

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Hindu Women's Property Right: A Birthright

AASHI JAIN¹ AND GAJENDRA PRATAP SINGH²

ABSTRACT

In India, the evolution of Hindu women property rights takes place in a remarkable way. India is a secular country that has different kind's religions and each religion has different laws and patterns. Hence, the ownership of women property varies from religion and religion. In this article, we will see how the changes took place in the property right of women, how the amendment took place. Indeed, to give women their birthright took a long time and waited for so long but finally they claim it. Their right to get a share in inheritance property has always been restricted from ancient times. Throughout history, the property rights of women were limited and felt underprivileged. So, the judiciary has to protect their right not only in law books but also in a practical manner. The study revealed that women who don't have a property and depend on husbands are more vulnerable to poverty, ill-treated and face social and economic risks. But India's women are changing and claiming their rights. Thus, the constitution guarantees equality and hence, provides the right principles. Let's take a look at what women struggled with and how they finally achieved their rights.

Keywords: *Secular, inheritance, ownership, constitution, property right.*

I. HISTORIC VIEWPOINT ON WOMEN'S PROPERTY RIGHT

In India, from equality rights to property rights, women have to fight a little more for almost everything. And it's pretty much unfair for women that they don't have equal rights that men have, both in terms of quality and quantity. India is having personal laws and not a universal civil code yet, those personal laws show how and in what matters women would be getting things. When we talk about property rights, it is still depending on what religion a woman belongs to, is she married or unmarried. Their inherent property right are always been challenging from the beginning. There were different Hindu schools whose perspectives were different from each other and namely they were Mitakshara and Dayabagh. In the former, only male members have the right to be a coparcener in the ancestral property and later the family

¹ Author is a student at JIMTEC School Of Law (JIMS), Greater Noida, Uttar Pradesh, India.

² Author is a student at Nirma Law University, Ahmedabad, Gujarat, India.

members including females have the right to acquire the property only after the death of the property holder.

In ancient times, women were not allowed to work were not educated well and were allowed only for household purposes and where depend on the husband for everything. So at that time, there were no such demands from the women's side for their rights. After years, time changed, reality changed and women have been self-educating to become self-independent and gradually they get to know their rights.

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

This act gives the right to the widow of the husband's property after his death. So, instead of the rule of survivorship, the property would be given to the wife and she has the sole right over his property. But, at that time the mentality of society is against equality and providing equal opportunities for women. Hence, she had restricted rights which remained with her till her demise.

III. HINDU SUCCESSION ACT, 1956

In the year 1956, the Indian government gave property rights to the female members in a family by introducing the Hindu succession act 1956 which means now females are the full owner and abolishing their limited owner status of what she possessed from Stridhan. This act mainly dealt with the intestate or unwilled (testamentary) succession. The word intestate means a person who acquires property but dies without leaving behind a will. Property is also two types: self-acquired property and ancestral property. According to this act, females can have shared in the property but they will not be legal heirs or coparceners. Coparcener means a person who owns an ancestral property by birth and is the legal heir of that property.

Although it gave the property right to females but somewhere it has discrimination by not determining females as coparceners. The property distributions took place as grandfather to father to son. It affects article 14 of the Indian constitution which talks about the equality. It was such a basic right that everyone should have but it was the mindset among people that females have to go one day once she married so there is no need to give any share of the property but treated as husband's property. Women did not have any source of income and hence walked behind men. The evolution of time took place; women are also educating themselves, demanding their basic rights and being self-independent. It was a challenge for women to fight others and even their family members to demand their rights which were gender discriminated.

IV. HINDU SUCCESSION (AMENDMENT) ACT 2005

Whenever there is any such kind of trouble to any person's basic right, the judiciary comes and protects the basic right of the people. Judiciary always provides justice to the system and in society. And once again Indian judiciary stands for the betterment of society in the year 2005 by amending the Hindu succession act 1956. In 2005, section 6 of the Hindu succession act amended where females are accepted as the coparceners in the property. The court declared that daughters will also be coparceners with equal property share as sons. This was the step towards women rights and brings equality in society. In the present time, women are literate and know their rights. In the year 1951, the female literacy rate was just 8.86% which increased to 70.30% in the year 2021 this shows how females and society evolved. The literacy brings the decision making power among women so that they can stand on their own feet. Because of the women and judiciary power, the amendment has taken place as:

On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

1. by birth become a coparcener in her own right in the same manner as the son;
2. have the same rights in the coparcenary property as she would have had if she had been a son;
3. be subject to the same liabilities in respect of the said coparcenary property as that of a son"

Hence, this amendment break down the gender-based discrimination almost after 50 years Thus, daughters now have equal rights as granted to sons and are considered coparceners. This act abolished the difference between male and female rights of property. it is an inspiration and landmark decision in respect of equality, right and respect of all the women in India.

V. CASE LAWS

After the amendment came, various judgments came from the high court and the Supreme Court. But there were different types of perplexity regarding this act and some unclear facts about the inheritance from which people have had certain doubts like:

- If the daughter would inherit the property if the father was not alive as of 9.9.2005 or not
- If the law can be apply to daughters who are born before (or after) 2005.

But the latest judgments clear all doubts and uncertainties. In the case of Vineeta Sharma v.

Rakesh Sharma & others 2020¹, Supreme Court stated that this act has a retrospective effect. The daughter acquired this coparcenary right by her birth date and it is irrelevant whether the daughter was born before this act. Moreover, whether a father is alive or not on the date of commencement of the 2005 amendment act is not matter. It means that if the father died before 2005 then also daughters have full right to be determined as a coparcener in property share. And hence remove gender biases.

In the case of *Arunachala Gounder v. Ponnusamy* 2022², the supreme court verdict was that daughter is capable to acquire the self-acquired property or the received share of coparcenary property of her Hindu father dying intestate. The court stated that it is well recognized from various judicial pronouncements and declared a woman can be also a part of it.

VI. CONCLUSION

We can see from the abovementioned points that India is changing by many ways. The standard of the women are changing, they are making their own path. Just because of gender one cannot take away one of the basic rights of women. But it is proven that implantation is the key to everything. The change on paper is not enough. Just amending a certain act is not enough rather than this it is more important to implement the particular act and section in society. It is crystal clear that was one of the most crucial steps to build the importance of women in society. As is mentioned earlier, the judiciary plays a commendable role by giving significant and landmark judgments. In the year 1966, in the case of *Radha Rani Bhargava v. Hanuman Prasad Bhargava*³ Supreme Court held that women to be the absolute owner and it cannot be challenged on any basis and one cannot take away her ownership. This shows how people and society change their perspectives from time to time and take one step towards equality in India. By the historic judgment by the Supreme Court, it is positively determined that daughters right is from birth as their brothers have. We can also say that this amendment has been the step towards women emancipation, now they have freedom and have an economic resource that are marginalized or neglected by patriarchal families. Hence they got the right to ask the coparcenary property by their own will. Moreover, the process of claiming this right wasn't easy because many of the women were not aware of it but because of the proactiveness of the judiciary, the Hindu women got aware of their basic right in a true sense. Without the role of the judiciary, this act merely existed in a legal document. Additionally, this decision is welcomed with open arms to provide their right more graceful and in an easy manner. So instead of letting go they should stand up for their rights and claim them.

VII. REFERENCES

- Hindu succession amendment act 2005
- Hindu succession act 1956
- <https://www.drishtias.com/loksabha-rajyasabha-discussions/the-big-picture-hindu-succession-law-daughter-s-rights>
- <https://www.thehindu.com/opinion/editorial/right-by-birth-the-hindu-editorial-on-daughters-and-hindu-succession-act/article32347299.ece>
- Vineeta Sharma v. Rakesh Sharma & others (2020) 9 SCC 1
- Arunachala Gounder v. Ponnusamy 2022 CIVIL APPEAL NO. 6659 OF 2011
- Radha Rani Bhargava v. Hanuman Prasad Bhargava, AIR 1966 SC 216.
