

Hindu women's right to land in India: A comprehensive study

Akhil Bharat Kukreja

Amity Law School, Delhi (Affiliated to GGSIPU), New Delhi, Delhi, India

Abstract

This research paper focuses on the right of Hindu women to land in India. Since India is a nation with diverse cultures and beliefs, customary and legislative laws vary from one religious community to another. The paper explores in detail the status of women's right to land in the early Vedic period, and how the advent of the philosophies of the Mitakshara and Dayabhaga Schools of Hindu law was a step towards providing hereditary capacity to five females – the widow, the daughter, the mother, the paternal grandma and the paternal grandpa. The paper further raised the topic of women's right to Stridhan, what is Stridhan and whether a woman has a restricted or absolute right over Stridhan. Apart from deliberating on the historical background of Hindu women's right to land, the paper further analyses the constitutional mandate on gender-just property rights. In addition, the paper discusses the ground-breaking legislation, the Hindu Succession Act, 1956, concerning the proprietary rights of Hindu women and how its shortcomings were subsequently fixed by the Hindu Succession (Amendment) Act, 2005. The paper further addresses how the right to own/inherit land is still denied to Tribal Women, the problems that persist even after the requisite amendments have been made to the Principal Act and the most recent judicial pronouncements that have eliminated the questions posed by the 2005 Amending Act.

Keywords: Hindu women to land, diverse cultures, beliefs, religious community

Introduction

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."^[1]

Right to Property has been enshrined in Article 17 of the Universal Declaration of Human Rights. It says that *"Everyone has the right to own property alone as well as in association with others and No one shall be arbitrarily deprived of his property."*^[2]

India is a country of diverse cultures, religions, races and traditions. Every Religious group is regulated by its own personal or customary law. Indeed, also within various religious communities, there are sub-groups and local customs and norms with their respective property rights.

India's rich cultural and ethnic diversity, together with complex customary tenures and laws conflicting with private property-based formal law, raises challenging issues for strengthening and improving women's land and resource rights.

According to the Research Study named *"Property Rights of Women in Tamil Nadu"* conducted by Centre for Women's Studies, Hindu, Sikhs, Jains and Buddhists are governed by the Hindu Succession Act, 1956. Christians are governed by Sections 31-49 of Indian Succession Act, 1925. For Muslims however there is no codified law that governs their property laws for Muslims however, there are two schools of thought: the Sunnite and the Shiite. The usual practice is to either follow the Sunni Law or Shi'a Law. The laws of succession for Parsis are laid down in Sections 50-56 of Indian Succession Act, 1925. The tribal women of various religions and states continue to be governed for their property by the customs and norms of their respective Tribes^[3].

In the Economic Survey 2017-18, the Government of India

highlighted a rising trend in the feminisation of agricultural labour. This is due to the increasing trend of urbanisation, where more rural men have begun to move to big cities in search of non-farming employment. However, the ability of women to inherit assets and property is hampered by deeply and strongly held social, legal and institutional stereotypes. According to the Agricultural Census 2015/16, Women Account for more than 60 percent of the country's agricultural labour force and still own just 13.96 percent of agricultural land^[4].

When women do not have any legal right or claim to the land they cultivate, they lack control over resources, the process of production and income. There is a range of benefits of increasing women's ownership such as women have a higher propensity for using income for the benefit of the household. In addition, ownership of property provides a sense of stability, self-confidence, increases bargaining power and increases public participation. Economically dependent women are subject to domestic and marital abuse. Women's right to access and control over property is determined through overall living conditions, economic security and physical safety. The problem of gender inequality is due to deep cultural bias against women. Women have long been subjugated to the inheritance of land. This has become a major concern for the advancement of fair representation in the field of gender equality. The Government of India has set up specific institutions whose goal is only to uplift women. These institutions are *National Commission for Women, Department of Women and Child Development* etc. India also follows the guidelines recognised in a variety of International Legal Instruments such as: *International Covenants on Economic, Social, and Cultural Rights and on Civil and Political Rights, United Nations Commission on Human Rights Resolution (UNCHR), the Convention on Elimination of All forms of*

Racial Discrimination (CERD) 1965, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

Historical Background

In the historical development of humanity, woman has always been considered as an important part as man. At the same time she has always been treated as an inferior creature as compared to their male counterparts. *This inferior status of the woman exists not merely in their households and in the society but also in the matter of privileges and right* ^[5]. The Indian Constitution in its preamble provides for Justice - social, economic and political, and with its declaration of equality of man and woman through its numerous provisions e.g. Fundamental Rights and Directive Principles. But this is the blueprint that has yet to be realised. It is one thing to enact a principle and it is another to implement or give effect to it in real life. While de-Jure rights and freedoms are granted with great enthusiasm, this does not, in reality, mean that those rights and freedoms are actually realised.

Women's Right to Land in Vedic Age

In the Vedic period, the Brahmins held the highest position in the socio-religious hierarchy. For legalizing their superiority and dominance in the caste system, they adopted the method of relying upon Dharmasastras. The sources of these Dharmasastras were supposed to be Hindu holy texts, such as the Vedas and the Smritis

Regarding the position of women in early Vedic society, women occupied the same position as the man. There was complete equality between men and women in all spheres of life and women enjoyed great respect, significant rights and privileges. In those days, a girl was free to get herself education just like boys.

As the property rights of females are considered, the Rig Veda speaks of individual ownership, the sons who divide their father's property after the death of father, the unmarried daughter who stays at the father's home also have a share of a father's property. In Vedic literature the unmarried daughter was entitled to get a share of her paternal wealth, but the brothers did not partition their paternal property with their married sisters.

However, the general opinion of dharmasastras was that in a family consisting of both brothers and sisters, the sisters should not get share in father's property ^[6]. During the Vedic period, both the husband and the wife were treated as joint owners of the household. The husband was required to take a solemn vow at the time of marriage that he would never contravene the economic rights and interests of his wife. Along with this joint ownership theory, the fiction of Brihaspati emerged. On the basis of this fiction, the widow was entitled, in preference to all other heirs, to succeed the estate of a sonless husband.

The idea that Hindu women are exempt from inheritance began with the text of Baudhayana, the renowned founder of one of the Black Yajurveda Schools. He was responsible for not granting women heritable rights. He could never regard women as capable of possessing an independent status. In support of his views he contends that *'The father protects woman in her childhood; the husband during her youth; the son in the old age; woman ought not to have freedom.'*

Furthermore, the low status of women is attributable to Manusmriti. Dr. B.R Ambedkar traces the low status of

women to Manu's Manusmriti who observed: *"A wife, a daughter and a slave have no property."* Thus Manu was deadly against welfare and giving women a dignified status at every point of their lives.

Women's Right to Land under Mitakshara and Dayabhaga Schools

After the Smriti Period, the law of female succession was embodied in the commentaries of the Mitakshara and the Dayabhaga Schools. These commentaries have attempted to base their conclusions on the texts on the Smritis. Both the Mitakshara and Dayabhaga Schools have granted heritable capacity to five females, these are - the widow, daughter, mother, paternal grandmother and paternal great grandmother.

The Mitakshara School did not refer to the vedic text relating to the exclusion of women from inheritance. The Dayabhaga School, on the hand, stated that the above named five females were included in the list of heirs under the express text of the Smritis and in that way it did not contradict Baudhayana's theory of general incompetence of females to inherit.

The Mitakshara's sub-schools had also shared their view on women's property rights. The Bombay and the Mithila schools had not referred to Baudhayana's text while mentioning the females as heirs. However, The Banaras and Madras schools followed the vedic doctrine of general exclusion of women from inheritance.

The Bombay school further recognised many more female heirs than those recognised by Mitakshara such as *Stepmother* ^[7], *Brother's Widow* ^[8], *Daughter in Law* ^[9], *Widow of an Undivided Brother's Son* ^[10], *Widow of Half-Brother* ^[11], *Uncle's Widow* ^[12], *Brother's Daughter* ^[13], *Sister's Daughter* ^[14], *Father's Sister* ^[15], *Half-Sister* ^[16], *Mother's Sister* ^[17], *Paternal Grandfather's Sister's Son's Daughter* ^[18] and *an Illegitimate Daughter* ^[19] were held as heirs.

In 1929, the legislature made a number of changes and reformed the status of women on the right of inheritance among the persons governed by Mitakshara Law. The Hindu Law of Inheritance (Amendment) Act, 1929, added certain female heirs to all the Mitakshara sub-schools for the first time and also assigned a fixed rank in the sapinda class. It only included son's daughter's daughter and sister as heirs ^[20]. The Act had not been extended to the Dayabhaga School ^[21].

In 1937, The Hindu Women's Rights to Property Act was enacted. It had revolutionary changes as it included the widow, the predeceased son's widow and the widow of the predeceased son in the list of heirs. However the Act had neither modified the whole area nor did it amend the Hindu law of inheritance in general.

The Hindu Succession Act, 1956 conferred heritable capacity on many more females and thus discarded the old notion of general exclusion of women from inheritance.

Women's right to Stridhan

Most legal authorities in ancient India did not acknowledge the right of a woman to own property such as land, houses etc., which falls under the category of immovable property. However, those authorities recognised the women's right to stridhana (Ornaments, jewellers etc.) which were given to her at the time of her marriage by her husband, her parents, relatives etc. The Rig Veda recognised the following as

woman's stridhana, they are: *gifts from parents and brothers, gift before the nuptial fire, earning mechanical arts, gifts in the bridal procession.* Manu shows six kinds of Stridhana ^[22] they are: *gift given before the nuptial fire, gifts given at the brides' procession, gift given in token of love, gifts made by the mother, gifts made by the father and gifts made by the brother.*

Such property belonged to the wife alone and the husband or her parents were not allowed to touch it. However the husband may use it in emergencies such as illness, famine, drought, theft, or for performing holy deeds. If the husband uses it for any other immoral purpose, the wife had the right to complain in court of law ^[23]

Stridhana is recognized as a property to women on the basis of sources from which the property was acquired. A woman has the absolute right of ownership over the stridhana. It means that she could dispose of the property at her pleasure. The following are the rights of women over Stridhan deduced from the principles contained in Hindu texts ^[24]:

1. During maidenhood, she can dispose of her Stridhana of any description at her own pleasure.
2. During her marriage, she can dispose of only that kind of Stridhana which is called Saudayika i.e. the gifts from relations except those made by husband. For the purpose of determining the rights of a woman over Stridhana during coverture, Stridhana has been classified into two categories: - (a) Saudayika, (b) Non-Saudayika.
3. Right of a female over Saudayika kind of Stridhana-Saudayika means a gift from relations made through affection. It includes bequests from her relations also. She has absolute disposal control over this form of Stridhan. She can dispose of it by way of gift, sale, will or in any other way she pleases, even without the consent of her husband. Her husband has no control over it, and he cannot bind her in any way while dealing with it. But her husband can use this Stridhan in case of distress famines, illness or imprisonment.
4. Rights of a female over Non-Saudayika Stridhana- As regards to Non-Saudayika Stridhana which means gifts from strangers, she has no power to dispose of the property without the consent of her husband. Her husband is entitled to use it at his pleasure even if there is no distress etc. After the death of her husband, her power to dispose of it becomes absolute and she then can dispose of it at her pleasure, the way she likes.
5. During widowhood, she can dispose of her Stridhana of any description according to her own wishes, including movable property and immovable property given by the husband. During widowhood, she has absolute power to dispose of every kind of Stridhana, whether acquired before or after the death of her husband.

Constitutional Framework for Gender-Just Property Rights

The Indian Constitution has an elaborate framework to ensure equality amongst its citizens. Not only does it guarantees equality to all individuals as a fundamental right under Article 14, but it also extends the scope of Article 14 to subsequent Articles, to make room for affirmative action and positive discrimination. *Article 14* of the Constitution states that, "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*" ^[25] *Article 15* of the Constitution

provides, in particular, for the prohibition of discrimination on any arbitrary grounds, including the ground of sex and that "*the state shall not discriminate against any citizen on grounds of caste, sex, place of birth or any of them.*" ^[26]

As can be seen in the first place, women are one of the identified sections that are vulnerable to discrimination and are thus expressly protected from any form of manifestation or discrimination. Second, moving a step further, women also have a right to special protection or special rights granted by legislations, if necessary, to compensate for the historical and social disadvantage they have suffered on the basis of sex alone. Ironically, after numerous attempts, this was not the case with respect women's property rights.

In addition, while they are not justiciable or enforceable in a court of law, the Principles of State Policy of Chapter IV of the Indian Constitution endorse the paradigm of equality, social justice and empowerment that is consistent with all principles. Since one of the goals of the directive principles is to guide the conscience of the state and that they have been used to constructively interpret the scope and ambit of fundamental rights, they should be implemented in favour of women facing any form of discrimination or unfairness.

Current Position of Property Rights of Women The Hindu Succession Act, 1956

Property rights of Hindu women vary depending upon the status of the woman in the family and her marital status: whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property it is: whether the property is hereditary or ancestral or self-acquired, whether it is a land or a dwelling house or a matrimonial property.

The Mitakshara School acknowledges the distinction between ancestral property and self-acquired property. It also acknowledges an institution by the name of "coparcenary". A coparcenary is a legal entity made up of three generations of male heirs in the family. Every male member, at birth becomes a member of the coparcenary, within three generations. This implies that no person's share in ancestral property can be assessed with certainty. It decreases with the birth of a male member and increases with the death of a male member. Any coparcener shall have the right to demand partition of the joint family. Thus, the concept of a birth right, at which a person acquires rights on his birth even if the ancestor is still alive, is fundamental to an understanding of the coparcenary.

The Hindu Succession Act, 1956 was the first legislation to provide an all-inclusive and uniform system of inheritance among Hindus and to redress gender inequalities in inheritance – it was at the same time, a process of codification and a reform. Previously, the Hindu Women's Rights to Property Act, 1937 was in force and while this statute was progressive in itself as it bestowed rights of succession on the *Hindu Widow* for the first time, it also gave rise to lacunae that were later filled by the Hindu Succession Act, 1956.

The following are the main features of the Act

1. It abolished the principle that any property taken over by a female shall be a limited estate. After the coming of the act, the female heir is now to be taken as an absolute owner ^[27].
2. Many more females have been introduced to the order of succession. Apart from the mother, widow and

daughter, the following females have been made heirs of Class I in the Schedule of the Act:

- a. Widow of a pre-deceased son
- b. Daughter of a pre-deceased son
- c. Widow of a pre-deceased son of a pre-deceased son
- d. Daughter of a pre-deceased son of a pre-deceased son
- e. Daughter of a pre-deceased daughter

These female heirs inherit simultaneously along with other Class I relatives of the deceased ^[28].

In Class II of the Schedule, twelve more females were introduced as heirs; however the female heirs of this Class can only inherit the property of the deceased only in the complete absence of any heir in Class I of the Schedule. These heirs have further been classified in nine entries. The heir to the earlier entry excluded all heirs in the latter entries. The heirs coming into one entry take simultaneously between them and take per capita ^[29].

The following are female heirs in Class II of the Schedule:

- a. Son's daughter's daughter
 - b. Sister
 - c. Daughter's son's daughter
 - d. Daughter's daughter's daughter
 - e. Brother's daughter
 - f. Sister's daughter
 - g. Father's mother
 - h. Father's widow
 - i. Brother's widow
 - j. Father's sister
 - k. Mother's mother
 - l. Mother's sister
3. The Act furthers strengthens the rights of the widow:
 - a. The widow is entitled to succeed not only to the intestate's separate property but also to his interest in the coparcenary property. Further, she is ranked at same level as her son.
 - b. Widow shall not be deprived of her absolute right to inheritance on her subsequent remarriage.
 - c. A widow on adopting a son to her deceased husband is no longer divested of the property which has inherited on the death of her husband, including his coparcenary property.
 - d. An unchaste widow is not excluded from inheritance.
 4. The principle of simultaneous succession of heirs of a certain class was introduced
 5. In the case of the Mitakshara Coparcenary, the principle of survivorship continues to apply but if there is a female in the line, the principle of testamentary succession is applied so as to not exclude her ^[30].
 6. Conversion of a Hindu Female to another religion during the lifetime of the deceased is not recognised as disqualification from inheritance ^[31].
 7. There have been several judicial pronouncements that have determined the scope of Section 14 of the Hindu Succession Act. These pronouncements have not only assessed the position of the female Hindu in respect of her property but have also led to a liberal approach that was going to help solving the new growing problems on the subject. In the case of *V. Tulasamma v. Sesha Reddi* ^[32], the Supreme Court of India clearly set out the meaning and scope of Sections 14(1) and (2) of the HSA, in which a fine distinction was made by the court which recognized the woman's right to property by means of her pre-existing right to be maintained. Before

a widow can get absolute interest under Section 14(1) she must have some vestige of title, that is, her possession must be under some title or right and not be that of a trespasser.

8. Another significant reform brought out by the Act is that, on the death of a member of a coparcenary, the property is passed onto his mother, widow and daughter, along with his son, by testamentary or intestate succession, as the situation may be, and not by survivorship. This law confers on the women an equal right with the male member of the coparcenary ^[33].

Flaws of the Hindu Succession Act, 1956

1. Women are not members of the Coparcenary under the Hindu Mitakshara law and are therefore not entitled to have any right in the coparcenary property except otherwise provided by Section 6 of the Act. However, in five southern States in India namely, *Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka* necessary amendments had been made. According to the law of four of these states, with the exception of Kerala, the daughter of a coparcener in a common Hindu family governed by the law of Mitakshara is, by birth, to become a coparcener in the same way as the son. Kerala, however, has gone one step further and has abolished the right to assert or claim any interest in any ancestor's property during his or her lifetime on the basis of the mere fact that he or she was born into the family. In fact, the Kerala Act is the only law that has abolished the Joint Family System. The legislations passed by the five states are given below:
 - a. The Joint Hindu Family System (Abolition) Act, 1975, Kerala.
 - b. The Hindu Succession (Andhra Pradesh Amendment) Act, 1986.
 - c. The Hindu Succession (Tamil Nadu Amendment) Act, 1989.
 - d. The Hindu Succession (Karnataka Amendment) Act, 1994.
 - e. The Hindu Succession (Maharashtra Amendment) Act, 1994.
2. The Act fails to take into account the right to claim partition of dwelling houses by women. Where a coparcenary property contains a dwelling house, the right of a daughter to claim partition of the dwelling house shall not occur until the male coparceners agree to divide their respective shares and the daughter is entitled to a right of residence therein ^[34].
3. A wife only gets the right in the joint family property when there is a partition between father and son(s). If she has daughters only, she will be deprived of that right. If she has sons, both father and sons will deprive her of her proprietary rights in the coparcenary property by not demanding partition and by alienating family property.
4. According Section 4(2) of the Act, agricultural land was excluded from the purview of the act. The discriminatory provision contained in section 4(2) of Act provided that state can pass rule providing for the prevention of fragmentation of agricultural holding or for fixation of ceiling or for the devolution of tenancy rights in respect of such holding. For eg: under the U.P Zamindari, Abolition and Land Reforms Act, 1951 women were not entitled to inherit land if the male heir

is alive.

Hindu Succession (Amendment) Act, 2005

The subject matter of the law of succession falls in Entry 5 of the concurrent list of the Seventh Schedule to the Constitution. Therefore, Parliament as well as the State Legislatures is competent to enact laws in this area. Thus the amendments brought by the five states i.e. Kerala, Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra was perfectly valid.

Accordingly, the need was felt to have Central law enacted by Parliament under Article 246 of the Constitution on the same subject. Considering this need and to remove the continuing inequalities existing under the Hindu Succession Act, the Law Commission of India prepared a draft of Hindu Succession (Amendment) Bill, in 2000. This Bill was embodied in the Hindu Succession (Amendment) Bill of 2004 which became the Hindu Succession (Amendment) Act, 2005. It was passed by both the Houses of Parliament in August, 2005 and came into force on 9th September, 2005. It is an amendment made under Hindu Succession Act but indirectly it put major effects on Hindu coparcenary, joint family and joint family property, and thus tries to remove discrimination against female which exist in these institutions.

The Hindu Succession (Amendment) Act, 2005 attempted to make two major amendments in the Hindu Succession Act, 1956. Firstly, it abolished the discrimination based on gender prevailing in Section 6 of the Act. Secondly, it omitted Section 23 of the Act, which disentitled a female heir to claim partition in respect of a dwelling house, until the male heirs chose to divide their respective shares therein.

The following are the changes brought about by the Hindu Succession (Amendment) Act, 2005

- *In accordance with Section 2 of the Amending Act of 2005, the provision of section 4(2) of the Hindu Succession Act, 1956 was omitted.* This omission tried to remove the gender discrimination under the Act of 1956 as in many states, the tenure laws specified a highly gender discriminatory order of devolution. Therefore, after the deletion of the discriminatory clause relating to agricultural land, the above amendment gave women rights to inherit agricultural land.
- Section 6 of the Hindu Succession Act, after the substitution of Section 3 of 2005 Amendment is as follows:
 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, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary*

disposition of property which had taken place before the 20th day of December, 2004.

2. *Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.*
3. *Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—*
 - a. *The daughter is allotted the same share as is allotted to a son;*
 - b. *The share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*
 - c. *The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.*
- Under the Amending Act of 2005, Section 23 of the Act of 1956 has also been omitted which disentitled the female heir to ask for partition in respect of a dwelling house wholly occupied by a joint family until male heirs chose to divide their respective shares therein. Thus again it removes the disability imposed on female heirs and thus reduces the gender gap.
- Similarly, Section 24 of the Act of Hindu Succession Act, 1956 was also omitted which debar the widow of predeceased son and the widow of a pre-deceased son of the predeceased son or brother's widow to succeed the property of the intestate if they were remarried at the time when succession opens.
- Apart from the above changes, the amendment sought to bring unmarried and married daughter within the ambit of HUF (Hindu Undivided Family) Property. Earlier, after marriage, the daughter ceased to be the part of the father's property with respect to HUF. This was regarded as an infringement of women's property rights. After the amendment, any daughter whether married or unmarried, is considered to be a member of her father's HUF and may even be called 'Karta' (who manages the HUF property).

Thus, the Amendment of Hindu Succession Act of 1956 in 2005 is a total commitment for the women empowerment and provides more and more property rights to women in the Mitakshara system which was mainly patriarchal one.

Property Rights of Tribal Women

As far as property rights of tribal women are concerned, they continue to be regulated by even more Archaic form of customary law in which there is a complete lack of

inheritance and succession rights. In reality, Tribal women do not have any rights in agricultural property. It is ironic that, for preservation of Tribal culture, gender neutral property rights have been resisted. In, *Madhu Kishwar & Ors. v. State of Bihar & Ors.* ^[35], Land/Succession rights of Tribal Women came into question. *It is a case which is widely known as a blow to gender equality.* In the above case, the three judges had to consider the constitutional validity of Sections 7 and 8 of the Chotanagpur Tenancy Act, 1908. This Act was applicable to the Scheduled Tribes in Bihar and it denied the right of succession to the females in favour of the males. The constitutionality of this Act was questioned as being discriminatory against women. *The Supreme Court ruled, by a majority of 2:1, that the challenged provision could not be regarded as unconstitutional. They determined that the right of the male successor must remain suspended until the right to livelihood of the surviving female members of the deceased male has been satisfied.*

In effect this means that as long as the female descendants are still dependent on the land, the male successor's right does not come into operation. In effect, what the court was trying to say is that even if certain provisions are blatantly biased against women, some loophole in the law is going to be found to let such bias continue. The reason why it's called as a blow to gender equality is because the judges completely ignored the fact that the effect of these provisions was to deny women succession rights and was therefore violative of Article 15(1) ^[36].

Problems Pertaining to Women's Right to Land

Legally, the Hindu Succession Act recognises a women's right to a share in the family property (including agricultural land), but the revenue codes of many states don't provide equal treatment for men and women's rights to agricultural land. This unfair treatment is often displayed by states such as Punjab, Haryana, Himachal Pradesh and Jammu and Kashmir, not allowing daughters and sisters to inherit agricultural land. Delhi gives the widows inheritance rights over agricultural land, but not the daughters. Such discriminatory provisions are observed in many revenue codes across states. As agricultural land is a state subject, the revenue codes hold primacy over the Hindu Succession Act when it comes to succession ^[37].

According to the Constitution, succession is part of the concurrent list, which means that both States and Centre can legislate on this subject. However, agricultural land is a State subject, which brings the succession of agricultural land into the jurisdiction of the State. The north-western states – Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Uttarakhand and Delhi – have the most regressive inheritance provisions that explicitly prefer male descendants over females. In many places where daughters can inherit agricultural land according to law, their names are still not entered in the records due to the bias of the irresponsible revenue officials. This bias is woven into the social fabric, and the girls are not expected to claim their share ^[38].

Women typically give up their claims on parental property for the benefit of their brothers due to both explicit and implicit social pressures. Daughters are under pressure to forfeit their claims not only from within the family, but also from patwaris who register village land claims. In addition, there is implicit pressure on women. Socially a "good sister"

is expected to give up her rights. Moreover, in the absence of a government social security system, many women see brothers as their main source of support after the death of their parents and forfeit their claims to maintain that relationship with their brothers, who may or may not provide the expected support ^[39].

Latest Judicial Pronouncements

In general, most of the laws are prospective in nature. When the 2005 Hindu Succession (Amendment) Act came into force, there were concerns as to whether it would apply to daughters born before 09 September, 2005 or if they were born before that, whether it would be limited to those whose father (coparcener) through whom they would be inheriting the property was also alive on that day. In three different cases, the Supreme Court tried to solve the problem.

1. *Prakash & Ors. v. Phulavati & Ors* ^[40]

Held: A two-judge bench ruled that if the coparcener i.e. the father died before 09 September, 2005, his daughter would not have right to coparcenary property. If a daughter claims for the partition of joint family property, her father ought to be alive as of 09.09.2005. If this is not the case, she will not be entitled to any share in the coparcenary property.

2. *Danamma @ Suman Surpur & Anr. v. Amar & Ors.* ^[41]

Held: The Trial Court and the High Court ruled that the daughters were not entitled to a share in the joint family property as the father (male coparcener) in this case died in 2001. However, The Supreme Court after taking into account *Phulavati's* ruling, applied a different principle to grant relief to the daughters. The two-judge bench held that the daughters involved in the case would get a share in the property, even if their father was not alive in 2005.

3. *Vineeta Sharma v. Rakesh Sharma & Ors.* ^[42]

Held: Because there were conflicts of opinion, a larger three-judge bench headed by J. Arun Mishra, upheld that the coparcenary status of daughter is created by birth and is not dependent on whether the father was alive or dead on the date the amendment came into force. A daughter will have the same status as a son as soon as she was born. This verdict is based on all questions as to the interpretation of the amendment and whether any women can be left out due to prospective application of the law.

Conclusion

The fact is that the laws enacted in favour of Hindu women have remained out of their reach because of lack of mental awareness and implementation of the laws in force. Though, the legal position of women in India is better than that prevailing in other countries. Still, India has to go a long way in strengthening the process of regulation of laws. Giving rights to women to inherit land is not enough, more efforts must be made to get the names of the women enter into the land records. The Supreme Court should harmoniously interpret discriminatory laws under the individual state revenue codes and bring them in consistency with the Hindu Succession Amendment Act, 2005, for countrywide applicability. The law has to be provided with sufficient teeth and there must be genuine apprehension in the mind of every Hindu that non-compliance of succession laws would be visited with

exemplary punishment. Right now, the time is ripe to convert the de-jure status of gender equality in property rights into de-facto status.

All land laws with a gender perspective need to be reviewed and areas where there is either open or covert discrimination against women need to be identified. Inconsistencies in the provisions on inheritance in state laws need to be addressed in states^[43].

“It is not easy to eradicate deep-seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society.”

References

1. Universal Declaration of Human Rights, Art. 1, 1948.
2. Universal Declaration of Human Rights, Art. 17, 1948.
3. Centre for women’s studies, “Property Rights of Women in Tamil Nadu”
4. Kajal Jain, “Women’s right to property should be central to India’s land reforms”, *CNBC TV18*, August 13th, 2020, available at <https://www.cnbctv18.com/politics/view-womens-right-to-property-should-be-central-to-indias-land-reforms-6628201.html>(lastvisited on 26/11/20)
5. Prof Khan H Nazeer. “Ambedkar on Gender Equality: Myth and Reality”, Deep and Deep Publications, 2007.
6. Jain PC. “Heritable Rights of Hindu Female: General Survey”, *Journal of Legal Studies*
7. Rukhmabai V, Tukaram. ILR 11 Bom 47, 1867.
8. Rudrappa V, Irava. ILR 28 Bom 82, 1904.
9. Vithaladas V, Jeshy Bai. ILR 4 Bom 219, 1880.
10. Nahul Chand V, Hemchand. ILR 9 Bom 219, 1885.
11. Supra note 6
12. Kashibai V, Sitabai. 13 Bom LR 552, 1910.
13. Supra Note 8 & 9
14. Ibid.
15. Ganesh V, Waghu. ILR 27 Bom 610, 1903.
16. Tikaram V, Sadashiva. 13 Bom LR 863, 1911.
17. Saguna V, Sadashiva. 4 Bom LR 527, 1902.
18. Bai Vijili V, Bai Prabhalakshmi. 9 Bom LR 1129, 1907.
19. Bhikya V, Babu. ILR 32 Bom 562, 1908.
20. Hindu Law of Inheritance (Amendment) Act, S, 1929, 2.
21. Hindu Law of Inheritance (Amendment) Act, S. 1929, 1(2).
22. Desai SA. *Mulla Hindu Law* (Lexis Nexis Butterworths, Wadhwa Nagpur, 20th Edition), 2.
23. Debarati Halder, Jaishankar K. “Property rights of Hindu women: A feminist review of succession laws of ancient, medieval and modern India”, *Journal of Law and Religion*. 2008-09; 24:663-687.
24. Rameshwar Dyal Aggarwal. *Hindu Law Revised Edition* by A.N Sen (Sri Sai Publications, Faridabad), 2002, 106-107.
25. The Constitution of India, Art. 14, 1950.
26. The Constitution of India, Art, 1950; 15(1).
27. The Hindu Succession Act, S. 14, 1956.
28. The Hindu Succession Act, S. 9, 1956.
29. The Hindu Succession Act, SS. 9 & 11, 1956.
30. The Hindu Succession Act, proviso to S. 6, 1956.
31. The Hindu Succession Act, S. 28 read with SS. 24, 25 & 26, 1956.
32. 1977 AIR 1944
33. The Hindu Succession Act, S. 6, 1956.
34. The Hindu Succession Act, proviso to S. 23, 1956.
35. 1996 AIR 1864
36. Reddy V. “A blow to gender equality: Supreme Court Judgment on Manushi’s Case on Women’s Land Rights”, PMID: 12295762. 1999; (113):24-5.
37. Supra note 3 at 2
38. Rudroneel Ghosh. “We Need to Recognise Women as Independent Individuals... Review All Land Laws With a Gender Lens”, *Times of India*, 2020. available at <https://timesofindia.indiatimes.com/blogs/talkingturkey/we-need-to-recognise-women-as-independent-individuals-review-all-land-laws-with-a-gender-lens> (last visited on 26/11/2020)
39. Rashme Sehgal. “Women Who Own Property Face Lower Risk of Domestic Violence – Prof Bina Agarwal”, *News Click*, 2020. Available at <https://www.newsclick.in/Women-Who-Own-Property-Face-Lower-Risk-Domestic-Violence> (last visited on 26/11/20)
40. 2 SCC 36, 2016.
41. 3 SCC 343, 2018.
42. Civil Appeal No. 32601/2018
43. Supra Note 37 at 16