



INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 5 AND ISSUE 11 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 11 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-11-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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AN ANALYSIS OF HINDU WOMAN'S RIGHT TO PROPERTY UNDER HINDU SUCCESSION ACT, 1956 AND HINDU SUCCESSION [AMENDMENT] ACT, 2005

AUTHOR – P JANANI, STUDENT AT SCHOOL OF EXCELLENCE IN LAW – THE TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY

BEST CITATION – P JANANI, AN ANALYSIS OF HINDU WOMAN'S RIGHT TO PROPERTY UNDER HINDU SUCCESSION ACT, 1956 AND HINDU SUCCESSION [AMENDMENT] ACT, 2005, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (11) OF 2025, PG. 547-552, APIS – 3920 – 0001 & ISSN – 2583-2344

Abstract

In India there are no codified or consolidated legal provisions which provide property right to women. It always gets determined depending on the religion or faith or religious school to which she belongs, her marital status and her place of birth or based on the place of origin. In ancient times, women does not have any kind of share or ownership in fathers property because of the domination of male in succession i.e., Male was considered the head of the joint family & therefore he holds the rights to ancestral property. Hindu Succession Act 1956 originally did not gave inheritance rights for women in the ancestral property instead it gave the right of maintenance from Hindu Joint family. Most effect was done in status of women in his father's property after the Hindu Succession Act 2005 and this amendment tried to maintain Article 14, 15, & 21 of the Constitution of India which upheld the fundamental rights being assured to both men and women without any gender discrimination. There are certain provisions of Hindu Succession Act 1956 amended by Hindu Succession Amendment Act 2005 after which various issues raised regarding interest of women in ancestral property and questions as to whether this amendment Act had a Prospective effect or Retrospective effect was put forth before the Judiciary which gave an excellent interpretation or explanation for prospective effect.

Introduction

Every human being has a right to be treated equally in every aspect of life. However, in our society, the position of a woman is lower than a man's and she is made to feel this inequality particularly in her right to property. The patriarchal society in India disregards the Hindu women's right to property and considers her position to be inferior in the social and economic aspects of human relationships. In ancient times, Hindu women's property rights were beset with manifold limitations.

Property right refers to legal ownership over certain resources and it gives exclusive authority to decide how these resources can be used or disposed of. Property rights gives income and security to every citizen & it enables

to live peacefully. But discrimination against women in the area of property distribution or inheritance was practised from the ancient period. Not only in India, but in many countries women do not enjoy equal legal rights towards property. Providing equal property rights for every woman will always raise her status in the society and it helps women to take part in decision making and gives greater autonomy & economic independence.

However, attempts have been in India to improve the position of Hindu women with regard to her succession and inheritance rights with different legislative enactments in pre and post independent India. Yet, the position could not be improved as much as would have been expected. This is reflected in the 174th Report of

the Law Commission of India on “Property Rights of Women : Proposed Reforms under the Hindu Law”. On the recommendation of Law Commission of India in 2005, an amendment has been brought to the Hindu Succession Act, 1956 to improve the position of women further.

Historical Overview of Woman’s Right to Property

- I. Ancient/Vedic Period – During Vedic period women were respected & considered as goddess. The Vedic literature mention about inheritance rights were granted to the unmarried daughter & to brother-less married daughters. The widow was disabled from any right of inheritance of her husband’s property and if she had brother, then she had no inheritance right in father’s property, but childless widow was entitled to succeed to husband’s immovable property for her life.
- II. Medieval Period – During this period the position of Indian women deteriorated and various evils like Sati system, Child Marriage, etc., were practised. Women’s property right was not-practised or recognised during early part of this period. The writings of various Smritis, Commentaries and Digests led to the emergence of various schools of Hindu law like- Dayabhaga, which was dominant in Bengal & Assam region, Mayukha dominant School in Bombay, Konkan and Gujarat in western part and in South India, Marmakkattayam or Nambudiri School in Kerala. Remaining part and majority of Hindus follow Mithakshara School of Hindu law.

Mithakshara School recognises two kinds of property such as (i) Self – Acquired Property and (ii) Ancestral/ Joint Family or Coparcenary Property. A coparcenary is a legal institution consisting of three generation of male heirs who acquire right over the ancestral property by

birth. Mithakshara did not recognise female/ women/ daughter as coparcener and so she had no right to inherit property from her parents absolutely, but it recognised certain limited right to property by a woman.

Before passing of Hindu Succession Act 1956, there were two kinds of Property owned by Hindu women. They were – (i) Stridhana and (ii) Women’s Estate.

- (i) Stridhana : The word Stridhana literally means ‘Woman’s Property’. In the entire history of Hindu law women’s right to hold & dispose of property was recognised only in the form of Stridhana. No doubt she had absolute ownership of own her Stridhan, but the quantum of such property was meagre and it included only movable property. According to Smritikars, the Stridhan constituted those properties which she received by way of gift from relatives and strangers at the time of marriage, and Stridhan being the absolute property of women, she had full right of alienation and after her death it used to go to her own heirs.
- (ii) Women’s Estate: It consists of property inherited by females where she enjoys limited right-over such property. She can inherit property from males or females, but she takes only a limited interest in such property and on her death the property passes not to her heirs but to the next heir of the person from whom she inherited it. A woman or limited heir is not a trustee for the reversioner & so she had absolute power of dispose of the income of the property inherited by her. But she had no power of alienation except for legal

necessity. Thus only during her life time she was able to enjoy the income from such Property.

- III. Pre – Independence Development – Making the improvement over the above mentioned Hindu women's position, in the pre-independence period, two legislations such as the Hindu Law of Inheritance Act, 1929 and Hindu Women's Right to Property Act, 1937 were passed. In pre-independence India, the Hindu Law of Inheritance Act, 1929 was the earliest legislation which brought the Hindu females into the scheme of inheritance. Three female heirs – son's daughter, daughter's daughter and sister were conferred the right of inheritance under the Act.

The second landmark legislation was the Hindu Women's Right to Property Act, 1937 which brought revolutionary changes and also tried to ensure that in the Mitakshara coparcenary, the widow of the deceased would take the same interest which her deceased husband had in the joint family property at the time of his death. She was made entitled to claim partition as a male owner. Although these legislative enactments conferred new rights of succession on certain women, they failed to protect women against discrimination.

- IV. Post – Independence Development – With the dawn of independence, the framers of the Constitution took note of the inequality which had been perpetuated against women depriving them of social and economic justice as envisaged in the Preamble to the Constitution of India, Fundamental Rights in Part III (Articles 14, 15, 16), Directive Principles of State Policy in Part IV (Articles 38, 39, 39A, 44) and Fundamental Duties

in Part IVA [Article 51 A (e)]. Despite these constitutional mandates, women continued to be subjugated and deprived of her rights including property rights. Consequently amidst strong resistance from orthodox Hindu sections, the Hindu Succession Act was enacted in 1956 and came into force on 17th June 1956.

Women's Property Rights Under Hindu Succession Act, 1956

This Hindu Succession Act of 1956 reformed and codified personal laws relating to intestate succession to the property of Hindus. It abolished women's estate i.e. women's limited rights to property and gave absolute and full ownership of property.

According to Section 14(1), *"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner."* It states, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by a gift from any person, whether a relative or not, before, at or after her marriage, or by her skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act." Thus, with the introduction of the Hindu Succession Act, 1956, a Hindu woman now had absolute ownership of any property that she possessed.

Since Hindu women now had absolute ownership of all the property they had, there was no question regarding the disposition of such property. Women could freely transfer or sell such property and appropriate money gained through such sale as per their wish. As regards the testamentary disposition, she had a right to dispose of her self-acquired property by way of a will. Enactment of Hindu Succession Act, 1956 gave way for intestate and

testamentary disposition of property. However, as regards the coparcenary property, it was only men who could dispose it by a will whereas women were not entitled to do so.

In the case of Punithavalli Ammal v. Ramalingam and Anr. (1964), The Supreme Court held that Section 14(1) gives an absolute right to women and it cannot be curtailed in any manner by making any presumption or interpretation of the law. It further held that the date of possession of such property is irrelevant as women in possession of the property before the enactment of the provision would now be given absolute rights which were previously limited.

In the case of Radha Rani Bhargava v. Hanuman Prasad Bhargava (1966), The Supreme Court reiterated its stand and held the woman to be the absolute owner. Such ownership cannot be challenged on any basis. However, it can be challenged if it can be proved that the widow transferred or alienated the property before the enactment of Section 14 and such transfer or alienation was made without any reasonable cause or legal necessity. Thus, this is the only situation in which the absolute ownership rights of the woman can be challenged.

In the case of Pratap Singh v. Union of India (1985), the Hon'ble Court held that Section 14(1) faced a lot of criticisms wherein the Hindu men stated it to be unconstitutional on the ground that it infringes the right to equality guaranteed under Article 14. However, the Supreme Court in Pratap Singh held that the provision was, in no way, a violation of either Article 14 or Article 15(1). It was constitutional since the rights of women need to be strengthened.

In the case of Agasti Karuna v. Cherukuri Krishnaiah (2000), The Hon'ble Court held in this case that women had absolute right over the property of the deceased husband under Section 14. Any transfer or alienation of such property by the wife after the commencement of the Act cannot be challenged by any of the heirs.

Amendment in States

In 1985, Andhra Pradesh became the first state to bring a tremendous amendment in the succession laws by providing the status of a coparcener to unmarried daughters. Thus, Andhra Pradesh succeeded in bringing this law two decades ahead of other states. Inspired by this amendment, other states including Tamil Nadu, Maharashtra and Karnataka also accorded the status of a coparcener to unmarried daughters. These states became an inspiration and a similar suggestion was then given by BP Jeevan Reddy in his Law Commission Report for changes in centrally enacted law.

Women's Property Rights Under Hindu Succession Amendment Act, 2005

As a result HSA (Hindu Succession Act 1956) was amended & came into force from 9th Sept 2005 by incorporating the suggestions of Report of Law Commission. This Amendment Act of 2005, made way for women's inheritance of agricultural land equal to that of what is received by males by repealing sec 4(2) of HSA 1956. By amending Section 6, this amendment Act enhanced the position of every daughter in Mitakshara Coparcenary by considering them as coparceners like a Male/Son in that family.

Sec 6 (1) says that "in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener"

Thus, after this Amendment, now a woman can inherit property from her parents, pre-deceased husband, father-in-law in case of widowhood, pre-deceased son & pre-deceased unmarried daughter. If a male Hindu dies intestate, his class I legal heirs includes several women like his mother, widow (wife), daughter and widowed-daughter-in-law if any. Members of class I legal heirs share the estate of the deceased equally.

As mentioned before, the 2005 Amendment substituted the former Section 6 where Section 6(1) dealt with the right of Hindu women to hold the property whereas Section 6(2) and Section 6(3) dealt with the disposition of the property.

The former gives the authority to a female coparcener to dispose of her coparcenary property as per her will. It has also been stated above that with the amendment, daughters have been brought at par with sons. Thus, in such a case, a woman should even have the right to dispose of her property as per her wish i.e. make a testamentary disposition of such property. Section 6(2) which has been inserted allows this and says that a female coparcener can dispose of her coparcenary property by way of a testamentary disposition.

Section 6(3) deals with the incidents of devolution of property in case of the death of a Hindu. It states that it will be treated as if a partition is taking place and property will be divided as per rules of intestate or testamentary succession.

In the case of *Prakash & ors v. Phulavati & ors*, the question before the Supreme Court was whether the right would be conferred only upon the daughters who are born after 9th Sept 2005 i.e. when amendment Act came into force. In this case, the plaintiff filed a suit for partition where it was contested that plaintiff, being daughter, can claim share only in self acquired property of her deceased father. During the pendency of this proceeding, the Hindu Succession Amendment Act 2005 came into force. So plaintiff amended plaint but was not able to get share in lower court. Hence the appeal was filed

before High Court where it was held that the amendment was applicable to pending proceedings even if it is taken to be prospective. On appeal, Supreme Court held that the right conferred on daughter of a coparcener is on & from the commencement of Hindu succession (Amendment) Act 2005. Thus, Supreme Court made it clear that the rights under the amendment are applicable to living daughters of living coparceners as on 9th Sept 2005 irrespective of when such daughters are born.

In the case of *Danamma v. Amar & Ors*, the father died in 2001 leaving behind two daughters, two sons and widow. After his death the coparcenary property was in joint possession of two sons, widow & grand-son. The two married daughters also claimed share & same was denied on the ground that they were not coparceners. However during the pendency of suit, Sec 6 was amended in 2005 & lower court passed its decision in 2007. The trial court held that the daughters were not entitled to any share as they were born prior to the enactment of the Act & so were not considered as coparceners. The decision was upheld by High Court. The question that came up before the Supreme Court was whether daughters could be denied their share on the ground that they were born prior to the enactment of the Act. And whether, with the passing of Hindu Succession (Amendment) Act 2005, the daughters would become coparcener "by birth" in their own right in the same manner as the son. The S.C held that the right is inherent and can be availed of by any coparcener now even a daughter who is a coparcener.

Recently in *Vineetha Sharma v. Rakesh Sharma & ors*, Supreme Court clarified all the doubts and held that even a daughter is also a coparcener by birth and overruled many decisions including *Prakash v. Phulavati* case. This court cleared all confusions regarding retrospective application of this Amendment Act. As per the decision, Sec 6 (after Amendment) confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights &

liabilities. And the rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004. Since the right in coparcenary is by birth, it is not necessary that father's coparcener should be living as on 9th Sept 2005".

Conclusion

Traditionally, women's desire for property rights was assuaged by giving something as gift only, instead of right. Gifts, in the name of dowry, are given as per the wishes of her natal family, for the sake of their name and fame in society, but not as a right of that woman. The position of Hindu woman in respect of her property right has undergone unprecedented transformation from ancient times to the Hindu Succession (Amendment) Act, 2005 with the proactive role of the judiciary. The journey from exclusion to recognition of Hindu daughters in Mitakshara coparcenary has been remarkable, but non-inclusion of other Hindu females is irrational and unjustified, for all women are equally entitled to economic and social justice which the Constitution of India proclaims. In spite of the undeniable progress brought by the Hindu Succession (Amendment) Act, 2005, Hindu females are still denied of their lawful rights in the predominant patriarchal society.

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