



INHERITANCE RIGHTS OF WOMEN - THE NORTH INDIAN SCENARIO

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Abstract: Indian women have had to fight for their property rights for a long time, just like women in other countries. Indian women's property rights are not fair or equal, but they have come a long way in the last 100 years. Indian women still have less property rights than men, both in terms of the amount and the quality of those rights.

When it involves property rights, Indian women have a lot of different ideas. India is home to a lot of various religions, and each one has its own rules about how to live. The right to own something is one of these aspects. Even among the different religions, there are subsets and local rules and customs that have their own property rights. A code of property rights was written down for Hindus, Sikhs, Monks, and Jains in 1956. Christians live by a different set of rules, and neither Shias nor Sunnis have put their property rights in writing. Also, tribal women from different faiths and states still adhere to the laws and traditions of their tribal groups when it did come to their property rights. The Indian Constitution states that both the central government as well as the state governments have the authority to pass legislation about succession, which makes things even more complicated. This means so each state can make its own rules about property, and some have done so.

Keywords: uniform civil code, property rights, codified, religions, customs, governed, tribes, constitution, enact laws, constitution.

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1. INTRODUCTION

The Indian Constitution has a very detailed system for making sure that everyone is treated equally. In Article 14, it says that everyone has the right to equality. In the following Articles, it goes into more detail, making room for affirmative action and positive discrimination. So, Indian women do



not have a single set of property rights. "The Indian woman's property rights depend on things like her religion and religious school, whether she is married or single, where she is from in the country, whether she is tribal or not, and so on."

Article 14 of India's Constitution says, "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India." In practise, this guarantee has been interpreted to mean "substantial" equality instead of "formal" equality, as the Supreme Court of India and the Indian High Courts have explained and expanded on in a number of rulings. The second one says that only people who are the same must be treated as equals and that people who are not the same cannot be treated as equals. This broad framework makes it possible to make affirmative action through special laws that give people rights and positive discrimination through reservations that help the weaker parts of society. Article 15 of the Constitution backs up this point of view. It says that it is against the law to treat people differently for any reason, including sex. It also explains the rules for positive discrimination and affirmative action: Article 15: "It is against the law to treat people differently because of their religion, race, caste, sex, birth location, or any of those things. The state can't treat any citizen differently because of their religion, race, caste, gender, place of birth, or any of those things. No citizen shall be subject to every disability, liability, restriction, or condition because of his or her religion, race, caste, sex, place of birth, or any of those things.

access to stores, restaurants, hotels, and entertainment spots; or the use of wells, armored vehicles, bathing ghats, roads, and other public places that are paid for or kept up by the government or are open to the public. Nothing in this article stops the government from doing anything special for women and children. Nothing in this article or clause 2 of Article 29 prevents the state from making special plans to help Scheduled Castes and Scheduled Tribes or any other group of citizens who are socially or educationally backward."

So, first of all, women are one of the groups that have been found to be at risk of prejudice and are therefore explicitly protected from any kind of discrimination. Second, and this is a step further, women also are entitled to special protection or rights through laws, if they are needed, to make up for the past and present disadvantages they have faced because of their sex alone.

The "fundamental right to life" guaranteed by Article 21 of the Indian Constitution has been broadly interpreted by the country's courts. They've written into it the privilege of enjoying all the things that make life worth living rather than just existing. This involves having access to food, clean air and water, safe transportation, proper medical care, and, most importantly, a safe and secure place to call home.¹

But, as was said above, even though the Constitution says women have equal rights, Indian women's property rights are still not equal, even though many of the differences have been worked out in court. Here are some of the most important things about Indian women's property rights, along with some landmark decisions that have helped make them less unfair to women.

In India, women have only had inheritance rights for a short time. Formal, informal, or customary rights to possess ancestral property are discriminatory against women even though they are crucial to eliminating the gender gap. Women in India historically have minimal rights to inherit land or property from male relatives. The purpose of this article is to examine the evolution of streedhan and pro-women legislation with the end objective of securing equal inheritance rights for women today. The study goes on to discuss how patriarchal schools like Mitakshara and Dayabhaga, as well as conventional societal systems, work to deny women their rightful place in the family's wealth.

¹ "For instance in *Shantistar Builders v. Narayan Khimalal Tortame*: (1990) 1 SCC 520), *P.G. Gupta v. State of Gujarat* ((1995) Supp 2 SCC 182), *Chameli Singh v. State of U.P.*: (1996) 2 SCC 549, *Nawab Khan's case (Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*: (1997) 11 SCC 121)), right to education (*Bandhua Mukti Morcha v. Union of India* (1984 3 SCC 161), *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666) and *Unnikrishnan J.P. & Ors. v. State of Andhra Pradesh & Ors. Union of India* (1993) 1 SCC 645), right to health (*C.E.S.C. Ltd. v. Subhash Chandra Bose* (1992) 1 SCC 441, *Consumer Education & Research Centre & Ors. v. Union of India & Ors.*: (1995) 3 SCC 42), right to food (*People's Union for Civil Liberties v. Union of India & Ors.*: Writ Petition No. 196 of 2001), right to clean water (*Attakoya Thangal Vs. Union of India* [1990(1) KLT 580])"



2. HISTORICAL PERSPECTIVE ON POSITION OF WOMEN IN SOCIETY

When we look at writings and other evidence from the Stone Age, there is no evidence that men were in charge and had more power than women. In many ways, men and women were treated the same. Men eventually learned how to use stones, hunt, and make tools out of iron. They slowly learned how to farm and keep animals as pets. So, farming and raising animals became the main ways for most people to make a living. Women continued to work alongside men on all tasks as equals. As a result, people started moving to one place and making a life there. Staying in the same place with a partner led to the development of family, institutions, and the idea of property. Men were in charge of hunting and farming, which required a lot of physical strength, while women were in charge of taking care of children and family, cooking, and fixing things around the house. So, by looking at how men and women lived in the past, it was found that they had the same chances and did the same amount of work. In the primitive stage, work was still split up, but it became more organised. In fact, there were many times when women were encouraged and recognised for their right to own and manage property. Most of the tribes that were formed at that time have been known to be led by the women. If a guy killed in the family, all of his property would go to his mother, wife, or daughter. This gave women in the primitive society equal rights and respect.

Manu said in Manusmriti, "A lady must be safeguarded and cared for by her parents in her childhood, by her spouse in her youth, and by her son and relatives in her old age." Buddha's wife remarked something similar: "Good ladies require no veiling more than light and moon." "It must be observed that the isolation and ignorance of women, which was originally primarily owing to dread of Mughal invaders, do not remain to the same degree in districts untouched by conquerors," argues Sir Monier Williams. He goes on to remark, "One ancient grandma may govern an entire home with a rod of Iron," implying that Indian women are more powerful than European spouses. According to Hindu law, women may hold legal positions. The classic Indian epic the Mahabharata has the lines, "The woman is half the man, his dearest friend, a loving wife is a continual fountain of virtue, joy, prosperity, a devoted wife his finest assistance in achieving heavenly happiness." The Bible says that "a woman who speaks gently is a friend in loneliness, a father before her time, a mother in times of trouble, and a rest in the desert of life." These texts unequivocally demonstrate the ancient Indian culture's high regard for females. The situation of women in India has gotten much worse as the country's culture has changed. When the Mughals took over India, Hindu women's clothes got even worse and their status got worse. In Hindu culture, bad things like Sati, not letting widows remarry, child marriage being common, and making women wear veils over their faces became the norm.

The Mughals had a big effect on Indian society, which led to big changes in clothing, food, eating styles, social habits, lifestyle traits, culture, and traditions. Slowly, the men members of families took over as the most powerful ones in the military, at home, in politics, and in running the government. After that, all property rights were protected by the men, and women had to rely on men for their most basic needs. During this time, when a male family member died, his property went to the next male in line, like his sons, grandsons, or other male relatives. Hence, this system that made all women reliant upon men.

3. LEGAL TREATIES AND LAWS FOR WOMEN

The Dayabhaga was written by Jimutavhana, an Indian Sanskrit scholar and well-known writer of legal and religious treaties from the early Middle Ages. Dayabhaga is thought of as the Hindu thesis, and it is mostly about how people inherit in India. It was the main source that modern British Indian courts in the Bengal region of India looked to when making decisions. On the other hand, Vijnaneswara wrote Mitakshara on the Yajna Valkya Smriti. The word "commentary" is where the word "Mitakshara" comes from. The Dayabhagas schools of law were most common in Bengal and Assam. In other parts of India, the Mitakshara school of law was more common.

Under Indian law, the Mitakshara school had four subgroups that took care of the Hindu Joint family's inheritance law.



The first is Benaras School, the second is Mithila School, and the third is Maharashtra School and fourth is School of Dravida

The treatment of families was where the Dayabhaga and Mitakshara schools of law diverged the most. Only joint families, in which the male inherits property for himself and passes it on to his sons and grandsons and great-grandsons, are addressed by the Mitakshara School of Law. All the male members of a joint family enjoyed equal rights under the law. When his father is still living or throughout the lifetimes of his three closest forebears, an adult son may request a divorce. He has the right to object to any use of family assets that he deems inappropriate. Yet, according to the Dayabhaga School of Law, the son has no authority or claim to the family's wealth. Only upon his father's passing will he be entitled to his inheritance. Hence, the father enjoys absolute power over all family assets until his death. A wife under the Mitakshara system had no legal standing to demand property rights or a division of assets. When her husband and their sons finally divorced, she finally received her fair portion. Yet, women did not enjoy even this basic freedom under Dayabhaga. Women were seen to have no legal standing to assert ownership under either system. The men just handed them the institutions and customs they had created, and they had very little freedom to make or change their own choices or satisfy their own desires.

4. CONCEPT OF STREEDHANA - A WOMAN'S MARITAL RIGHT

Before the Succession Act of 1956, women had what were called "Streedhana" rights to certain assets. "Streedhana" means "the property of women." Smritikars say that the "Streedhana" is everything that a woman's parents or relatives give her as a wedding gift. This mostly consisted of transportable items, but might also include a home, land, jewellery, and clothing for the recipient female.

The "Streedhana" specifics that Jimutvahana had provided included:

1. Relatives' gifts and bequests
2. outsiders' gifts and bequests
3. possessions earned via toil and technology
- 4, Acquiring Real Estate with "Streedhana" Funds
5. Acquired property via a compromise
6. Acquired property :
7. a material reward in place of regular upkeep.

In Gautama's Bhrama Sutra, the term "Streedhana" appears for the first time. It's a fusion of the Sanskrit words for "women" (Stree) and "property" (Dhana). He also notes that the word's origins suggest it may be used to refer to any female asset:

According to Yajnavalkya, "Streedhana" refers to everything a woman did not get as a gift from her father, mother, husband, or brother, or something she did not receive before the nuptial fire or as a gift when her husband married another woman. Hence, gifts received from strangers outside of marriage are not considered Streedhana, and neither is the accumulation of wealth through the hard work and ability of the recipient. It is divided into different types:

- The things that parents give to their children when they get married.
- Gifts from her parents when she goes to live with her husband
- Gifts that her husband gave her out of love during or after their marriage
- Property given to the in-laws separately by their brother, mother, father, or in-laws at any time after or during the marriage

Streedhana is not only described in Kautilya's Arthashastra, but its female owner is also mentioned. In addition, he said that a wife may not have more than 2,000 silver panas in her husband's trust account. Vritti, or means of subsistence, and Abandhya, or ornaments, are both possible components of Streedhana. Land (bhumi) and currency (Hiranyadi) valued over 200 Karshapanas that may be invested to generate income make up Vritti. Only a woman's daughters are legally entitled to inherit her estate. A piece of the Streedhana may be given to her daughter-in-law as a present if she so chooses. According to Arthashastra, a remarried widow must have the approval of her elder in-laws before giving up her right to the property known as Streedhana, which was bequeathed to her by her late



husband and his family. If not, she must leave it to her sons. There were cases of men attempting to marry wealthy widows. According to the Arthashastra, the monarch should send spies to stay with well-off single women. Since many widows were left very well off, it was important for them to get to know their potential mate well before remarrying. There were a lot of rules about what women could do on Streedhana. There were mostly two kinds:

- Taking care of her (in this case, her husband would give her money or land).
- Getting any other things, like jewellery, from her family, husband, in-laws, and friends of her husband.

Types of Streedhana changed over time and varied from one state to the next. In the Rig Veda society, only a few things were known to be women's Streedhana. These are gifts from the parents, gifts before the wedding fire, money a woman makes through arts and crafts, and gifts in the bridal procession. In many cases, daughters who grow old in their father's house are given a share of their father's property. A widow with no children can also get a share of her husband's property. In the Taittiriya Samhita of the Yajur Veda, it says that when a daughter gets married, the father gives gifts to the daughter. Buddhism and Jainism didn't have any rules about how to handle the inheritance of property.

5. ADVENT OF THE BRITISH ERA & INDIAN REFORMS

When the British merchants came to India in 1600, they slowly took over the whole country. Indians became more aware during the first time the British ruled their country. Social reformers like Raja Ram Mohan Roy, Eswar Vidhyasagar, and others were among the first to work for women's well-being and independence. They fought to get rid of bad systems and practises like Sati, bad treatment and discrimination against widows, not letting widows remarry, dowry, child marriage, women not having property rights, and women not getting an education, among other things. These social and religious changes gave women chances to stand up for their rights. Raja Ram Mohan Roy was the first person to give women the right to own property. He said, "All ancient law-makers gave the woman, as the person's mother, the same amount of property as her son." He said that the Sati system is sometimes done on purpose because widows can't afford to live on their own after their husbands die. He talked about how the practise of Sati is linked to the problem of women not having property rights. Also, he insisted that the common people should have the same inheritance rights as women. Raja Ram Mohan Roy thought that the government should take steps to end these kinds of restrictions on women and stop these kinds of practises. He also thought that women should have more economic freedom and education.

Although the British did not outright prohibit or meddle with India's religious practises, they did impose restrictions on intimate connections inside families. These reforms included the Widow Remarriage Act of 1856, the Child Marriage Restriction Act of 1929, and the Bengal Sati Control Act of 1829. In 1850, the British government of India first outlawed the Hindu Law of Succession Act. This was accomplished by an act of federal legislation enacted in 1850 called the Caste Disabilities Removable Act. Few widows were permitted to remarry after the Widow Remarriage Act of 1956 was approved. The economic status of women seldom budged either. The social reform movement in India dates back to 1858, when it was launched by the British Parliament. Several new regulations were enacted as a result of this. The legal usage of the term "personal" dates back to this era. These are the rules that a person must live by because of their faith. There are few overt manifestations of sexism in these personal laws. Personal laws included those pertaining to marriage, divorce, inheritance, adoption, and succession. It further said that religious law applies to "personal laws." Yet, most legislation originated at the state level. The Victorian moral ethic on which these statutes were founded was stringent. It was also a watershed occasion because once the Victorian code of morals was enacted, very few women were granted divorce rights under state law. After much debate and criticism, this was finally adopted in 1956, over a century after it was first proposed, marking a significant stride forward for Hindu women.

Women finally gained some measure of economic freedom and security in the latter part of the 19th century. The Hindu Law of Inheritance was very harmful to women in terms of their legal claim to property ownership. Women were completely at the mercy of their male relatives, including their



husbands, fathers, brothers, and sons. The Indian Succession Act of 1865 was passed to protect the rights of married Indian women and ensure that they would not be disinherited or prevented from doing anything with their own property that they would have been able to do if they had not married. The Women's Property Act of 1874 was changed in 1923 so that it covered Hindu women and other women as well. People thought 1923 was a big year because it was the first time that Hindu women were given the right to own property on their own. The Widow Remarriage Act of 1856 said that a childless widow could get a share of her husband's property. This right used to be limited, so this was seen as the first and most important step towards giving women more economic rights.

6. IMPORTANT ACTS RELATED TO WOMEN PROPERTY RIGHTS

The movements for social reform made people care more about women's property rights. So, the Indian Succession Act was passed in 1925. It was a big step forward for women's rights because it gave them the same rights to property as men. Even by today's standards of women's rights, the Act can be seen as the most important piece of legislation.

6.1 Hindu Law of Inheritance Act, 1929:

"The Hindu Law of Inheritance Act of 1929 was made for women to make it easier for them to get their inheritance rights after the Succession Act of 1925. It only takes care of the property of a male Hindu who died without leaving a will. The act says that a son's daughter, a daughter's daughter, a sister, and a sister's son, in that order, have the right to rank next to a father's father and before a father's brother in the order of succession, as long as a sister's son is not included if he was adopted after the sister died."

6.2 Hindu Women's Right to Property Act, 1937:

At a man's death, his widow inherited his undivided interest as heir, but she inherited it as a restricted estate and not through survivorship to the other coparceners. Surviving coparceners would inherit the deceased man's undivided share of the property prior to the Act of 1937. Nevertheless, things altered with the passage of the Act in 1937. A widow has the same claim to her husband's share of the property as her husband has, according to Section 3(3) of the Hindu Women's Right to Property Act of 1937.

In India, the Constitution says that men and women should have the same rights, but this is not always the case. Also, in the Mitakshara system, a will made before the husband dies is limited. This was changed by the Amendment of 2005. This means that Hindu women are on the same level as men. It has given women freedom when it comes to their rights to inherit property from a dynasty that was ruled by men. South Indian states like Andhra, Kerala, Maharashtra, and Tamil Nadu each made one of these changes in 1986, 1989, 1994, and 1994, respectively. In 1975, the state of Kerala put an end to all joint family property.

6.3 Hindu Succession Act 1956 and Amendment of 2005:

The Hindu Succession Act of 1956 was the first and most important law that gave Hindus, Sikhs, Buddhists, and Jains all the same inheritance rights. It also acknowledged that men and women have the same rights when it comes to succession. But it only applies if the husband dies without a will. In that case, the mother and widow's children, whether they are married or not, get an equal share. This act doesn't apply to the inheritance from a will (where there is a written will).

In 2005, this Act was changed to give women the same chances as men. This became law on September 9, 2005, and it applies to all Hindu groups and castes other than Sikhs, Buddhists, and Jains. It said that Indian women have the same right to own property as Indian men. It also said that daughters have the same right as their male relatives to inherit property from their parents. The main thing about the 2005 Amendment is that it makes it possible for a daughter to become a coparcener by birth, just like a son. Even though a previous section said that a male Hindu's property will go to the rest of the coparcenary if he dies after the Act goes into effect. The 2005 Amendment has made a lot of things better. For example, the daughter gets the same share as the son, and the



share of the brother or sister who died before will be split among the remaining siblings, whether they are male or female.

7. CONCLUSION


There are still many problems with giving women the same property rights as men. In Sections 8 and 9, the Act talks about what happens to a man's property when he dies. In Sections 15 and 16, the Act talks about a woman's rights when she dies. In the event of a woman's death, her husband and parents would be her heirs. If a man died, his relatives would get his property as an inheritance. To show how important it is for women to have power, the legislation ought to be gender-neutral. For example, there shouldn't be a difference between men and women in the order of succession or the rules for succession.

The goal of making pro-women inheritance laws is to stop the unfair and discriminatory treatment of women's inheritance rights that has been going on in India since ancient times. With the 2005 amendment, women in India now have the same inheritance rights as men because they now have the right to be a co-owner. Even though this Act and its amendment were a big step forward, women in India still don't have equal property rights. The paper talked about how patriarchal social structures keep women from inheriting family property and how that affects women's social and economic lives. Women still don't get their fair share of family property because of the way society is set up and how it has been for a long time. This is a result of the social structure and rules that go back to ancient India. In a country like India, where people believe in and follow unfair traditions and rituals, it is still hard to make the Hindu Succession (Amendment) Act of 2005 work. The relationship between women's inheritance rights and their socioeconomic status is directly proportional. Therefore, giving women equal property rights is a key way to give women more power and improve their status in society.

India's women are still fighting for a uniform civil code that is in line with the Constitution. They are also fighting for their rights to marital property, which are denied to them regardless of religion. In some of the hill states, there is also a big push for women to own land as a group. This is done by making group titles and encouraging women who don't have land to work together and manage land and natural resources for joint farming or other farm activities. Under this approach, which is being pushed for by the Beijing Platform for Action, land rights would be directly linked to where people live and where they work on land. But there are a lot of problems, and the social acceptance of women's property rights is one of them. In a country where women are still treated as property, the road ahead looks long and rough.

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