

# Proprietary Rights of Women under Hindu Law

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## ABSTRACT

In this study theoretically analyzed the law following The Hindu Succession Act, 1956, and the Act's 2005 Amendment, and has made a few recommendations to guarantee the Act's effective implementation in order for it to become an authentic personal law and be able to resolve legal disputes resulting from ambiguities in the classification of succession rights. This paper deals with the property right of the women as a wife, daughter and mother under hindu law and examine a need for a special laws with some suggestions to improve the implementation of such rights. However, an evaluation of the Act's actual performance cannot be made until it is put into effect. Although there are still flaws in the legislation, there is still optimism that it can eventually overcome them and guarantee equality for men and women without prejudice while adhering to the language and spirit of the Constitution.

*Keyword: Succession, Proprietary, Discrimination, Inheritance, Equality, Hindu women.*

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## INTRODUCTION

Right of Hindu women over property has been evolved as a result of ongoing conflict between patriarchal Indian society and contemporary progressive movements in India. Since the inception of Indian civilization, women's rights over property have been restricted, and they have not been granted the part of property that is rightfully theirs. Women's property rights can affect decision-making, income distribution, acquisition, and the general role and standing of women in the community. Furthermore, a woman's access to land is crucial in the event that her household breaks down; for instance, in the case of a husband's desertion, abandonment, divorce, partnerships involving other women, sickness, or demise. Hindu women's inheritance rights have historically been restricted. In the past, women's rights were inferior to those of males in society, and they were not viewed as equals to men. Women were not allowed to own property because of religious customs that forbade them from participating in sacrifice ceremonies and from bringing funeral cakes as a means of achieving the spiritual salvation of a shared ancestor. Following India's independence, the Parliament enacted a number of legislation to harmonise inheritance rules throughout the country<sup>1</sup>. Hindu Succession Act was one such effort. It has sparked intense responses from a number of sources. However, compared to when the country gained its independence, women's status has improved significantly, thanks to amendments by Parliament and judgements given by the Supreme Court. Following India's independence, the Parliament enacted a number of legislation to harmonise inheritance rules throughout the country. Hindu Succession Act was one such effort. It has sparked intense responses from a number of sources. But because of changes made by Parliament and rulings by the Supreme Court, women's status is far better now than it was during the Declaration of Independence.

## HYPOTHESIS

Women by enlarge are not satisfy with the implementation of existing property rights in hindu succession act.

### HINDU WOMEN'S RIGHT TO PROPERTY UNDER AMENDMENT ACT 2005

i. According to the provisions of HSA<sup>2</sup>, "A female Hindu who possesses any property, whether obtained before or after the effective date of this Act, shall hold such property as her entire property and not as a limited owner." Section 14 pertains to

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<sup>1</sup> Pradeep Kulsherstha and HumaBaga, THE HINDU SUCCESSION ACT, 1956 and the Amendment Act of 2005, 7(10) JOUR. OF CRITICAL REV. 1337-1341(2020), doi:10.31838/jcr.07.10.262.

<sup>2</sup> Section 14 of the Hindu Succession Act, 1956.

both immovable and mobile property. In case of *Vaddeboyina Tulasamma v. Vaddeboyina Shesha Reddi*, “The Supreme Court decided that a widow's claim to maintenance under Hindustani law is derived from joint family property, and that her stake in such property is unrestricted and absolute”. A Hindu woman may obtain property in the following ways: through inheritance, partition, maintenance or arrears of maintenance, Gifts from any body, Whether connected or not, before to, during, or following her marriage, her own initiative or talent, the acquisition of whatever property she had as ‘stridhana’ just before the start of this act, or in any other manner at all. Women now have unrestricted rights under the Act, including the ability to sell their property.

There are two types of property: movable and immovable. Any Hindu woman may utilise her property without the knowledge or approval of her husband, father, or other family members under Section 14 of the HSA. She is free to give up her property whenever she wants and to do with the money whatever she pleases. The Hindu Succession Act of 1956 stipulates in Section 14 that the property of a female Hindu is her absolute property<sup>3</sup>. The word "absolute" in this context means that whatever property she acquires—before or after the start of this act—that she earned, inherited, received as a gift, or received as maintenance will belong to her alone. The Hindu act was developed to address concerns of inheritance and gender inequity<sup>4</sup>.

Section 14(1), of HAS, it makes no difference how the woman obtained the property; as determined in the *Chaudhary v. Ajudhia* case, “any property she possesses after the act's implementation is her absolute property. However, the property cannot be regarded as her absolute property in accordance with Section 14(2) of this act if it is the first time it has been obtained and that too by a grant without any pre-existing right.” One may refer to this subsection as an exemption to section 14(1).

In case of *Bhura v. Kashi Ram*, She was not considered the "absolute owner" because the property was provided to her for a certain period of time.

In case of *Chaudhary v. Ajudhia (2003)*, the Himachal Pradesh High Court ruled that it makes no difference how the woman obtained the property; if she owns any, it is her absolute property.

In case, *Punithavalli Ammal v. Ramalingam and Anr. (1964)*, According to the Supreme Court, “women have an unassailable right under Section 14(1), which cannot be restricted in any way by legal interpretation or assumption. Furthermore, it was decided that the date of ownership of such property is meaningless because women who owned the property before to the law's passage would now have full rights that were previously restricted”.

In case *Agasti Karuna v. Cherukuri Krishnaiah (2000)*, In this case, the Andhra Pradesh High Court ruled that, “in accordance with Section 14 of the HSA, the widow had full ownership rights over her husband's belongings. None of the heirs may contest any transfer or alienation of such property made by the wife after the HSA began”.

**ii. The Hindu Succession Act's Section 15**, "Succession in the Case of Female Hindu Ancestor," lays forth the distribution of property in the event that a Hindu woman passes away without leaving a will. Section 16 additionally, has a list of regulations related to it. Section 15 of the 1956 Act covers the general requirements for a Hindu's intestate property transfer. It details how the devolution will take place. First and foremost, the husband's heirs; Second and third, the mother and father respectively; and The fourth group consists of the sons and daughters (including any surviving son or daughter). The mother's heirs are the last to arrive, then the father's. Sons had ownership rights over their father's estate before the Hindu Succession Amendment Act of 2005, whereas daughters could only do so while she remained single. The Hindu Succession (Amendment) Act, 2005 was passed in response to the suggestions provided in the 174th Law Commission Report. This act significantly altered the 1956 Act. This change made it possible for married women to inherit their father's possessions, which had only previously been available to the men in the family. Stated differently, women may now have equal deposition rights over and inherit the patriarch's property as coparceners.

**iii. Section 6 of the HAS:** This 2005 Amendment ended the long-standing discriminatory practice of banning women from the coparcenary system. This was accomplished by altering Section 6 of the HSA. Section 6(1) of the modified HSA states that, like boys, a coparcener's daughter will become a coparcener by birth. Section 6(1) provides equal rights and duties to the coparcener's sons and daughters.

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<sup>3</sup> ‘The Hindu Succession Act, 1956’ sec. 14, No ^30, Acts of Parliament (India).

<sup>4</sup> Arjun Pal, Transformation of Women’s Rights under section 6 of the Hindu Succession Act, 1956, (2016), <http://rgdoi.net/10.13140/RG.2.1.4795.3522> (last visited Apr 22, 2022)

**iii.a. Share in coparcenary property:** Section 6(3) of the Hindu Undivided Family Act states that a dead coparcener's share of the assets of the family will descend through testamentary or intestate succession. The devolution needs to take place so that, A daughter's portion is equal to a son's. The pre-deceased lady coparcener's portion is awarded to her living children in the same manner that it was provided to her.

**iii.b. Hindu Succession Act, Section 6:** Daughter's Coparcenary Rights<sup>5</sup> revolves around the idea of coparcenary. Coparcenary descendants are those who have the legal right to inherit their Hindu ancestor's belongings upon their death<sup>6</sup>. According to the terms of the original Act, a woman could not inherit as a coparcener. This discriminatory provision was changed by the Hindu Succession (Amendment) Act of 2005. According to the current edition of Section 6, a coparcener's daughter shall, due to her birth, become a coparcener in the same way as a son does; she will also have the same property rights and be subject to the same obligations. It further specifies that any mention of a Hindu Mitakshara coparcener is assumed to include mention of the coparcener's daughter<sup>7</sup>.

### FEMALES WHO ARE ENTITLED TO GET A SHARE

#### (A) Mother

In India, a mother has Class I heir property rights under the Hindu Succession Act's Schedule. So her property rights are controlled by the relevant parts, which include parts 6, 8, 9, 10, 11, 14, 15, and 16 of the Hindu Succession Act of 1956.

#### (B) Daughter

A daughter is a Class I heir according to the Hindu Succession Act's Schedule. Thus, the pertinent portions of the Hindu Succession Act, 1956, namely portions 6, 8, 9, 10, 11, 14, 15, and 16, regulate her property rights.

In case, **Vineeta Sharma v. Rakesh Sharma & Ors** by the Supreme Court in 2018 is also significant. According to the statement, daughters and sons have equal coparcenary status regardless of when the daughters were born or if their father was still living on September 9, 2005, the day the Hindu Succession (Amendment) Act, 2005 went into effect. In the Vineeta Sharma case, daughters were acknowledged and treated from birth as coparceners<sup>8</sup>, with the same rights and obligations as sons. Married Daughter's Rights in Father's Property: A daughter's marriage has no bearing on her ability to inherit property. She has the same coparcenary rights as a son as a daughter. She is likewise an heir of class I.

#### (C) Coparcner Widow:

According to the Hindu Succession Schedule, a widow is a class I heir. Property succession in the event of a male Hindu death without a will is controlled by pertinent laws such as Sections 8, 9, and 10 of the Hindu Succession Act, 1956. Rule 1 under Section 10 states that in the event of a Hindu man dying intestate, one share will be given to the widow, or widows, if there are several widows. In addition, a married woman is entitled to all the privileges that belong to a daughter. This has been made possible by the amendment of Section 6 of the Hindu Succession Act, 2005, which addresses the Devolution of Coparcenary property. Women are now eligible to inherit property as coparceners.

#### (D) Father's Wife

The father's wife is entitled to a portion equivalent to her son's share in any division between her boys and her husband. She is allowed to keep this portion and enjoy it apart from her spouse. In the event that there are many wives, each woman is qualified to receive a portion equivalent to that of a son. Whether or not a wife has her own son is irrelevant. She has the right to have the partition reopened if no portion is given to her. As per the Dayabhaga School, she is not entitled to this.

### SUGGESTIONS

There are some suggestions to reforms the ambiguity in rights of women under Hindu law. Some suggestion are here:

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<sup>5</sup> Section 6 of hindu succession amendment act (2005)

<sup>6</sup> Paras Diwan, Ancestral Property after Hindu Succession Act 1956—Joint Family Property or Separate Property? A Muddle under Tax Cases, 25(1) JOUR. OF THE INDIAN LAW INSTI. 45 (1983).

<sup>7</sup> Shital Prakash Kharat, Effect of the Hindu Succession (Amendment) Act 2005 Judicial Response, SSRN: Electronic Journal (2017), <http://www.ssrn.com/abstract=2912662> (last visited Apr 23, 2022).

<sup>8</sup> Family Law Research Paper - Family Law Research Paper PriyanshuTawer BA 2nd year 3rd sem. StuDocu, GGSIPU, <https://www.studocu.com/in/document/guru-gobind-singh-indraprastha-university/family-law-i/family-law-researchpaper/12564906> (last visited Apr 23, 2022).

**i. Society Needs to be Educated:** It is imperative that society get education in order for them to comprehend these kinds of regulations. Education is the only way to influence people's attitudes towards gender equality. The Amending Law can only be beneficial to society if it operates in this manner; otherwise, it will prove to be detrimental.

**ii. Better to Abolish Mitakshara coparcenary system:** The percentage of other class I female heirs will decrease if the Mitakshara coparcenary system is maintained while granting the daughter equal birthright and coparcenary rights. Conflict amongst the female family members might result from this. Therefore, in order to treat each heir equally, it would be preferable to completely remove the Mitakshara coparcenary system.

**iii. Mother should also be included in Coparcenary:** The mother's exclusion from the coparcenary is not justified in any way. At the time of the hypothetical division, her sole entitlement, along with the other class L heirs, is an equal portion of the father's separate property. The class I heirs list now includes a significant number of new heirs as a result of the modification. In actuality, the mother's share will go down. To ensure that all of the family's female members receive equitable treatment, this prejudice should be eliminated.

**iv. Awareness of Law:** The goal of the 2005 Amendment Act must be understood by the general public, as well as the legal community, the female recipients of this privilege. The new legislation which gives women extra rights, which most of peoples are still ignorant of that. In order for women to be able to claim their birthright in the family property created by the amendment, efforts should be taken to raise public awareness of the legislation and inform them of it. In order to comprehend the actual nature of the law and be qualified to teach others about it, members of the legal community must also be employed in the field of succession. Another means of increasing awareness include seminars and educational facilities. It is necessary to adopt a Common Civil Code that applies to everyone in their personal matters, regardless of race, religion, or caste.

## CONCLUSION

Hindu women have historically been unable to take use of laws that were created in their favour because they lack the financial means and mental aptitude to utilise the positive aspects. The reality is very different from the wording of the legislation since, even today, only around 10% of women are aware of the rights they are allowed to exercise. The legally knowledgeable members of society bear the obligation of ensuring that this deficiency is rectified, therefore making a significant progress towards achieving gender equality, as envisioned by the founding fathers of our country and the authors of our constitution. In principle as much as in practice, men and women should have equal rights and opportunities.

Only until a nation truly supports gender equality in both theory and practice can it actually embark on the path of growth. Given that women have the same entitlement to the family property as the boys, the ladies' interest in it is safeguarded now that they have been acknowledged as coparceners. The father cannot use testamentary disposition to take away the girls' portion of the property.

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