

PARADIGM SHIFT OF WOMEN'S PROPERTY RIGHTS IN INDIA: EVOLUTION, CHALLENGES, AND RECOMMENDATIONS

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Abstract

This research paper examines the evolution and reform of laws in India, focusing on shifting paradigms on the concept of gender equality specifically regarding women's property rights. The study explores the driving factors behind this paradigm shift triggering the legal reforms, emphasizing the extensive processes and timelines required for significant change. It identifies persistent gaps in these rights, highlighting challenges arising from insufficient implementation, inadequate administrative support, gender inequality and deeply ingrained patriarchal mindsets. While acknowledging legislative advancements like the Hindu Succession (Amendment) Act of 2005, the paper underscores ongoing challenges related to patrilineal inheritance systems, personal laws, and regional variations in reform implementation. The authors advocate for a holistic approach to address implementation complexities and recommend strategies to raise awareness and empower women through equitable property rights enforcement for daughters.

Keywords: *Gender Inequality, India, Women's Property Rights*

PERGESERAN PARADIGMA HAK MILIK BAGI PEREMPUAN DI INDIA: EVOLUSI, TANTANGAN, DAN REKOMENDASI

Intisari

Artikel ini meneliti evolusi dan reformasi hukum di India, dengan fokus pada perubahan paradigma kesetaraan gender, khususnya hak milik perempuan. Studi ini mengeksplorasi faktor-faktor yang memicu reformasi hukum dan menyoroti proses serta waktu yang diperlukan untuk perubahan signifikan. Penelitian ini juga mengidentifikasi kesenjangan yang masih ada dalam hak-hak tersebut, terutama terkait kurangnya implementasi, dukungan administratif yang lemah, ketidaksetaraan gender, dan pola pikir patriarkal yang kuat. Meskipun terdapat kemajuan legislatif seperti Undang-Undang Amandemen Pewarisan Hindu tahun 2005, tantangan masih berlanjut, termasuk sistem pewarisan patrilineal, hukum pribadi, dan variasi regional dalam penerapan reformasi. Penulis mendorong pendekatan holistik untuk mengatasi masalah implementasi dan merekomendasikan strategi untuk meningkatkan kesadaran serta memberdayakan perempuan melalui penegakan hak milik yang adil bagi anak perempuan.

Kata Kunci: Kesetaraan Gender, India, Hak Milik Perempuan

A. Introduction

The narrative of the Movement for Equal Inheritance Rights in India unfolds dynamically, probing the intricate interplay of societal norms, legal frameworks, and cultural practices that historically impeded women's access to property. Originating from entrenched patriarchal values, these challenges manifested through the Hindu Succession Act of 1956 (hereafter HAS, 1956),¹ perpetuating gender bias in inheritance and intestate succession. As specific states took progressive actions to address these disparities, the journey achieved a milestone with a nationwide intervention in 2005, aiming to shift patriarchal paradigms by rectifying gender imbalances under the Hindu Succession Act.²

This article explores the historical context of the equal inheritance rights movement, indicating that practical implementation has seen limited advancements despite legal reforms and impactful judgments endorsing the retrospective application of these rights. It delves into the complex interplay of religion, social norms, and patriarchy, revealing persistent disparities despite legal progress. It reiterates that societal pressures often discourage women from asserting inheritance rights, emphasizing the ongoing need for advocacy and awareness initiatives to bridge gaps and instigate a transformative shift in societal attitudes towards gender equality.

Going beyond legal reforms, the primary research illuminates the current landscape of the movement. Despite slight increases in women's property ownership, the findings underscore challenges related to awareness and societal hesitance in challenging ingrained gender norms. This paper introduces a crucial perspective by presenting primary research on awareness of property laws, emphasizing the present landscape and advocating for comprehensive strategies to overcome implementation challenges. The research aims to empower women by equitably enforcing property rights, highlighting the imperative for broader societal transformation.

1 Ancestral property (also known as Coparcenary property) means a property inherited by a male Hindu from his three immediate lineal male ascendants, i.e., his father (F), grand-father (FF) and great grandfather (FFF). Separate property is a property inherited by a male Hindu (A) from a relation other than the above three (i.e., relation other than his father, grand-father or great grand-father), or is property which is self-acquired by such male Hindu. (See Articles 212, 213, 216, 218 & 235 Mulla on Hindu Law; 16th Edition), See also; The Hindu Succession Act, 1956. [Indiankanoon.org](https://indiankanoon.org). <https://indiankanoon.org/doc/685111/> (accessed 26 November 2024).

2 Union of India, The Hindu Succession Act, 1956, 5.

B. Indian Inheritance Laws

In India, the Hindu Succession Act (HSA) of 1956 regulated inheritance rights for Hindus, Sikhs, Buddhists, and Jains (hereafter collectively referred to as Hindus). The act differentiated between joint family property (including ancestral assets held collectively by the extended family, such as land) and individual property (acquired by an individual during their lifetime). When a Hindu male died without a will (intestate), daughters were entitled to equal shares of their father's individual property, but they had no claim over the joint family property. Sons, on the other hand, inherited rights to the joint family property by birth, being recognized as members of the "Hindu coparcenary." As coparceners, their share of the property couldn't be disposed of by will, and they alone could request a division of the ancestral property while older coparceners were alive. Since a significant proportion of individuals in India passed away without making a will, property settlements predominantly followed the guidelines of the HSA, resulting in women inheriting considerably less than men, if anything at all. A report by the Law Commission of India from May 2000 highlighted the systemic discrimination against women in property inheritance laws, noting that this bias was evident even within legislation governing inheritance within Joint Hindu families. Paragraph 2.5 of the report states: "Legislation that on the face of it discriminates between a male and a female must be made gender neutral."³

To address the gender disparity embedded in the Hindu Succession Act (HSA), five states made amendments to ensure that daughters of coparceners would also inherit coparcenary rights by birth, thus granting them equal status with sons. Kerala initiated the amendment in 1976, followed by Andhra Pradesh in 1986, Tamil Nadu in 1989, and Maharashtra and Karnataka in 1994. Notably, these amendments specifically applied to unmarried women when implemented. Subsequently, in 2005, the HSA was amended nationwide to align with the principles set forth by the aforementioned states, aiming to rectify gender inequality in inheritance laws.⁴

3 Law Commission of India 174th Report, "Property Rights of Women: Proposed Reforms under the Hindu Law". D.O. no.6(3)(59)/99-LC(LS) (2000), 27- 36, <https://cdnbbsr.s3waas.gov.in/s3ca0daecc69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf>.

4 Law Commission of India, 174th Report, "Property Rights of Women: Proposed Reforms under the Hindu Law". D.O. no.6(3)(59)/99-LC(LS) (2000)51-57., <https://cdnbbsr.s3waas.gov.in/s3ca0daecc69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf>.)

The significance of this policy has prompted extensive research. Initially, some scholars investigated whether it indeed led to an increase in women's inheritance. Studies by Deininger, Goyal, and Nagarajan⁵ confirm that the amendment substantially elevated the likelihood of women inheriting property in both rural and urban areas. Another set of studies explored the broader impacts of this law on various aspects of women's lives, such as mobility⁶, education (Roy 2015, Deininger, Goyal, and Nagarajan 2013),⁷ workforce participation, domestic violence, female child mortality, and marital discord (Anderson and Genicot 2015).⁸ I contribute to this latter line of inquiry by offering the initial insights into the mechanisms through which the reform influences household bargaining dynamics, crucial for informing policy recommendations. Additionally, my work contributes to the literature on decision-making within extended families, highlighting the significance of intergenerational negotiation.⁹

C. Movement of Equal Inheritance Rights

Access to property plays a pivotal role in facilitating women's economic engagement, especially in entrepreneurship. Despite this, women globally only own a mere 20 percent of the world's land.¹⁰ Discriminatory regulations and practices on a global scale create barriers for women to acquire assets, which could serve as collateral for obtaining financial support to initiate or expand their lifestyle¹¹. In India, women have faced prolonged obstacles in accessing

5 Klaus Deininger, Aparajita Goyal, and Hari Nagarajan, "Women's inheritance rights and intergenerational transmission of resources in India" *The Journal of Human Resources* 48, no. 1 (2013): 77-89.

6 Sanchari Roy, "Empowering women? Inheritance rights, female education and dowry payments in India," *Journal of Development Resources* 114 (2015): 233-251.

7 Ibid, Klaus Deininger, Aparajita Goyal, and Hari Nagarajan, "Women's inheritance rights and intergenerational transmission of resources in India", *The Journal of Human Resources* 48, no. 1 (2015): 67-75.

8 Siwan Anderson, Garance Genicot, "Suicide and property rights in India" *Journal of Development Economics* 45, no. 1 (2015): 137-150.

9 Bina Agarwal, *A field of one's own: Gender and land rights in South Asia* (Cambridge University Press, 1994).

10 World Economic Forum, *Collaboration in Cities: From Sharing to 'Sharing Economy'*, (World Economic Forum, 2017), 7.

11 Bin Humam, Yasmin Klaudia, Julia Constanze Braunmiller, and Mahmoud Elsamam, "Emerging Trends in National Financial Inclusion Strategies that Support Women's Entrepreneurship" World Bank Group, <http://documents.worldbank.org/curated/en/099400003082361874/IDU15eccc2c4f127b91446b19954105faa70906f9> (accessed 26 November 2024).

property due to entrenched patriarchal social norms, which are further institutionalized through discriminatory practices in laws and institutions. The original provisions of the Hindu Succession Act of 1956 perpetuated gender discrimination, particularly in matters of inheritance and intestate succession among Hindus. Initially, several states took the initiative to amend the HSA, leading the way in equalizing inheritance rights for Hindu women until the law was federally amended for all states in 2005.¹² This segment presents a chronological overview of women's inheritance property rights progression in India.

1. Absence of a Unified Civil (Personal) Law in a Diversified Society

The reform in inheritance laws in India can only be comprehended within the intricate framework of the country's diverse society. India, characterized by multiple religions and communities, follows various customary practices and laws governing aspects of personal and family life such as marriage, divorce, succession and inheritance, adoption, and guardianship. The country's progressive constitution prompted the government to review, consolidate, codify, and harmonize existing religious, customary, and personal laws and practices. This effort primarily targeted individuals following Hinduism (in its diverse variants and schools), Buddhism, Jainism, Sikhism, and other religions (excluding Islam, Christianity, Zoroastrianism, and Judaism). This initiative resulted in the enactment of several federal laws by the Parliament of India, including the Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Succession Act of 1956.

Despite the constitutional vision to strive for a uniform civil code throughout India, no standardized civil law covers the country. Presently, parallel personal laws persist across India. A notable example is the Hindu Succession Act (HSA), which, despite constitutional principles on gender equality, initially included provisions allowing discrimination against women. Although amendments, including a federal-level change in 2005, have been made to the law, several provisions based on customary practices still exist,

¹² Law Commission of India 174th Report, "Property Rights of Women: Proposed Reforms under the Hindu Law". D.O. no.6(3)(59)/99-LC(LS) (2000), 27-36. <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082470.pdf>

denying women equal access to property rights.¹³

According to Hindu customary law, property within the “joint Hindu family” or “ancestral property” differs significantly from self-acquired property. A “joint Hindu family” consists of lineal descendants from a common ancestor and family members, including wives and unmarried daughters, who jointly share in estate, food, and worship.¹⁴ Under the Mitakshara school of customary law, three generations of male members automatically became joint heirs, known as “coparceners,” to the joint family property by birth. At the same time, women did not possess such rights. The Hindu Succession Act of 1956 formally recognized this “coparcenary framework” of inheritance and the entirety of the “ancestral property” or “joint Hindu family property” it encompassed. This property includes all assets and liabilities of the family, such as real estate, movable assets, investments, jewelry, and business assets.¹⁵ This framework laid the foundation for gender-biased provisions, granting three generations of male descendants an inherent birthright to the ancestral property of the joint Hindu family while denying similar property rights to female descendants. The Hindu Succession Act of 1956 made limited exceptions, notably allowing property to devolve according to a testamentary disposition in cases where a testament was made 174th Report by Law Commission of India 2000.¹⁶

2. State-Level Shifts in Inheritance Rights, Federal Unequal Ground

In 1975, Kerala took an unprecedented measure by abolishing the joint Hindu family system entirely. This reform addressed gender imbalances by equalizing patriarchal and matriarchal family traditions and reconciling conservative and progressive schools of thought.¹⁷ The Indian constitution designates joint family property, succession, and intestacy matters within the legislative competence of the central government and the states, allowing them to legislate in this domain. Following suit in the 1980s and 1990s, albeit

13 Pestonjee L. Paruck, *The Indian Succession Act, 1925* eds, SS Subramani and K. Kannan, 9th edn. (New Dehi: Lexisnexis Butterworths, 2002), 3.

14 Mandayam Nayakar Srinivasan, *Commentary on Hindu Law and Statutory Amendments Enacted* 2, no.6 (Delhi: Delhi Law House, 2019), 1028.

15 Union of India, Hindu succession Act (1956), 8.

16 Law Commission of India, “Property Rights of Women,” 26-28.

17 Robin Jeffrey, “Legacies of matriliney: The place of women and the “Kerala model”,” *Pacific Affairs* 77, no. 4 (2004/2005): 647-664.

to a lesser extent, the states of Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra introduced respective state amendments to the Hindu Succession Act of 1956 (collectively known as State Amendments).¹⁸ Through these amendments, daughters were statutorily granted the same coparcenary rights (and liabilities) as sons from birth concerning ancestral property, aiming to equalize daughters' inheritance rights. However, as only five states had recognized such equal rights for daughters, and numerous joint Hindu families (and their properties) were spread across multiple states still following the unamended HSA of 1956, the State Amendments, while commendable, resulted in legal uncertainty and practical implementation challenges for women's property rights, leading to an increase in disputes among heirs.¹⁹ It took another decade, until 2005, for the HSA 1956 to be federally amended, improving inheritance rights for women throughout the country.²⁰

3. Reformation of the Hindu Succession Act

The Law Commission of India, an executive body established during British colonial rule and reappointed by the government of India in 1947, is tasked with providing recommendations to address anomalies, ambiguities, and inequalities and enact progressive reforms across a broad spectrum of laws. This Commission played a crucial role in the legal reform process, conducting analyses and public consultations that resulted in a detailed report in 2000 proposing a draft law to amend the Hindu Succession Act of 1956 (174th Report). After consulting state governments and relevant ministries, the Indian government accepted the Law Commission's recommendations, introducing a bill to amend the HSA of 1956 in the Parliament of India in December 2004 (Seventh Report of Parliamentary Standing Committee, 2005). The Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice deliberated on the bill over five sessions, hearing perspectives from the Ministry of Law and Justice, experts, and civil society organizations. On September 5, 2005, the Parliament of India enacted the Hindu Succession

18 Julia, et.al., "How Did India Successfully Reform Women's Rights? Part I: Answers from the Movement on Equal Inheritance Rights," *World Bank Group, Global Indicators* 19 (2023), 3.

19 Nilima Bhadbhade, "State Amendments to Hindu Succession Act and Conflict of Laws: Need for Law Reform." *SCC (Jour)* 1 no. 40 (2001).

20 Bina Agarwal, Pervesh Anthwal, and Malvika Mahesh, "Which Women Own Land in India? Between Divergent Data Sets, Measures and Laws." *In Global Development Institute Working Paper* 2020-043 (Manchester: University of Manchester, 2020), 23-27.

(Amendment) Act, 2005 (2005 Amendment).²¹

The 2005 Amendment to the HSA of 1956 introduced significant reforms to women's inheritance rights. Section 6 was amended to grant married and unmarried daughters the same inheritance rights in joint Hindu family property by birth as sons throughout India. Subsequently, the Supreme Court actively interpreted women's equal inheritance rights by acknowledging the retroactive application of the new rights to daughters born before the Amendment and clarifying that the father (coparcener) did not need to be alive on the date of the 2005 Amendment for the daughters' rights to be valid. (for instance, in the case of *Vineeta Sharma*, discussed further).

4. Retrospective Effect and Judicial Interventions

In recent years, India has witnessed significant transformations in the property rights of daughters, driven by legislative reforms and landmark judicial interventions. These legal developments have played a pivotal role in challenging traditional male primogeniture norms and advancing gender equality within inheritance. Several crucial case laws have been instrumental in shaping the evolving landscape of daughters' property rights in the country. One such case is *Prakash & Ors. v. Phulavati & Ors.*,²² where the Supreme Court played a crucial role in expanding the rights of daughters in ancestral property. The court asserted that daughters possess an equal right to ancestral property, even if the coparcenary had ceased to exist before the amendment to the Hindu Succession Act. This ruling ensured daughters the right to claim their share in ancestral property, irrespective of their birth circumstances. Addressing the issue of daughters' rights in situations where the father had passed away before the amendment, *Prakash vs Phoolawati*²³ held that daughters have a right to share the father's property under the Hindu Succession (Amendment) Act, 2005, even if he died before the amendment.

A landmark judgment in *Vineeta Sharma v. Rakesh Sharma*²⁴ reaffirmed the equal coparcenary rights of daughters, emphasizing that daughters, regardless of their marital status, possess an equal right in ancestral property alongside their male siblings. The court clarified that the 2005 amendment to

21 Union of India, Hindu Succession (Amendment) Act, 6, no. 1, (2015).

22 (2009) 6 SCC 99.

23 (2015) AIR SCW 6160.

24 (2020) SCC 3717.

the Hindu Succession Act is retrospective and applies to daughters born before and after its enactment, solidifying the equal inheritance rights of daughters in India.

In the case of *Danamma @ Suman Surpur & Anr. v. Amar & Ors.*,²⁵ the Supreme Court clarified the retroactive effect of the Hindu Succession (Amendment) Act of 2005. The court ruled that the amended law applies to daughters regardless of whether their father was alive on the date of the amendment, allowing daughters to claim their share in ancestral property even if their father had passed away before the amendment. *Danamma* holds particular relevance in the contemporary context, especially as women own less than 20 percent of the world's land globally. Human rights mechanisms and UN bodies have actively advocated for enhancing women's rights to property, land, and other resources by effectively addressing discriminatory laws and practices.

D. Law v Practice

In recent years, there has been a surge in research papers by economists examining the state-level amendments of the HSA 1956 before 2005. These scholars treat the amendments as quasi-natural experiments and employ econometric tools to analyze the impact of legal improvements in daughters' rights on various aspects such as girls' education, female suicides, son preference, women's likelihood of inheriting land, and more. However, their findings vary: some studies report a positive effect on girls' education;²⁶ some indicate an increase in female suicides²⁷, while others suggest a rise in son preference;²⁸ some observe a positive effect on the likelihood of daughters inheriting land, whereas others find no effect.

We do not aim to assess these studies; however, there are four aspects of India's inheritance law reform that have been overlooked in these discussions, which could influence the interpretation of their findings in our paper.

25 (2018) 3 SCC 343.

26 Nimish Adhia, "The History of Economic Development in India since Independence." *Education About Asia, India: Past, Present, and Future* 20, No. 3 (Winter, 2015): 18–22.

27 Siwan Anderson, Garance Genicot, "Suicide and property rights in India," *Journal of Development Economic* 114, Issue C (2015): 64–78.

28 Sonia Radhika Bhalotra, *et al.*, "Women's inheritance rights reform and the preference for sons in India," *Journal of Development Economics* 146, Issue C (2020): 2.

Firstly, there are likely disparities between amending a law and the general population's awareness of the precise nature of the amendment, particularly given the gradual and varied nature of the amendments over time. Secondly, as previously mentioned, even before the amendments, the unamended HSA 1956 granted daughters (and widows) equal rights to sons in a man's separate property as well as in his presumed share of joint family property. To evaluate the impact of subsequent legal changes, it is crucial to determine the extent to which women begin to own property in accordance with the change, specifically as direct coparceners. However, without data on the origin of inheritance, it becomes challenging to empirically differentiate between land received by daughters from their father's property and their own portion in coparcenary property.

Thirdly, while enacting a law represents a significant step forward, it cannot be assumed to inherently alter household or individual behaviors and attitudes. There is ample documentation of parental resistance within India's predominantly patrilineal communities towards bestowing immovable property upon women.²⁹

Fourthly, despite the consistent direction of reform in post-Independence India towards strengthening the rights of daughters at the expense of the deceased man's widow, social acceptance and practice in India have traditionally favored widows over daughters. The majority of women relocate to their husband's home upon marriage, often to a distant village in northern India. Consequently, the paternal family perceives land bestowed upon daughters as relinquishing its control, while widows (and often wives), particularly those with sons, are regarded as firmly rooted in the marital family and entitled to a portion of family land.³⁰

E. Need for Continued Advocacy for Reform and Assertion of Women's Property Rights

Despite being lauded as a progressive legal reform aimed at establishing equal property rights for Hindu daughters, women's actual land ownership has

29 Bina Agarwal, *A field of one's own: Gender and land rights in South Asia* (Cambridge: Cambridge University Press, 2010), 5.

30 Bina Agarwal, "Widows versus daughters or widows as daughters? Property, land, and economic security in rural India," *Modern Asian Studies* 32, No.1 (1998): 3.

witnessed only marginal growth since the enactment of the new law. A study conducted between 2009 and 2014 in thirty villages across nine Indian states, with 95 per cent of the sampled landowning households being Hindu, revealed that 2014 women-owned land was merely 16 per cent of households. This figure was almost identical to the situation five years earlier, in 2009, when women owned land in only 14.2 percent of the sampled households³¹. Another study encompassing 8,640 rural households across four states indicated that women's land acquisition through inheritance experienced only a nominal increase from 5.5 per cent in 1956–2005 to 6.4 per cent in 2006–15.³² The limited progress can be partially attributed to the restricted awareness among women about their newfound rights and, additionally, a lack of assertion of these rights due to deeply ingrained gendered norms and behavior.³³

The awareness regarding daughters' property rights in India has gradually increased over the years, attributed to diverse initiatives by government entities, non-governmental organizations (NGOs), women's rights advocates, and legal awareness campaigns. However, it is crucial to acknowledge that awareness levels in India exhibit variations across regions, communities, and socioeconomic strata. Despite the frequent organization of amendments and awareness programs by the government and non-governmental organizations, there remains a deficit in the perception of daughters' property rights.

1. Data Interpretation and Analysis

The authors undertook some primary research with a sample size of 64, which was gathered to gauge the public's awareness level. The gathered data underwent manual analysis using the Google Form response generator.

In this section, we present the main results of our study.

Based on the data, there is a solid comprehension of daughters' property rights in India, though it tends to be more moderate regarding a nuanced understanding of the subject. See Figures No. 1 and 2 below:

31 Siwan Anderson, Garance Genicot, "Suicide and property rights in India," *Journal of Development Economic* 114, Issue C (2015): 137-150.

32 Valera, Harold Glenn A., Yamano Takashi, Puskur Ranjitha, Veettil Prakashan Chellattan, Gupta Ishika, Ricarte Phoebe, and Mohan Rohini Ram "Women's Land Title Ownership and Empowerment: Evidence from India." In *ADB Economic Working Paper* No. 559: 11.

33 Klaus Deininger, Aparajita Goyal, Hari Nagarajan, "Inheritance Law Reform and Women's Access to Capital: Evidence from India's Hindu Succession Act," *World Bank Policy Research Working Paper*, No. 5338 (2010): 3.

On a scale of 1 to 5, how familiar are you with the concept of property rights and its importance for individuals, including daughters, in India?

64 responses

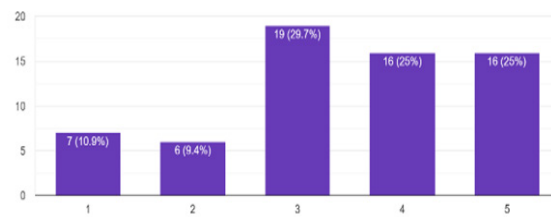


Figure No. 1³⁴

On a scale of 1 to 5, how well do you understand the provisions of the Hindu Succession Act regarding the property rights of daughters?

64 responses

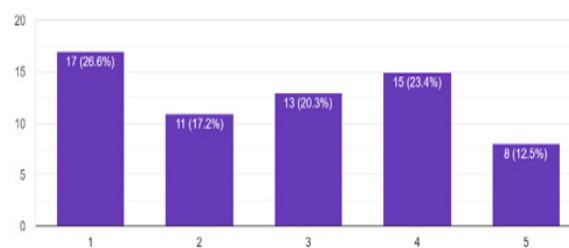


Figure No. 2

General awareness of the diverse property rights embedded in India’s various religions must be improved among the populace. See Figure No. 3 below:

On a scale of 1 to 5, how knowledgeable are you about the differences in property rights of daughters under different personal laws in India (e.g., Muslim, Christian, or Parsi law)?

64 responses

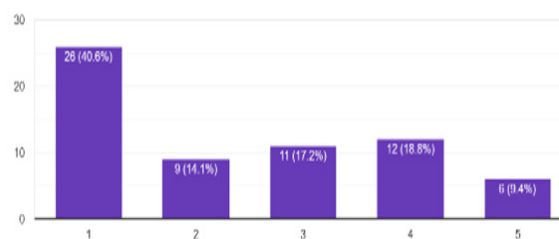


Figure No. 3

Moreover, the knowledge about the process for claiming property, its limitations, and the most recent revisions is mainly confined to a narrower scope. Nevertheless, there is a commendable eagerness for awareness and a

³⁴ All figures are from collected data that has undergone manual analysis and analysis using the Google form response generator.

pressing need for corresponding measures. See Figure No. 4 below:

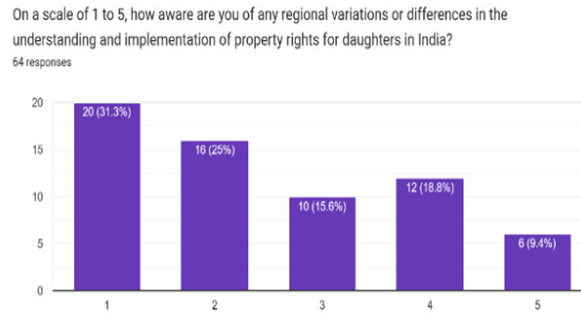


Figure No. 4

The judgments hold practical significance, albeit for a limited segment of women. Given the escalating poverty, layoffs, and job losses experienced by Indian society lately, the available property for succession is notably diminished from the outset. Thus, these judgments are particularly crucial for daughters within propertied families. See Figure no. 5,6, and 7 below:

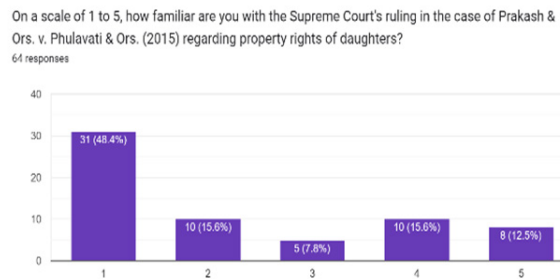


Figure No. 5



Figure No. 6



Figure No. 7

The assertion of rights through legal means hinges on both awareness of those rights and the availability of human and financial resources. However, women often find it challenging to confront their birth families and approach the courts to assert their property rights. The natal family typically serves as a support system for women, especially in situations like marital breakdowns or the death of a husband. Social stigma and victim-blaming further act as deterrents for women seeking to assert their rights. See Figures No. 8 and 9 below:



Figure No. 8

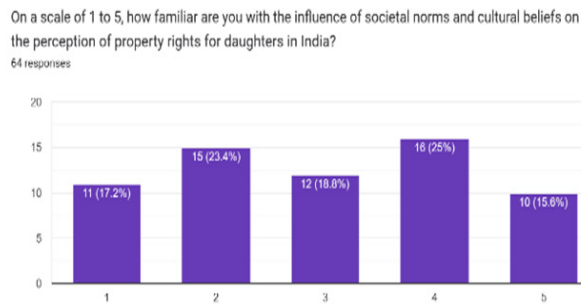


Figure No. 9

Thus, while individuals like Danamma Phoolawati and Vineeta Sharma have sought legal redress when denied equal property rights, a considerable majority may be coerced into silence or compelled to relinquish their property rights to their brothers. Women are frequently persuaded to forgo their property rights in the name of preserving peace and harmony in the family, reinforcing traditional gender roles that expect daughters to be peacemakers and uphold ideals of self-sacrifice.

F. Religion, Social Norms and Patriarchy

The historical roots of Hindu property law trace back to the classical Indian legal treatises or Dharamshastras, dating from 200 BC to AD 200. However, it was during the twelfth century that two primary Hindu legal systems emerged - the Mitakshara and the Dayabhaga - which prevailed until the late nineteenth century when British modifications were introduced. Under the Mitakshara system, which was prevalent in much of India, there existed a community of interests and rights to ancestral property of the Hindu undivided family.³⁵ This property was jointly held only by male coparceners spanning four generations of males - namely, the man, his son, grandson, and great-grandson - who became coparceners by birth.³⁶ Devolution occurred through survivorship, with living coparceners having an interest in the property of deceased ones, and the actual share being determined only at partition. Any coparcener could initiate partition proceedings, but all coparceners were entitled to a share upon partition.³⁷ However, over self-acquired property, a man had absolute ownership rights. In this system, a woman could inherit her father's ancestral property only if she had no brothers. In such cases, she could inherit directly or indirectly on behalf of her son, which granted her an interest in the property without the right to alienate it. Typically, such cases involved uxori-local residence by the husbands. In all other instances, daughters and incoming wives had maintenance rights only, while widows enjoyed a limited interest.³⁸

35 Patrick Olivelle, *A Dharma Reader: Classical Indian Law* (Columbia University Press, 2016): 114-130.

36 The Hindu Succession Act (1956), 6.

37 The Hindu Succession Act (1956), 6-7.

38 *Ibid*, 8.

In contrast, under the Dayabhaga system prevalent mainly in Bengal, a man had absolute ownership over all his property, whether ancestral or self-acquired, and could bequeath it to whomever he chose. Division occurred only upon the owner's death, with the property initially going equally to his sons. Women inherited as widows or daughters in the absence of heirs in the male line, but they enjoyed only a life interest in this inheritance, having the right to manage but not alienate it.³⁹

While some recognition of female property rights existed in traditional law through the concept of *stridhan*, interpretations varied. Initially, *stridhan* included movable gifts given to a woman at marriage and meant to be under her control, but later interpretations expanded to include any property given to her before, at, or after marriage by members of her natal and marital families (except immovable property given by the husband).⁴⁰

Overall, under both Mitakshara and Dayabhaga, women typically did not inherit immovable property such as land, though they could receive it as a gift, and they often had a life interest in ancestral property under specific circumstances. Despite advancements, persistent disparities in legislation and practical implementation impede women from fully exercising their property rights and attaining equal access to resources alongside men.⁴¹ Deep-rooted patriarchal conditioning often discourages women from asserting their rightful inheritance. Traditional norms favour sons, who, by staying with their natal families after marriage and supporting parents in old age, are deemed deserving of both their share and their sisters' share of the property. Conversely, daughters, assuming new roles within their husbands' families, often receive assets through voluntary gifts or dowries during weddings, contributing to the reluctance of many women to assert their inheritance rights. Fear of antagonizing their natal families or jeopardizing social ties frequently dissuades women from seeking their fair share of inheritance.⁴² Social pressures may compel women to either refrain from asserting property rights or, conversely, relinquish these rights through a deed of relinquishment

39 Ibid.

40 Donald R. Davis, *The spirit of Hindu law* (Cambridge University Press, 2010), 25-32.

41 Ibid.

42 Davis, *The spirit*.

in favour of male heirs.⁴³ Concerted efforts by the government and civil society are essential to raise awareness about women's legal rights to inheritance and property, overcoming societal barriers hindering women from asserting these rights.

While the 2005 amendment has positively impacted women's education, labour force participation, and their daughters' education in states that witnessed law reform prior to the amendment, addressing rigid patriarchal and cultural norms, beliefs, practices, and biases remains a crucial challenge. The amendment, and any future law reform on women's property rights, must confront deeply ingrained patriarchal mindsets that resist sharing family property with women, believing property ownership and management to be exclusively male domains.

Circumvention of equal inheritance rights often occurs through the creation of gender-discriminatory testaments. Section 30 of the HSA 1956 grants any Hindu individual the right to dispose of their property through a testament, including self-acquired and ancestral joint property. This provision is frequently utilized to disinherit female heirs, particularly daughters deliberately. Social norms incentivize fathers to draft wills, leaving their property, including the share designated for a daughter in case of intestate succession under the HSA 1956, to their sons and other male heirs. Despite the celebration of the 2005 Amendment for addressing specific issues related to Hindu women's property rights, discriminatory provisions persist in the text of the HSA 1956. Coparcenary rights for female heirs other than daughters, such as mothers, wives, or widows, still need to be recognized. The rules of intestate succession vary between Hindu males and females, with differences in the class of heirs and priority rules. The Law Commission of India has recommended unifying the scheme for intestate succession for Hindu men and women, ensuring equal priority and inheritance rights for surviving females and their natal families. The commission has also suggested abolishing the "coparcenary framework" and the right to property by birth, although no reforms have been implemented. Alternatively, recognizing coparcenary rights for all female heirs, not just daughters, could be a less satisfying but

43 Ibid.

valid option.⁴⁴

It is important to note that gender-equal rules under the HSA 1956 are limited to the Hindu community. While this act has substantially equalized daughters' legal coparcenary rights within the Hindu community, other religious communities continue to operate under their laws, often perpetuating gender discriminatory or patriarchal regulations. Discussions about enacting a uniform civil code have faced challenges due to religious diversity and differing personal laws. The Law Commission of India advocates for a continuous reform process within various communities to align personal laws with constitutional values of equality and nondiscrimination rather than enacting a uniform code. Further reform efforts should extend to ensuring equal rights to own and administer marital property and recognizing non-monetary contributions to the home and family upon the dissolution of a marriage, including amendments in the Hindu Marriage Act of 1955, Section 27.

G. Recommendations for Addressing Gender Discrimination in Inheritance Laws and Practices

Addressing gender discriminatory inheritance rules within the Hindu Succession Act of 1956 and other personal laws, along with prevalent social norms, is crucial to ensure that women are not excluded from property ownership. To achieve this goal, several proposed measures need to be implemented. Firstly, there is a need to unify the scheme for intestate succession among Hindu men and women. This may involve considering the elimination of the "coparcenary framework" and birthright property entitlement, thereby ensuring equal inheritance rights for both genders.

Additionally, efforts should focus on raising awareness about legal reforms and the significance of women's property and inheritance rights. This is essential to counteract patriarchal pressures that often lead women to relinquish their rights. Strict enforcement of anti-dowry laws is necessary, coupled with a comprehensive review and reform of laws across diverse communities, to align personal succession and inheritance rules with constitutional principles

⁴⁴ Law Commission of India 174th Report, "Property Rights of Women: Proposed Reforms under the Hindu Law," 27-36.

of gender equality. To further these efforts, ongoing initiatives are required to increase awareness about daughters' property rights, especially in rural and marginalized communities. Educational campaigns, workshops, and outreach programs can empower women and their families by informing them about legal provisions and debunking property inheritance myths.

Ensuring access to affordable legal aid services is vital for women, particularly those from disadvantaged backgrounds, to navigate the legal system and seek redress in case of violations. Simultaneously, promoting financial literacy among women is integral, allowing them to make informed decisions regarding financial management, investment, and property ownership.

Finally, fostering a shift in societal attitudes toward gender equality and property rights is crucial. This can be achieved through community-level awareness campaigns, engagement with religious and community leaders, and media initiatives challenging patriarchal norms and advocating for gender equity in property inheritance.

H. Conclusion

It took numerous decades for India to achieve a paradigm shift of gender equality resulting in some parity in (Hindu) women's inheritance rights, yet significant gaps persist in both law and practice. This brief emphasizes the potential for positive advancements through regional initiatives. Bridging the remaining disparities in women's property access necessitates collaborative efforts from the government, policymakers, civil society organizations, and the private sector. Legislative reforms, exemplified by the Hindu Succession (Amendment) Act of 2005, which acknowledged daughters as coparceners and granted them equal rights in ancestral property, have played a crucial role in raising awareness about daughters' property rights. These legal changes have spurred media coverage and discussions on gender equality and women's rights. Supreme Court judgments, notably those previously mentioned, have garnered considerable attention in legal circles, media platforms, and social discussions, contributing to increased awareness and comprehension of daughters' rights in ancestral property. Despite progress, it is essential to acknowledge that there are still pockets of society where awareness remains low. Factors like illiteracy, cultural norms, and patriarchal ideologies can

influence awareness and acceptance levels of daughters' property rights. Efforts should prioritize reaching marginalized communities and rural areas with comparatively lower knowledge levels.

In conclusion, there has been a gradual increase in awareness regarding the property rights of daughters in India attributed to legal reforms, judicial interventions, and awareness campaigns. However, ongoing efforts are imperative to ensure widespread dissemination of the message across all societal segments, empowering women with the knowledge to assert their rights.

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