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## WOMEN'S RIGHT TO PROPERTY UNDER HINDU LAW

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### **ABSTRACT**

*This society has been male dominating and most of privileges have been available only to men and having "right to property" is one of them. since ages women are not given the right over property, but as the time passed we started recognizing more human right, and with we started giving the rights to women, in ancient time the right on property were given on the basis of two "school of thoughts" which were Dayabhaga and Mitakshra where Mitakshra was of view that unmarried women and widow do not have right over property while Dayabhaga was liberal in thought and always unmarried and widow were given right over the property in this school.*

*History has complicated Ups and down regarding the women's right but for first time women got proper right was when Hindu women's right to property act 1937 came. This give proper right to women specially to widow and to the daughters but there were still some lacuna, finally there come Hindu succession act 1956 which give right to women in property of their parent by succession as well they were given equal right as the son gets these right were given support by amendment of 2005.*

*There were lots of judgment which resolved lots of lacuna and loopholes in the system like, Arunachala Gounder v. Ponnusamy (2022) in which it was held that if women dies without interstate, her property goes to its origin means if she gets it from parents it will go to parents and if she gets from in laws than it will go to them, but still there is issue here that if she dies and husband is alive than due to Hindu succession act the property will go to husband no matter form where she got that property.*

### **INTRODUCTION**

Women have fought for their most basic rights for decades, both in India and around the world. They were denied a number of rights and advantages that were reserved for men only. One such privilege is the right to property. It was assumed that daughter belongs to different home in ancient Hindu society because they were never thought of as being equal to men. And because of that during the division of property, only the male members of Hindu family were given share. But after the marriage (stridhan) and other auspicious occasions at public gatherings did women obtain property. Because they had no other income, women were not awarded a piece of the property.

With the passage of time Women are now on par with men. They possess a separate source of income and assets. The law also has developed with the passage of time and change in society. As a result, numerous laws have been passed over the past few decades, including the Hindu Women's Right to Property Act of 1937, The Hindu Succession Act of 1956, The Hindu Succession (Amendment) Act of 2005, and numerous others. Even various judicial rulings have been made to clarify legal ambiguities and present the proper interpretation. In this article we would understand the evolution of law which gives right to women to have property with help of various judgment and historical aspects.



## **HISTORY**

The ancient scriptures make no mention of giving an unmarried woman property, and Stridhan—a kind of endowment—is only available to or given to married women. As time went on, various sages from the 9th and 12th centuries gave their interpretations of the Yagnavalkya Smriti, a Hindu Code next to the Manusmriti in terms of authority. The Mitakshara School of Thought was founded on the interpretation of Sage Vignaneswara, and the Dayabhaga School of Thought was founded on the interpretation of Sage Jimootavahana.

One of the most important schools of thought in pre-colonial India with regard to property and inheritance is the Mitakshara School of Thought, which has its origins in inheritance by birth. While a separate school of thought, Dayabhaga, predominated in Bengal, Mitakshara, with some changes, was the main school of thinking in North, West, and South India. The primary difference between Dayabhaga and Mitakshara is that the latter supported liberal opinions regarding the ownership rights of widows and unmarried daughters over their father's or husband's property. The Dayabhaga School says that even in an undivided family, the widow could accede to her husband's portion of property on his death if there is no male heir; the Mitakshara School held that the widow was not entitled to such right. Stridhana was a concept that existed both before and after colonialism. A woman may get stridhana, a form of endowment, from her father, mother, friends, or other family members. Typically, stridhana includes moveable property as well as the woman's own earnings at the time of marriage. Despite the fact that Dayabhaga viewed women's rights more liberally than Mitakshara did, these rights were nullified as soon as the widow who acquired the property passed away. Even if the widow had female heirs, the closest male heir of the deceased spouse used to inherit the land. The fact that neither of these institutions offered women total control over their property is crucial. The women

were unable to sell the land or give it away in any other way.

In Mughal India, Muslim women were granted property rights either through inheritance, gift, or in lieu of mehr. To defend against arbitrary divorce, the Quranic right known as Mehr was created. This right provided a long-term assurance of the woman's security at the time of marriage. The concept of a dowry initially appeared in mediaeval India, when the bridegroom and his family began to receive the bride's proper part of the bride's assets, including money and jewellery.

The personal laws, particularly those pertaining to inheritance and property, were left up to Hindus themselves as the British started to colonise India. This meant that when the British were needed to settle disputes, the Brahmins—who by this point were the consulting and interpreting authorities of the personal laws—were consulted.

It was men, not women, who first started to challenge the dominant Mitakshara School of thought at the turn of the 20th century. A group of Hindu men started to call for a codified law that would permit them to divide and alienate their share of the property because Mitakshara did not permit the sale of property in a joint coparcenary property. Coparcenary is a term used to describe a type of property ownership in which multiple inheritors hold an undivided, transferable interest in the same piece of real estate. With the assistance of the British government and against the wishes of the elected Indian legislators, the central legislature passed the Gains of Learning Act in 1930. Due to this law, a coparcener—a male member of a family—could only earn money for himself and not the entire family. Although it wasn't specifically related to women's property rights, this represented a departure from Hindu society's traditional property practices. A law governing Indian succession was passed in 1925, but it had limited application because it excluded Muslims and Hindus. However, this 1925 law prohibited sexism in the transfer of



intestate property, or property left by a person who passed away without leaving a will. For Indian reformers, this served as a springboard into the ideas of equality when it comes to the devolution of property.

### **THE HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937.**

Hindu women's rights to property were not specifically addressed by codified laws prior to 1937, and any resulting disputes were resolved in accordance with customary practices. The Hindu Women's Right to Property Act was passed in 1937 as a result of numerous complaints about the inadequate state of women's rights. For advocates of female empowerment, this Act was a breath of fresh air in the prevalent socio-legal environment of the time.

However, it was not enough to meet the aspirational goal of gender equality. A widow was only given a small share of her husband's estate, or what was known as the Hindu widow's estate, under the aforementioned Act. When this legislation was later amended in 1938 to bar widows from owning any agricultural land, the ameliorative effects were further diminished.

This Act states that "a Hindu man's widow, his widowed daughter in law, and his widowed granddaughter in law are entitled to inherit to his estate, not only in default of but along with, his male issues." In a Hindu coparcenary, the widow succeeds to her husband's claim whether or not there are any male heirs. This negates his collaterals' right to survive him. However, the widow's claim was only partially granted, and because of this partial ownership, the term "Hindu woman's estate" has developed.

A widow is incorrectly assumed to have a life interest in the estate she inherits. According to Hindu Mitakshara law, estates are valued based on their use rather than their duration. As long as she is not guilty of willful waste, a Hindu widow in possession of the estate is entitled to its full beneficial enjoyment and is not responsible to anyone. The peculiarity of this

estate is that, in the case of stridhan property, the last full male owner or the last full female owner, whichever is applicable, receives the estate upon the death of the widow instead of her heirs. It is impossible for the widow to produce "fresh stock of descent".

Shastric authorities have stated that a widow only inherits a small portion of her husband's estate; however, it is never stated that other female heirs are subject to the same limitations. The classes of female heirs who come from a different gothra or who, after marriage, join one other than the last male owner's gothra inherit the property in its entirety as absolute owners from the male heirs. Daughters, daughters of children, sisters, and daughters of descendants, ascendants, and collaterals within five degrees are included in this class, and they inherit in the order of propinquity.

### **THE HINDU SUCCESSION ACT, 1956**

The restricted estate theory that had been supported by the Hindu Women's Right to Property Act was replaced by the Hindu Succession Act in 1956. The Hindu Succession Act was a progressive piece of legislation that resulted in a number of changes, the most significant of which was the entire legal empowerment of women over their property. The Act had two main benefits, according to the Supreme Court's decision, which aimed to put an end to any discussion.

According to the Supreme Court, Section 14 of the Act totally eliminated women's ineligibility for property ownership. Due to the fact that the law was retroactive, it also transformed a female owner's limited estate into an absolute estate, regardless of the fact that the estate had already been established when the law was passed.

It has been said that this Act, "*abrogates all the rules of the law of succession hitherto applicable to Hindus whether by virtue of any text or rule of Hindu law or any custom or usage having the force of laws in respect of all matters dealt with in the Act. Therefore no*

*woman can be denied property rights on the basis of any custom, usage or text and the said Act reformed the personal law and gave woman greater property rights."*

But in reality, this Act is heavily biased in favour of male heirs. When there are both male and female heirs and an ancestral dwelling place is involved, the rule that states the female heir cannot request the partition of the residence until and unless the male heirs desire their respective shares is an example of gender discrimination. A daughter may exercise her right to reside if she is unmarried, widowed, divorced from, or was abandoned by her spouse. This privilege is also dependent on the daughter's marital status. She cannot claim her right to residence if she is happily wedded to her spouse.

According to Section 14 of this Act, a Hindu woman's limited interests can be transformed into unalienable rights. Prior to the passage of this Act, she was only permitted to sell the property she received from her deceased husband in order to meet the needs of the family or to hold religious rites in his honour. However, if she inherits property from her husband, she may sell it and the buyer will have an absolute right to the property. The scope of Section 14 is extensive.

Women's property is defined as broadly as is possible by law. The term "property" involves both movable and immovable property which is acquired by a female through inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from anyone, whether or not a relative, before or after marriage, or by her own skill, exertion, by purchase or by prescription, or in any other way at all, as well as any such property held by her as stridhanam immediately prior to the Act's beginning. Prior to the passing of this act, women were not allowed to alienate their property.

Due to this Act, which allowed a coparcener's property to pass to his mother, widow, and daughter in addition to his son in the event of

his intestate death, the concept of survivorship lost much of its significance. Despite offering a uniform intestate succession plan, Section 6 of this Act still upholds the Mitakshara coparcenary, which excludes women from survivorship. As a result, father and sons hold the joint family property to the complete exclusion of the mother and daughter.

According to the Law Commission's 174th report:

"While largely eliminating the inherent sexism in Mitakshara Coparcenary. Each of these Acts uses largely the same language to express the legislation's broad features. Three new sections, designated as Sections 29A, 29B, and 29C, are added by the amending Acts of Andhra Pradesh, Tamil Nadu, and Maharashtra; however, Karnataka refers to them as Sections 6A, 6B, and 6C of the Act.

These state laws include a non-obstante clause and grant a daughter the same rights in the coparcenary property.

Despite the changes made by the Act, it remained largely discriminatory against women, particularly when it came to daughters' inheritance rights. In 2005, it was changed to grant daughters the same rights as sons in both separate property and coparcenary property left by the father. Section 6 of the amended Act eliminated the barrier that prevented women from inheriting their patrimonial property. There are two exceptions to the new Section 6 that do not apply: (1) where the disposition, alienation, or partition occurred before December 20, 2004, and (2) where the testamentary disposition of the property was made before December 20, 2004.

By virtue of the Amendment Act of 2005, a daughter has an absolute right to the inherited property, with the exception of the situations described in the amended Section 6.

## **HINDU WOMAN'S RIGHT AFTER HINDU SUCCESSION (AMENDMENT) ACT, 2005**

### **Holding of property**

Now even daughters are eligible to be coparceners in the Joint Hindu Family of his father, which was one of the most important changes made by the 2005 Amendment Act. Her marital status would also not matter in this case. It took the place of Section 6 of the 1956 Act and now reads:

According to the Hindu Succession (Amendment) Act of 2005, the daughter of a coparcener in a joint Hindu family subject to Mitakshara law shall:

- Be having same rights to the coparcenary property which she would be having had if she was a son; by birth, become a coparcener in her own right.
- Be liable for the same debts related to the said coparcenary property as a son would be.

Now daughters have equal rights to own coparcenary property and are considered as equal to coparcener sons, as a result of the 2005 Amendment, the following events are now probable:

- In addition, she is now permitted to donate her independently obtained property to the family fund, which was previously barred by the Act, even though she is the senior-most family member.
- Previously, it was not feasible for a Hindu woman to hold the post of Karta in a Hindu Undivided family.
- A deceased father's daughter has an equal right to his property whether or not she is married.
- The coparcenary property is now subject to claim by daughters, who may even ask for its split.
- In addition to coparcenaries, women can now create their own nuclear families.
- In terms of the coparcenary, Hindu women now stand on an equal basis with men and have all the same rights as sons.

### **Disposition of property**

As previously stated, the 2005 Amendment replaced the previous Section 6. While Sections 6(2) and 6(3) deal with the disposition of the property, Section 6(1) deals with the right of Hindu women to hold the property.

The former enables a female coparcener to dispose of her coparcenary property in accordance with her wishes. Additionally mentioned above is the fact that daughters and sons now share the same rights as a result of the amendment. As a result, they had the right to hold the coparcenary property and request a division of it. Therefore, in such a situation, a woman should even have the freedom to dispose of her property as she sees fit, i.e., through a testamentary disposition. This is permitted by the newly added Section 6(2), which states that a female coparcener may dispose of her coparcenary property through a testamentary disposition.

Section 6(3) addresses incidents of property devolution in the event of a Hindu's passing. It specifies that property will be divided in accordance with the laws of intestate or testamentary succession and that it will be treated as though a partition is happening. Additionally, it states clearly that female coparceners have the same rights to a share as other male coparceners. Additionally, the heirs of a predeceased son or daughter would be qualified to receive such a share of the estate.

Since women were not previously included in the coparcenary, Section 30 previously only permitted male Hindus to make testamentary dispositions of coparcenary property. But because they now have the right to participate in coparcenary under the 2005 Amendment, they also have the right, as stated in Section 6(2), to dispose of the coparcenary property through a will.



### **SOME IMPORTANT CASES**

#### **Agasti Karuna v. Cherukuri Krishnaiah<sup>32</sup> (2000)**

In this case, the court determined that Section 14 gave women unalienable rights to the deceased husband's property. No heir may object to any transfer or alienation of such property made by the wife after the Act took effect.

#### **Punithavalli Ammal v. Ramalingam and Anr. (1964)**

According to the Supreme Court's decision in this case, Section 14(1) grants women an unalienable right that cannot be curtailed in any manner by making any assumptions or using any kind of legal analysis. The court went on to decide that the date of possession of such property is irrelevant because women who held the property before the provision's passage would now be able to exercise rights that had previously been categorically prohibited.<sup>33</sup>

#### **Radha Rani Bhargava v. Hanuman Prasad Bhargava (1966)**

The Supreme Court reiterated its opinion in this instance and recognized the woman as the sole proprietor. There is no justification for contesting this ownership. It may be contested, nonetheless, if it can be shown that the widow transferred or alienated the property before Section 14 was passed and that she did so without a valid reason or a requirement under the law. So, the only situation in which a woman's absolute ownership rights may be challenged is this one.<sup>34</sup>

#### **Pratap Singh v. Union of India (1985)**

Numerous Hindu males argued that Section 14(1) infringed their right to equality, which is guaranteed by Article 14 of the Constitution, and that it was therefore unconstitutional. However, the Supreme Court decided in Pratap Singh that

the clause did not in any way contradict Articles 14 or 15(1). It was constitutional because advancing women's rights called for it.<sup>35</sup>

#### **Arunachala Gounder v. Ponnusamy (2022)**

The property that a Hindu woman inherits from her father or mother will go to the heirs of her father, according to the ruling by the bench of SA Nazeer and Krishna Murari, JJ, while the property she inherits from her husband or father-in-law will go to the heirs of the husband. However, Section 15(1)(a) of the Hindu Succession Act, 1956 comes into effect if she passes away without leaving behind her husband or any issues, and the remaining assets, including those she inherited from her parents, pass to her husband and her issues simultaneously as specified in Section 15(1)(a) of the Act.<sup>36</sup>

### **CONCLUSION**

The law's final interpretation grants Hindu women the same property rights as Hindu men. Hindu women have come a long way from the original Hindu law, which allowed them relatively restricted rights, thanks to the Hindu Succession (Amendment) Act, 2005. In the process, they replaced the limited ownership that had previously prohibited them from completely enjoying their assets with full ownership of the property they already had. In the Hindu Joint Family, they now have coparceners as well. This gave them the power to ask for a partition and to dispose of such coparcenary property in a testamentary or will-based manner. In this aspect, the judiciary's involvement is equally commendable because without it, Hindu society would only have recognized the right through legal regulations. In conclusion, there has been a tremendous improvement in Hindu women's rights to property ownership and disposal. Last but not least, the judiciary's proactive role in ensuring that Hindu women have legitimate rights has been the single factor that has allowed for this.

<sup>32</sup> Agasti Karuna v. Cherukuri Krishnaiah 1999 (5) ALD 387

<sup>33</sup> Punithavalli Ammal v. Ramalingam and Anr. 1970 AIR 1730

<sup>34</sup> Radha Rani Bhargava v. Hanuman Prasad Bhargava 1966 AIR 216

<sup>35</sup> Pratap Singh v. Union of India 1985 AIR 1695

<sup>36</sup> Arunachala Gounder v. Ponnusamy, 2022 SCC OnLine SC 72





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