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# Women and Property Rights in India

## Present Position of Hindu Women

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### ABSTRACT

*Women and rights are often a theme for debate. The economic stability of women is the primary concern of all women activists all over the world. Gender equality in terms of property rights is needed of the hour. Religious indifferences should not be a barrier to the economic stability of women. This article would discuss the property rights of Hindu women in India and their fights to achieve their desired goal in terms of property rights on par with men. The right of Hindu women to property is personal to their religion. The Hindu women in India are governed by their personal Laws. This article would bring out how the right of Hindu women to the property is understood under their personal laws and what are their present position and its fallacies. The personal laws on Hindu women in India concerning property rights are not gender-equal. A Stridhana property right is the only form of property right enjoyed by the Hindu women in India in the early time. The concept of stridhana and the women's estate is discussed to bring out the present position of Hindu women's right to property. This article would give a positive outlook on women's rights to property and the fight for equal rights for women is achieved at best in the law book. The property rights of Hindu women have strengthened economic stability. This will give you a glimpse of how Sreedhana property and women's estate have become their absolute property and their role in coparcenary property and their position.*

**Keywords:** *Hindu Women's rights, Property rights, Stridhana property, economic stability, traditional Practice*

## I. INTRODUCTION

Women and rights are correlated in modern times and are often debated subjects among the legal community and among women activists. Whenever the rights of women are debated it is women's rights to land and property that come to the forefront. The first question that arises in the course of such debate is whether women have the rights to land and property as that of men? However, the rights of women are not restricted to land and property alone but have varied dimensions to them. The right to land and property gives economic stability and social

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status to women on par with men. The independence of women depends on their economic usage and non-denial of their rights to property and land. Inequitable and discriminatory practices and attitudes towards the right to property and land for women may cause severe damage to their social and economic prosperity. Some countries in the world have denied women's rights to land and property. In a few countries existing laws give fewer or lesser rights than men, and discriminatory and unequal practices in the society undermine women. Such practices leave women solely dependent upon men for their survival. Women who are deprived of the rights to property and land become vulnerable to violence, poverty, and food insecurity, particularly if widowed, divorced, single, or marriage is not formally recognized and women who are affected by infectious diseases<sup>3</sup>

These being the fact, countries at large have now, after a long battle for the rights of women, given equal rights to women as that of men. This is again disputable in a certain respect, but the world has awakened to the call of women's empowerment after a long struggle. India is one of the countries that promptly responded to the call for women's empowerment and their rights to land and property. India is the land of varied cultures, philosophies, varied ethnical groups, and various religious practices, women's rights to land and property have mixed responses and compliance. Despite that varied culture, religious group and ethnical group, the Indian legislature and judiciary time and again responded to the call for women's right to land and property positively.

## **II. WHAT ARE WOMEN'S RIGHTS?**

If one has to define the meaning of Women's rights, it has different dimensions and varied meanings. It is the legal rights that promote a position of women economically and socially in phase with men. Women's rights can be called the women's movement, the feminist movement, women's emancipation and so on.

Jone Johnson Lewis is a writer, coach, and teacher who had researched women's history around the world and in different eras. Within women's history, Jone has a special interest in 19<sup>th</sup>-century social reform and religion<sup>4</sup>. She had in her article written that "women's rights" has varied through time and across culture. Even today, there is some disagreement about what constitutes women's rights. Does a woman have a right to control family size? Usually,

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<sup>3</sup> Women's rights to land and property still a myth- by Deusdedit Ruhangriyo, VisionReporter. Available at:[https://www.newvision.co.ug/new\\_vision/news/1319672/women-rights-land-property-myth](https://www.newvision.co.ug/new_vision/news/1319672/women-rights-land-property-myth) (visited on 24/6/2018)

<sup>4</sup> What Are Women's Rights? Rights Included Under the Umbrella of "Women's Rights"? Available at: <https://www.thoughtco.com/what-are-womens-rights-3529028>. visited on 26/6/2018

"women's rights" refers to whether women have equality with the rights of men where women and men's capacities are the same. Sometimes, "women's rights" include the protection of women where women are subject to special circumstances (such as maternity leave for child-bearing) or more susceptible to mistreatment (rape)<sup>5</sup>.

### ***Seneca Falls Women's Rights Convention - 1848***

In 1848, the first known Women's Rights convention in the world declared "We hold these truths to be self-evident: that all men and women are created equal...." and in closing, "we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of the United States"<sup>6</sup>.

### ***United Nations Convention on Rights of Women - 1981***

The 1981 Convention on the Elimination of All Forms of Discrimination against Women, signed by many United Nations member states, defines discrimination in a way that implies that women's rights are in "political, economic, social, cultural, civil" and other spheres<sup>7</sup>. It is evident from the ancient time to this modern era of information and technology that women's rights differed somewhat from culture to culture. Some of these differences were:

- whether women were considered full citizens
- whether women could move around freely
- whether women could freely choose or refuse marriage partners, or end a marriage
- whether women had custody of children, especially after a divorce or in a dispute with the children's father
- whether women could own property or run businesses and control their wages, income and wealth
- whether women could represent themselves or others in legal proceedings, such as lawsuits and court actions
- Whether women could inherit the right to titles and ownership etc.

This article concentrates only on women's rights to property and land or otherwise economic rights of the women, which are one among the many rights that women should be enjoying. In this article, while analyzing the women's right to land and property, I have

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<sup>5</sup> ibib

<sup>6</sup> Wikipedia. 2022. *National Women's Rights Convention - Wikipedia*. [online] Available at: <[https://en.wikipedia.org/wiki/National\\_Women%27s\\_Rights\\_Convention](https://en.wikipedia.org/wiki/National_Women%27s_Rights_Convention)> [Accessed 22 July 2022].

<sup>7</sup> Hrweb. 2022. *U.N. Convention on Discrimination against Women*. [online] Available at: <<http://www.hrweb.org/legal/cdw.html>> [Accessed 22 July 2022].

concentrated on women's right to property and land and rights connected thereto who are governed by the Hindu Succession Act and other related laws concerning women who profess Hindu religion. The main aim of this article is to look at the positive side of the Act that confers property rights to women. The following are some of the aspects of women's rights to property and land that are taken into our consideration. Whether women professing Hindu religion, in India, property law is personal law that differs from religion to religion, and have

1. Right to own and dispose of property?
2. Right to inherit property in her name and control it; right to designate as to who will inherit her property?
3. Equality of survivor's rights upon the death of a spouse (e.g. how much property one inherits, whether one has a right to continuation of a spouse's pension benefits?)

### **III. EVOLVING PROPERTY RIGHTS OF WOMEN THROUGH EVOLVING CIVILIZATIONS**

If we trace the history of women's rights to property through the mirror of the development of the civilization, we might sometimes form the opinion that women were not given any property rights, rather they were only considered as property or commodities. Discrimination against women in all spheres of life continued from time immemorial.

The famous proponent of Justice and Equality in society has never considered women as part of society. Women had been considered and treated as commodities or property.

Plato and Aristotle, teachers and students and two of the most influential philosophers had somewhat constrained opinions about women in the ancient world. Plato championed some social roles for women as men after giving training to them, whereas Aristotle later opined:-- "as regards the sexes, the male is by nature superior and the female inferior, the male ruler and the female subject. And the same must necessarily apply to all mankind". Aristotle divided society into public and private. According to him, women had no role in public life. Female lacks authority in public life.

### **IV. TRADITIONAL PRACTICE IN INDIA**

Time had passed and the world had awakened to the cry of the women who had been battling for their rights to equality. Civilized societies that follow the rule of law now stand on the positive note to provide equal rights to women on par with men. Though male chauvinism exists in the social mindsets but the feminist ideology had gained momentum in recognizing certain economical rights for women. India, a very ancient civilized nation, is not an exception to the rule. Though there were no rights conferred to women concerning property in the ancient

period, may be due to religious perception, now Indian social thought has changed and has become one of the nations that had quickly responded to the rights of women in the matter of property rights. The response to the rights of women concerning property in India has its phase of growth. Initially, **according to Manu - “a wife, son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom they are in protection.”**

The social or religious perception that women are not to be vested with property rights had begun to change from the Vedic period onwards. The rights of Hindu women to property had undergone sea changes. Now the position has reached where women have an equal status that of with men.

Under ancient Hindu Law, the right to ownership has been recognized by great commentators notably Narada, Yajnavalkya, Vyas etc. According to them, the right to ownership of property should be used for a noble cause and good motives. As per ancient Hindu texts, there can be seven modes for the acquisition of ownership of property such as (a) inheritance (b) purchase (c) gain (d) conquest (e) employment (f) investment of wealth and acceptance of gifts.

In the ancient Hindu system of the Joint Family, males only held the property rights on behalf of the members of the family. Women had no rights over the property. It was the duty of male members to administrate the property of the whole family and women did not enjoy any saying with regard to the property administration.

But before 1956, when the Hindu Succession Act came into effect, there were two kinds of property rights women enjoyed to an extent, namely;

1. Streedhana property
2. Women’s Estate

### **Meaning of Streedhana property**

Streedhana is a combination of two Sanskrit words ‘Stri means Woman’ and ‘Dhan means Wealth’ and combined together means ‘Woman’s property’. Stridhan is a traditional property right of Hindu women accepted by Indian Hindu Society. Stridhan ensures a women’s economic independence<sup>8</sup>.

‘Streedhana’ in the Indian concept is a property given to women in marriage as gifts. The Streedhana property constituted all those properties women received by way of gifts from her

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<sup>8</sup> wealthingatters. 2022. *Stridhan*. [online] Available at: <<https://wealthingatters.com/2011/08/31/stridhan/>> [Accessed 22 July 2022].)

family members, her relatives and friends. Normally Streedhana properties consisted of movable, like ornaments, jewel and dress and so on. It is sometimes, immovable property, such as a house and piece of land also given to women as streedhana in the marriage. Property purchased with the streedhana property, and property received in lieu of maintenance also considered being streedhana property of women.

Streedhana property has all the characteristics of absolute ownership of property. This being her absolute property, the Hindu female has full rights of its alienation. It is to say that women can sell, gift, mortgage, lease, and exchange her property as an absolute owner. There is certain degree of difference in exercising this power of alienation by women. It depends upon the status of the women as to whether she is a maiden or a widow and or married. In case of woman who is a maiden or widow she has unfettered power of alienation but in case of married women some restriction are recognized on her power of alienation. In certain respect of property, in case of property received from stranger, she had to get consent from her husband. After her death all types of streedhana would be passed on to her own heirs. In other words, she constituted an independent stock of descent. If she dies intestate her streedhana property would devolve upon her heirs in the following order;<sup>9</sup>

1. upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband,
2. upon the heirs of the husband.
3. upon the heirs of the father, and
4. upon the heirs of the mother.

This concept of streedhana comes down centuries from the Hindu smritis but has today, permeated all forms of marriages in all castes and religions. This is an ingrained part of Indian culture. In a male dominated society, the existence of the custom of 'bride price' indicates that women understood the importance of financial independence and safeguarding their interests long before the feminist movement had an influence in this subject<sup>10</sup>.

### **Meaning of Women's Estate**

When the property right was not legally recognized, woman who is not married, widowed would be given some property for her life time. This is called women's estate. It means such women can have limited rights in that property and can use it in her life time as a tenant. She

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<sup>9</sup> *ibid*

<sup>10</sup> Scribd. 2022. *Stridhan and Woman's Estate | PDF | Ownership | Property*. [online] Available at: <<https://www.scribd.com/document/263253084/Stridhan-and-Woman-s-Estate>> [Accessed 22 July 2022].

becomes the owner of the property but her right of alienation is limited and after her death the property will not pass to her heirs but will pass to the heirs of the last full owner of the male lineage<sup>11</sup>.

Women's estate is taken by female as limited owner; however, she is the owner of that property as any other individual can be the owner of the property subject to some basic limitation.

In **Janki vs. Narayaswami**<sup>12</sup> the Privy Council has observed. "Her right is of the nature of right of property, her position is that of owner; her powers in that characters are, however, limited. So long as she is alive, no one has vested interest in succession."

## V. MANAGEMENT OF WOMEN'S ESTATE

In managing the women's estate female has full power as that of Karta in a Hindu family. In case of women's property her right is more than that of karta in certain respects, whereas the karta of the Hindu family is only a guardian or caretaker as there being other coparceners, but in her case she is the sole owner of the property and therefore need not bother about others. That is so say, female holding women's estate is alone entitled to hold the entire property and entitled for its income. With respect to women's estate female continues to be its owner until the forfeiture of estate, by her marriage, adoption, death or surrender.

### **The present position of Hindu women's property rights:-**

After the advent of Hindu Succession Act, 1956, the position of Hindu women's rights to property had undergone sea changes. As per Section 14 of Hindu Succession Act, 1956, the women's estate has been abolished and now become an absolute property of women. According to section 14 of the Hindu Succession Act, 1956;

Property of a female Hindu to be her absolute property.—

(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.

Explanation.—In this sub-section, "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 gift from any person, whether a relative or not, before, at or after her marriage, or by her own 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

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<sup>11</sup> Prof. U.P.D. Kesari, Modern Hindu Law, 3rdEd. 2001, p. 364.

<sup>12</sup> 1916) 43 I.A. 207

before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property<sup>13</sup>.

Therefore the property owned by women before the commencement of the Act and which does not fall under S. 14 (2) of the Act become the absolute property of women.

The old law of succession has put an end by the Hindu Succession Act, 1956. Women have become successors of the intestate property and her property, in case dying intestate, and would devolve as per the S. 15 of the Act. According to that section the general rules of succession in the case of female Hindus are as follows;

*(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16:*

*(a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

*(b) Secondly, upon the heirs of the husband;*

*(c) Thirdly, upon the mother and father;*

*(d) Fourthly, upon the heirs of the father; and*

*(e) Lastly, upon the heirs of the mother.*

*(2) Notwithstanding anything contained in sub-section (1)-*

*(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*

*(b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.*

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<sup>13</sup> The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

Further as per Section 16 of the Act, the order of succession is set out as follows; and S.16 of the Act thus reads;

*“The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place, according to the following rules, namely:-*

*Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.*

*Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.*

*Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father’s or the mother’s or the husband’s as the case may be, and such person had died intestate in respect thereof immediately after the intestate’s death.”*

When the constitutionality of the Act has been challenged in *Pratap Singh VS Union of India*<sup>14</sup> the Supreme Court observed that the Act has the object of enhancing women’s limited estate concept regarding property into absolute interest. It is within the spirit of court of India. Hence it is not violative of any fundamental rights especially Art.14, 15(1) of the Constitution of India. Now this is the new law of succession to women’s property.

## **VI. COPARCENARY RIGHTS OF HINDU WOMEN:**

Coparcenary rights in Hindu law have also undergone sea changes, especially with respect to women’s right to coparcenary property. Coparcenary is body of persons within a joint family who consisted of male decent. They consisted of father, son, son’s son. Mulla in his book defines coparceners as “the three generations next to the holder in unbroken male descent”<sup>15</sup>.

When we analyse the coparcenary rights of Hindu women in India we can find three phases of legal changes. They can be analysed in the following phase;

1. before the enactment of the Hindu Women’s Right to Property Act, 1937,

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<sup>14</sup> AIR (1985) SC 1694

<sup>15</sup> PRINCIPLES OF HINDU LAW BY MULLA (13TH EDITION)

2. after the enactment of the Hindu Women's Right to Property Act, 1937,
3. And as per the Hindu Succession (Amendment) Act, 2005

Before the enactment of the Act of 1937, the undivided interest of a coparcener on his death is passed by survivorship to the other coparceners. That is to say the Hindu women had no rights in the property of her husband on his death and it will only pass on to other male coparceners. Such position of Hindu women had changed to another phase by the advent of the Hindu Women's Right to Property Act, 1937. Section 3 of the Act 1937 defines how the devolution of property to widow is governed. It defines in the following ways;

*Devolution of property:-*

*(1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son: Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son: Provided further that the same provision shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.*

*(2) When a Hindu governed by any school of Hindu law other than the Dayabhaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.*

*(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.*

*(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends to a single heir or to any property to which the Indian Succession Act, 1925, applies.*

As per the above definition "The undivided interest of a coparcener on his death did not go by survivorship to other coparceners, but his widow took it as heir, though she took it as a limited estate."

Hence with the Act of 1937, the position of Hindu women had changed into another phase. According to section 3(3) of The Hindu Women's Right to Property Act, 1937, the Hindu widow had the right for partition of property as that of male owner. Therefore she will have the same right to claim a partition as a male owner.

Though Indian constitution provides for gender equality, however with respect to property rights, it took decades after the commencement of the Constitution to bring that gender equality. Though some of the states like Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu made amendments to bring gender equality with respect to inheritance of women in the Hindu Succession Act, 1956, parliament has amended the same to give effect in the year 2005. Now the position of Hindu women with respect to right of inheritance and coparcenary had been enriched on par with male.

As per the amendment in Hindu Succession (Amendment) Act, 2005, now the hindu female has been bestowed with the same power as that of male. Now the woman is given absolute interest as a coparcener instead. Section 6(1) of this Act, reads thus;

Devolution of interest in coparcenary property:-

*(1) 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,—*

*(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,*

Now the third phase of legal position puts the women in equal footing with men with respect to inheritance and coparcenary right to property. Though it is very difficult to give minute details of how property rights to Hindu women in India (daughter, mother, and wife) stands, we have made an attempt to analyse the same in the following manner.

According to the Hindu Law the inheritance and coparcenary rights of daughter, wives, and mothers are categorized as follows<sup>16</sup>

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<sup>16</sup> Report of National Commission for Women, Available at: <http://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/meera-didi-se-poocho/property-rights-of-women-in-india-and-maintenance>. visited on 16/9/18

**Daughters**

- Daughters have equal right of inheritance as sons to their father's property.
- Daughters also have a share in the mother's property.
- The Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force from 9th September, 2005. the Amendment Act removes gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters
  - The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
  - The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
  - The daughter shall be subject to the same liability in the said coparcenary property as that of a son;
  - The daughter is allotted the same share as is allotted to a son;
- A married daughter has no right to shelter in her parents' house, nor maintenance, charge for her being passed on to her husband. However, a married daughter has a right of residence if she is deserted, divorced or widowed.
- A woman has full rights over any property that she has earned or that has been gifted or willed to her, provided she has attained majority. She is free to dispose of these by sale, gift or will as she deems fit.

**Wives**

- A married woman has exclusive right over her individual property. Unless she gifts it in part or wholly to anyone. She is the sole owner and manager of her assets whether earned, inherited or gifted to her.
- Entitled to maintenance, support and shelter from her husband, or if her husband belongs to a joint family, then from the family.
- Upon partition of a joint family estate, between her husband and his sons, she is entitled to a share equal to as any other person. Similarly, upon the death of her husband, she is entitled to an equal share of his portion, together with her children and his mother.

## Mothers

- She is entitled to maintenance from children who are not dependents. She is also a Class I heir.
- A widowed mother has a right to take a share equal to the share of a son if a partition of joint family estate takes place among the sons.
- All property owned by her may be disposed by sale, will or gift as she chooses.
- In case she dies intestate, her children inherit equally, regardless of their sex.

Whenever there is a discussion on right to property for women in India we often come across people saying that women have no equal rights with that of men. This can be true, maybe, in a varied social pattern of thoughts in the society and practice, but in law, Hindu women are made equal with that of men with respect to property rights. In India, some sections of women may be ignorant of their rights on property. Though there are some dissimilarities prescribed in Law texts of Hindu, such as the Mitakshara and Dayabhaga systems, to a great extent, women are clothed with equal rights on the property after the advent of the Hindu Women's Right To Property Act, 1937, The Hindu Succession Act, 1956, Hindu Succession (Amendment) Act, 2005, etc.

Apart from The Hindu Succession Act, 1956, there are other Acts which has come to the limelight for strengthening the position of women regarding property rights. At the same time, Sections 24, 25 and 28 of The Hindu Succession Act, 1956 have laid down stringent conditions for avoiding enjoyment of property rights by the undeserved ones<sup>17</sup>.

With a thorough reading and interpretation of the law relating to Hindu women's property rights in India, it is no doubt, that women are legally empowered with equal rights in respect of property and allied rights. Such changes in the law concerning women's right to property in India have brought considerable changes in the social and economical status of women. The position of Hindu women about coparcenary rights, inheritance and property rights stands equalized with that of men now.

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<sup>17</sup> Academike. 2022. *Hindu Women and changes towards Property Rights - Academike*. [online] Available at: <<https://www.lawctopus.com/academike/hindu-women-changes-towards-property-rights/>> [Accessed 22 July 2022].