Succession Act, 1956: Before legislation such as the HSA, Hindu women enjoyed limited property rights under both school systems, but Dayabhaga provided somewhat more benefits. Hindu Women's Right to Property Act of 1937 was the previous effort for safeguarding property rights of Hindu women, chiefly providing limited property rights to widows, but significantly it didn't provide anything to daughters under coparcenary property.

The Hindu Succession Act, 1956, came into force after Indian independence to harmonize inheritance law across India in an attempt to eliminate gender bias and achieve the constitutional principle of equality. The Act codified and reformulated Hindu law uniformly applicable to Hindus in areas covered under both the Mitakshara and Dayabhaga schools

and regions where matriarchal Hindu law previously applied.

The 1956 Act replaced the 1937 Act with major amendments:

- It accepted Hindu women's rights over property and brought about ideas such as testamentary and intestate succession.
- Most importantly, Section 14 of the Act did away with the "limited estate" idea for women and made them absolute owners of any property in their possession, irrespective of the manner of acquisition.
- Section 6 of the initial 1956 Act covered the devolution of coparcenary property, including elements of the Mitakshara system. It provided that on the death of a coparcener, the property would pass to Class I heirs (including mother, widow, and daughter) together with the son through testamentary or intestate succession, ignoring the rule of survivorship for female heirs. Nonetheless, the original 1956 Act did not extend daughters coparcenary rights by birth over ancestral property, in contrast to sons. This preserved an important distinction emanating from the Mitakshara system.

Additional Reform in 2005: Acknowledging the continued discrimination, specifically the denial of daughters coparcenary rights by birth under the Mitakshara system as enacted in the 1956 Act, the Hindu Succession (Amendment) Act, 2005, was passed. The amendment sought to eliminate this gender-based discrimination and bring the legislation into harmony with constitutional principles of equality. The 2005 Act modified Section 6 of the HSA to provide daughters with the coparcenary status by birth, same as that of sons, and in coparcenary property. This was a major departure from the classical Mitakshara rule excluding women from coparcenary rights.

CHANGES IN THE 1956 AMENDED ACT

Prior to the 1956 Act, Hindu women's right to inherit property was traditionally restricted, and they tended to be considered economically and socially less than men. Women were assigned minimal ownership rights under ancient Indian customs and patriarchal systems. Classical Hindu law, especially the Mitakshara school that dominated much of India, accepted a coparcenary system by which property rights were generally gained by male lineal descendants through birth. Women in general were not coparceners under the Mitakshara school. The Dayabhaga school, largely in Bengal and Assam, was a bit more liberal in that women were allowed to inherit and widows had more significant property rights, but rights were obtained on death of the last owner, not by birth. Preceding laws like the Hindu Women's Right to Property Act of 1937 gave some minimal rights, chiefly to widows, but did not give any rights to daughters in coparcenary property.

The passing of the Hindu Succession Act, 1956 after India gained independence was a major reformative measure with the goal of unifying inheritance laws across India and removing gender discrimination, as per the constitutional requirement of equality. The Act was uniformly applicable to Hindus in regions under both Mitakshara and Dayabhaga schools of law and regions under matriarchal Hindu law.

Major fundamental changes brought about by the HSA, 1956 are:

- Recognition of Hindu Women's Property Rights: The Act recognized Hindu women's property rights in general, reforming and codifying Hindu law.
- Introduction of Testamentary and Intestate Succession: The Act introduced the terms testamentary succession (inheriting through a will) and intestate succession (inheriting when no will is executed) for Hindu women, rights previously more restricted or non-existent for women.
- Creation of Absolute Ownership (Section 14): Perhaps the most important change was introduced by Section 14 of the Act, which eliminated the notion of a "limited estate" for women and made them absolute owners of any property they held. This implied that any property a Hindu woman possessed, which was obtained prior to or after the commencement of the Act, would be owned by her as an absolute and full owner rather than a limited owner. This provided women with unfettered rights, such as the capacity to sell, transfer, or dispose of their moveable and immovable property without requiring approval from male family members. Judicial explanations further established that the said rights were indissoluble and non-limitable.
- Alterations to Devolution of Property of a Male Hindu: Section 6 of the initial 1956 Act addressed devolution of a male coparcener's right in a Hindu undivided family property. According to it, on the death of a coparcener, the property devolved to Class I heirs in addition to the son through testamentary or intestate succession. This successfully abolished the conventional Mitakshara rule of survivorship among female heirs, such as the mother, widow, and daughter, by enrolling them into the scheme of inheritance along with the son as Class I heirs.
- Expansion of Definition of Stridhan: The Act further expanded the definition of stridhan to include both movable and immovable property, while previously it was limited primarily to movable gifts given to a woman.

Even with these tremendous strides, the initial Hindu Succession Act, 1956, did not give daughters coparcenary rights by birth in ancestral property, as was given to sons. This exclusion, based on the historical Mitakshara

system, preserved an unequal status for daughters in the inheritance of ancestral property. This inequality subsequently prompted the Hindu Succession (Amendment) Act, 2005, to correct this particular gender discrimination.

WOMEN'S RIGHT TO PROPERTY UNDER THE ACT, 1956

The Hindu Succession Act, 1956 (HSA), and its subsequent amendments made drastic changes to Hindu women's property rights in all capacities. Prior to the 1956 Act, Hindu women's rights of inheritance were traditionally limited, viewing them as being socially and economically inferior to men. Classic schools of Hindu law such as Mitakshara and Dayabhaga contained varying provisions on property inheritance and division, but women's property rights were, overall, confined, though Dayabhaga was a little more accommodating. Some improvement was made for widows by the Hindu Women's Right to Property Act of 1937, but no rights in coparcenary property were accorded to daughters.

The Hindu Succession Act, 1956, was passed to harmonize the laws of inheritance in India, applying uniformly to Hindus in all the areas under the Mitakshara and Dayabhaga schools, with the purpose of removing gender disparities.

The Act, together with major amendments, affected women in the following roles:

➤ Coparcenary:

- Traditionally, under the school of Mitakshara, coparcenary was a special joint family property in which the rights were acquired through birth and only male lineal descendants were the ones to inherit as coparceners prior to the 2005 Amendment Act. Women were not normally treated as coparceners in this system.
- The initial Hindu Succession Act, 1956, under Section 6 addressed the devolution of coparcenary property but

did not provide daughters with coparcenary rights by birth, as they were given to sons. When a coparcener died, the initial Act provided that property would pass to Class I heirs (mother, widow, and daughter) along with the son through succession, abolishing the rule of survivorship for these female heirs in such a situation.

- Realizing the disparity, the Hindu Succession (Amendment) Act, 2005, drastically changed this stance. The amendment was intended to eliminate the gender discrimination in Hindu law of succession and bring it in line with the constitutional requirement of equality. Through the amendment of Section 6 of the HSA, 1956, the 2005 Act gave daughters the status of coparceners by birth, entitling them to the same rights and liabilities in coparcenary property as sons. This amendment did away with the century-long discriminatory practice of denying women membership in the coparcenary system.
 - With the 2005 amendment, daughters can inherit property as coparceners and have acquired a right in coparcenary property and can claim partition. They stand on equal birth right to ancestral property as sons.
- Mother:
- In ancient laws, the mother was referred to as a possible heir in certain institutions, frequently subject to the failure of male heirs.
 - The Hindu Succession Act, 1956, added the mother to the inheritance plan.
 - The mother is ranked as a Class I or Class II heir in case of an intestate male Hindu death, signifying preference in succession.
 - A mother is, in fact, also entitled to Class I heir property under the Schedule of the Hindu Succession Act.

- But the Act also provides for rules regarding the intestate succession of a female Hindu under Section 15. Under this scheme, the mother has been made an heir, but she comes after the husband and the heirs of the husband. This variation in rank of the mother (and father/natal family) in a female Hindu in intestate succession and a male Hindu is something that has come under criticism under gender bias of Section 15 of the Act.
- Class I and Class II Heirs:
 - The Hindu Succession Act, 1956, incorporated a schedule of heirs, which included Class I and Class II.
 - Upon the death intestate of a male Hindu, his estate vests in Class I heirs mentioned by him and, if they do not survive him, in Class II heirs.
 - The 1956 Act originally covered mother, widow, and daughter under Class I as heirs who will take the property of a dying male coparcener by way of succession.
 - The parents of a male Hindu are designated as Class I and Class II heirs in case he dies intestate.
 - In the case of a female Hindu intestate dying, Section 15 of the Act enumerates heirs in categories that are similar to classes but in a different order depending on the origin of the property and relationships. The first category consists of sons, daughters (and their children), and the husband. The second category consists of the heirs of the husband. The third category consists of the mother and father. Following categories are the heirs of the father and the heirs of the mother. This separate order in the case of female intestates under Section 15, favoring the heirs of the husband over the woman's own parents, is viewed as discriminatory.
- Other Roles:
 - Daughter: The Act covered daughters as Class I heirs. As explained under Coparcenary, the 2005 Amendment declared daughters coparceners by birth with equal rights and liabilities to sons. Married daughters are also equal to sons in inheriting their father's property (ancestral and self-acquired) under the 2005 amendment.
 - Widow: The Act covered the widow as a Class I heir. She is entitled to one share in case a Hindu male dies intestate. A wife also has some rights in the property of her husband, such as maintenance, the right to live in the common household, alimony (in case of divorce), and inheritance as a Class I heir in case of his death. The 2005 Amendment also removed Section 24, which earlier withheld the rights of a widow to inherit her husband's property upon her re-marriage.
 - Absolute Owner (Section 14): Another of the most basic changes brought about by the 1956 Act was through Section 14, which removed the notion of a "limited estate" for women and made them absolute owners of any property they held. This granted women untrammelled rights to dispose, transfer, or sell their property (immovable and movable) without having to seek approval from male relatives. This covers property obtained before or after the commencement of the Act, no matter how the property was obtained. The Supreme Court held that these rights were absolute and could not be made subject to limitation by interpretation. Property received by a woman as maintenance also becomes her absolute property under Section 14(1).

- Testamentary and Intestate Succession: The Act brought concepts of testamentary succession (inheritance through a will) to and intestate succession (inheritance through no will) for Hindu women. Hindu women entitled to full ownership can dispose of their property through testamentary or intestate succession. The provisions governing the intestate transfer of property of a Hindu woman are included in Section 15 and 16 of the Act, specifying the order of succession as above under Class I and II heirs.
- Hindu Undivided Family (HUF) Karta: With the 2005 Amendment, a Hindu lady has the right to assume the position of Karta of a HUF as she is the eldest, a right previously not within her reach.

CONCLUSION:

Historically, Hindu women enjoyed limited rights of inheritance and were considered socially and economically inferior. Customary laws, such as Mitakshara, kept women out of coparcenary property by birth in general. Limited rights were granted to women, mainly widows, under the Hindu Women's Right to Property Act, 1937, but no coparcenary rights to daughters.

The Hindu Succession Act, 1956, revolutionized the situation. Most importantly, Section 14 eliminated the principle of a "limited estate," making women absolute owners of property they held, whether acquired through gift, inheritance, or purchase. This conferred on them unlimited powers of management and disposition over their property. The Act further added the mother, widow, and daughter to Class I heirs for intestate succession of property by a male Hindu. Nevertheless, the initial 1956 Act did not bestow coparcenary rights by birth on daughters on par with sons.

The inequality was directly removed by the Hindu Succession (Amendment) Act, 2005. The amendment conferred the status of coparceners by birth on daughters on a par

with sons, having equal rights and liabilities in coparcenary property as sons. The Supreme Court, in *Vineeta Sharma v. Rakesh Sharma* (2020), made it clear that the 2005 amendment is retrospective. This implies that a daughter has a joint coparcenary right at birth effective as of September 9, 2005, regardless of whether her father survived on that date. This resolved conflicting interpretations.

In spite of these developments, the HSA remains open to criticism for gender discrimination, most notably in Section 15, dealing with the intestate succession of a Hindu woman. The scheme of this section tendentiously favors the heirs of the husband over the woman's parents and natal family heirs, even over her own self-acquired property. This is illustrated by the *Om Prakash v. Radha Charan* case. Section 15 is argued to be discriminatory and unconstitutional, representing outmoded patriarchal ideology. There remain legal challenges.

In conclusion, as much as the HSA, comprehensively changed in 2005, has transformed Hindu women's property rights through conferral of absolute ownership and equal coparcenary rights, discriminatory elements such as Section 15 exist and are undergoing continuous attempts to reform and extend gender justice to them. Public perception is still an obstacle in the complete execution of these rights.

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