

# INDIAN WOMEN AND INHERITANCE: A CRITICAL APPRAISAL

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## ***Abstract***

Throughout history, men have enjoyed the privilege of owning land and other assets of production while women were deemed naturally 'dependent' on their male counterparts. After independence, the Constitutional commitment to equal socio-political and economic rights facilitated statutory and legal provisions, yet it took a decade of social churning for legal recognition of the right of a woman to acquire, sell or inherit property to materialize under the Hindu Succession Act 1956. This right was further extended through an amendment in 2005 that acknowledged the 'right of inheritance' to be by birth. Ironically, even with the legal framework in place, property rights remain a far-flung dream for women in India. The constant perplexity that surrounds women when it comes to the question of 'inheritance' often negates the laws established by the government after years of struggle that women had to put forth. And the dilemma still remains: Does passing a law ensure its implementation?

## Introduction

While the idea of gender equality has always held the center stage in the history of Indian politics, its manifestation in society remains a subject of contention. This is true more so in the arena of inheritance rights wherein legislative efforts culminated in the substitution of a statutory regime for the traditional law of Hindus. The Indian experiment of augmenting an equitable law of inheritance has been a long-drawn process of conciliation between the Constitutional commitment to socio-economic and political equality and the principle of non-interference in personal laws. In addition to the sociocultural obstructions to the implementation of these laws, there are three important and overlapping issues: a) lack of awareness; b) legal loopholes disabling women's right to inheritance and; c) unintended consequences of the right perpetuating deeper inequalities and violence against women.

In a landmark judgment of the Supreme Court, a three-judge bench headed by Justice Arun Mishra ruled in *Vineeta Sharma v Rakesh Sharma* (2020) that 'a Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive or not when the law was enacted in 2005'. While the judgment, sure, is a progressive step towards gender equality, its implementation strategy remains chaotic. This was also reflected upon by leading legal practitioner Aggarwal (2020) who argued that "the lack of clarity on the practical implementation of the decision of SC can open a Pandora's Box

of litigation and property disputes". As such, the adjudication of equal inheritance for both men and women still has a long journey ahead. Therefore, this study aims to question and evaluate the effectiveness of laws in ensuring the exercise of women's inheritance rights and access to said property while offering insight into the historical, political, and cultural factors that hinder its implementation. Further, it sheds light on the social dilemma and lack of awareness that nullifies the impact of legal provisions in bringing about substantive changes in women's lives.

## Methodology

The paper majorly constitutes a qualitative research study into the political, cultural, and socio-economic constraints on women's right to inheritance in India. Data has been collected primarily from secondary sources. In order to grasp the real-life hindrances women face in exercising their rights, an extensive literature search has been undertaken covering various journal articles, books, and newspapers covering women's inheritance rights since its inception.

Its aims are both descriptive and analytical. It is principally divided into three sections. The first section delves into the legal provisions of inheritance rights as embedded in the Hindu Succession Act 1956, while the second section seeks to interpret and assess the magnitude of its implementation. Finally, the last section addresses some of the inadvertent drawbacks and provides solutions for the same. The paper begins, however, with a brief historical background and the recent events that helped bring the issue back to significance.

## Hypothesis

Despite the legal framework in place, property rights remain a far-flung dream for women in different parts of India.

## Historical Background

Indian culture has traditionally been restrictive in providing women with any autonomy outside the purview of the patriarchal household. While ancient Hindu texts like the Manusmriti staunchly asserted that a woman is never fit for independence, it did not exclusively deny them ownership of property (Halder & Jaishankar, 2008, pp. 663-664). Ironically, the concept of 'stridhan' (women's property or fortune) was widely prevalent in Indian society at a time when women themselves were viewed as the property of their male counterparts. However, stridhan only included assets obtained during the wedding and not ancestral property (Halder & Jaishankar, 2008, p. 665). As such, the idea of inheritance and succession was deemed the 'exclusive preserve of men' within the Hindu community. In fact, some scholars believe the historical intention behind the sati system or sending widows to holy places like Varanasi was also to deprive them of their inheritance rights so that their share could be enjoyed by other members of the family (Khan, 2000, p. 142). In contrast, though unequal but inheritance rights found space within the customary laws of Muslims and Christians. Their exercise, however, was negligible within both communities in the pre-colonial period.

Their exercise, however, was negligible within both communities in the pre-colonial period. During the colonial period, the desire for an uninterrupted source of revenue motivated the British administration to devise a uniform law of inheritance known as the Indian Succession Act of 1925. This act was secular in nature and was further extended by the Part B States (Laws) Act of 1951 to cover the Christians of Travancore as well (Jacob, 1986, p. 243). The act was largely gender- equal, yet it excluded the mother and daughter- in law from inheritance if their spouses were alive. For instance, with regard to succession to the property of a Christian intestate who leaves no lineal descendants, the entire property goes to the father (after deducting the widow/er's share if present) thereby excluding the mother. As such, these laws hardly translated into the women's actual ownership of land or other assets.

## **Inheritance Laws in Independent India: The Hindu Succession Act 1956 & More**

The Constitution-makers were quite firm in their commitment to ensuring equal socio-political and economic rights for both genders which culminated in Articles 14 and 15 of the Constitution. Obligated by the burden of widening the ambit of the 'right to equality', the Indian government passed the Hindu Succession Act in 1956. Drawn from the Mitakshara school of Hindu law, this act recognized the right of a woman to sell, acquire or inherit property (Duncan & Derrett, 1959, p. 488).

It expanded on the idea of stridhan to include both movable and immovable assets including landed property. At the same time, it also attempted to bring matrilineal and patrilineal people, formerly governed by various customs, under what is virtually a single system (Aggarwal, 2020). Buddhists, Sikhs, Jains, and followers of Arya Samaj, etc. were also considered Hindus for the purposes of this law.

Conversely, Muslims were governed by the Muslim Personal Law (Shariat) Application Act of 1937, according to which the daughter gets half the share of the son and the widow also has the same share as that of the daughter (Khan, 2000, p. 142). Similarly, in the absence of a male heir, the daughter's son would be adopted by her parents and exercise the rights of a natural son. Unfortunately, multiple factors including the principle of non-interference in the personal laws of minorities have constrained the Indian government from reforming this policy to date.

However, the shortcomings of the Hindu Succession Act were brought to light over the next few decades. Silent on its point of application to agricultural tenancies, inheritance rights were left at the mercy of the laws of different state governments and the interpretations of High Courts. Certain sections of the act like Sections 6, 14(2), and 15 to name a few, constrained this right by not only limiting inheritance to unmarried daughters but also ignoring the essence of matriliney (Aggarwal, 2020). Further, the lack of scrutiny in its practical implementation supplemented by poor interpretation produced a rather dissatisfactory and shameful result for almost 5 decades.

Finally, the 174th Law Commission recommended certain amendments to the act. In 2005, the Hindu Succession Act was amended in a landmark decision to retain the concept of the joint family while recognizing 'women as coparceners', who have a right at birth to share the agricultural land and property equal to that of sons (Kelkar, 2014, p. 53). By and large, it sought to detach the major ambiguities in the original law to ensure an equal inheritance for women. It was naturally expected by the government that the amendment would improve the condition of women across the country but the ground reality is rather disheartening.

## **Legal Loopholes Disabling Women's Inheritance Rights**

The amendment in the Hindu Succession Act in 2005 generated a sense of relief among legislators. It was anticipated that the amended act would be momentous in achieving gender equality by ensuring greater access to property for women. This was, however, naïve on the part of the government because the persistence of loopholes and ambiguities in the clauses continued to deprive women of their inheritance. The first and foremost amongst these loopholes is the enabling provision under Section 30 of the Act which spurs the Hindu fathers to disinherit their daughters by executing wills in relation to their coparcenary interests. Though it was removed by the amendment, a lot of grey areas still persist. Additionally, the definition of a 'joint Hindu family' remains ambiguous. Today, families are mostly nuclear or semi-nuclear and the traditional Hindu Mitakshara joint families are gradually eroding.

This changed scenario demands a clear definition of joint family in order to avoid conflicts during the allocation of inheritance. Similarly, when a female heir dies intestate leaving the property, her assets devolve upon her children and husband. If she does not have any of those, the property is inherited by the closest relatives of her husband (Khan, 2000, p. 142). This is a point of concern as the section does not specify the difference between inherited and self-acquired property nor does it include the natal family of women.

Amongst these, the most contended loophole in the Hindu Succession Act was whether the law would apply to daughters whose fathers died before the law was amended in 2005. The debate was aggravated after two High Courts passed contradictory judgments on the same issue. In *Prakash v. Phulwati* (2015), a 2-judge bench headed by Justice A. K. Goel held that the benefit of the amended act could be granted only to the “living daughters of living coparceners” as on September 9, 2005. This judgment was, however, contradicted in *Danamma @ Suman Supur v. Amar* (2018) which generated immense tension and controversy as leaving inheritance rights at the mercy of the interpretation of courts was undesirable. As such, multiple petitions and appeals were filed in the Supreme Court which climaxed in the momentous judgment delivered on August 11, 2020. Clearing the air, in *Vineetha Sharma v. Rakesh Sharma*, the 3-judge bench headed by Justice Arun Mishra declared that a Hindu woman’s right to be a joint heir to the ancestral property is ‘by birth’ and does not depend on whether her father was alive or not when the law was enacted in 2005 (Aggarwal, 2020).



However, the court did not overrule its own decision in *Uttam v. Saubhag Singh* (2016), wherein it decided that every time a notional partition occurred in a Hindu Undivided Family (HUF), it came to an end, with every coparcener granted separate property. In this case, daughters cannot be coparceners to a non-existent HUF, since every HUF has had a death post-1956 and pre-2005. As such, both *Uttam* and *Vineetha* case judgments exist together, adding to the confusion. Moreover, the court has also maintained a studied silence about the practical implementation of the law, which together with the ambiguous law and conflicting judgments, has led to the persistence of litigation surrounding women as coparceners.

## **Major Constraints on Women's Inheritance**

### **Rights**

While legal provisions facilitating inheritance rights for women have been in place for decades, property rights remain a fuzzy affair in India. Amongst all inheritable assets, land (a state subject) is the most crucial and debatable one. It is valued not just for material reasons or as a productive resource, but also for symbolic reasons in terms of identity, status, and hierarchy within a given social context (Rao, 2005, p. 4701). Thus, the success of any legal provision for property rights especially land dangles on the social and economic life of women. According to a study conducted by the United Nations Study Group in 2012, only 32% of women-owned plots in Andhra Pradesh and Bihar came from inheritance (Kelkar, 2014, pp. 54-58). The major reasons hampering women's exercise of inheritance rights have been analyzed below:

A. Lack of Awareness:

As discussed earlier, succession rights in India are mainly governed by various personal laws of people's religion. Additionally, there is little to no awareness among women about their legal rights pertaining to inheritance (Kelkar, 2014, p. 55). While people generally recognize the inheritance rights of women, the specificities of the law and its provisions are missing from their knowledge. This is connected to the larger problem of 'legal illiteracy' among women which enables people to escape their liability of providing an inheritance to their daughters who fail to question the discrimination due to their low educational background and lack of financial independence that would otherwise enable them to access avenues (like engaging lawyers) when it comes to inheritance, in comparison to men.

B. Social Stigma:

In communities where economic activities and social responsibilities are generally defined along the lines of gender, the idea of women owning or inheriting land is viewed with hostility. Scholars like Rao (2005) usually attribute this to the frustration of husbands about losing a part of their 'provider' role if women owned and cultivated land (p. 4703). Other reasons include insecurity about the fragmentation of land holding, protection of the economic and business interests of the father and sons in the household, and the basic instinct to pass on property to someone carrying the family name (Jacob, 1986, p. 245).

#### C. Pressure Within the Family:

There is a general reluctance among parents about passing on their property to their daughters as it would decrease the share of their brothers who are supposed to 'take care of the family' in the future. The longstanding traditional belief that the dowry paid during a daughter's marriage constitutes her part of the inheritance lowers their claim to the inheritance which is complemented by the misconception that a woman would enjoy the property of her husband after marriage leading to further resistance on part of family members. As such, the moral policing of girls is done from a very young age to gain their consensus about giving up their ancestral property rights. As for the few women who do acquire property, their access to the same is generally dependent on the dictates of their husbands and in-laws.

#### D. Lack of Formal Documentation:

There is barely any formal documentation wherever land inheritance is done within informal groups and women's names in deeds like white paper appear only in about 10% of the total documents (Kelkar, 2014, p. 56). The lack of communication between rural women and government issues of land management contributes majorly to this problem thereby making their land ownership vulnerable.

The societal notion of gender ideologies has also created some unintended and undesirable consequences of providing inheritance rights to women. Scholars like Rosenblum (2015) whose studies prove that even a small increase in inheritance rights or the perceived probability that a daughter will inherit can cause a decrease in investment in female child health (p. 224).

This is because inheritance increases the 'cost of daughters', leading to a decreased investment in daughters' health. Besides, these rights also have a retrospective effect in that women are 'forced to claim their share' of the inheritance by their husbands and in-laws who often resort to domestic violence to acquire ownership of the same. It is time that civil society and policymakers acknowledge the downside of the law and invest time and resources to eliminate these negative implications of the said Act to ensure the daughters of India freely enjoy their fundamental right to property.

## **Property Rights and Gender Equality: An Analysis**

Throughout history, the gender gap in ownership of property has been among the crucial reasons for the oppression of women. Though the government recognized the direct relationship between inheritance laws and the economic empowerment of women as back as in the 6th and 8th Five-Year Plans, the implementation aspect remained largely ignored. For instance, while the Sixth Five Year Plan stated that the government would 'endeavor' to give joint titles to spouses in programs involving the distribution of land and homesites to the landless, the Eighth Five Year Plan officially recognized that changing inheritance laws was one of the basic requirements for improving the status of women (Agarwal, 1994, p. 1456). However, the necessary directives for implementation were not issued. Agarwal (1994) has argued that the major reason for this is the treatment of 'women as objects of study and exchange, and not as subjects' (p. 1457).

This implies that women do find symbolic representation in the laws devised by the government, but their perspectives and gender relations at the societal levels are often ignored, thereby leading to the failure of the law in bringing about substantive changes in women's lives. This is perhaps best evident in the assumption of the household as the unit of analysis, when issues such as poverty removal and economic development are considered, which completely ignores unequal gender relations at the intra-household level. Thus, an in-depth analysis of the link between property rights and gender ideologies must be undertaken to ensure that policy implementation actually bears fruitful results.

The increasing 'feminization of agriculture' in recent years has given an impetus to this process of female property entitlement. (Vasudeva, 2018) The gradual realisation that rural women play a decisive role in food security and local agro-biodiversity has dawned upon the people that their role in economic activities as cultivators and entrepreneurs are of national importance (Shiva, 2009, p. 19).

The Economic Survey of 2017-18 also brought to light that only 12.8% of the operational holdings of agricultural land were actually held by women. Since productivity is most likely to increase in self-owned lands, the government is now trying to transform agricultural policies as well (Vasudeva, 2018). For instance, it has increased its focus on women's self-help groups (SHG) to connect them to micro-credit through capacity-building activities and providing information.

It has also initiated programmes like the Mahila Kisan Sashaktikaran Pariyojana (MKSP), under the aegis of the Ministry of Rural Development which focuses exclusively on women farmers with the primary objective of enabling them to gain effective control over production resources and manage support systems (“Central scheme for empowering women involved in farming.” 2012). Therefore, sustained efforts in this direction can culminate into an amalgamation of inheritance rights and economic independence leading to greater equality and empowerment of women in India.

## The Road Ahead

The development of gender as a central category of development analysis in the 21st century has necessitated an examination of the dialectical relationship between female oppression and property deprivation. In such a situation, the examination of the gender dynamics at the societal level especially in rural India is important to determine the inability of formulated policies in ensuring inheritance rights for women. This can be done by promoting ground-level research that focuses on the intra- household constraints binding women and subsequently developing policy methods that counter these restrictions. Further, the lack of awareness about inheritance rights must be tackled with the help of NGOs and other non-profit organizations through regular awareness campaigns for not only women but also men. Since the benefit of female property ownership accrues to the family as a whole, appropriate education will be instrumental in generating greater awareness and support from the male members.

This must involve the modification of the school curriculum to include basic guidelines about their property laws and rights as well. Such an initiative will help shape young minds in a manner that they are empowered by the weapon of knowledge and can contribute to nation-building. A strict differentiation between ownership of property and access to the property, as proposed by Agarwal (1994), must be taken into account as well. It is also advisable for the government to develop village-level mechanisms to promote not only female ownership and access but also 'effective control and decision-making capability' over the inherited land. This will serve as a major defense of women against that patriarchal family structure and lead to their economic empowerment. Consequently, adequate policy implementation of inheritance laws is intrinsic in the achievement of the larger social project of 'gender equality'. This will reduce women's vulnerability to domestic violence and equip them with increased bargaining power within the family. Strengthened by their property ownership, women would enjoy greater autonomy in the public sphere and denounce the risk of poverty in case of separation and divorce.

## **Conclusion**

The findings of this research prove that property rights have certainly evolved for the better in Indian politics. Over the last two decades, trends like the 'feminization of agriculture' have highlighted the potential benefits of female ownership of property prompting the government, academicians, and legal professionals to undertake research into the realization of female inheritance rights.

Still, the issue of inheritance is so dynamic in nature that both the government and the Supreme Court seem to have adopted a 'trial and error' method in their approach to deal with the problem. There is a gradual recognition that equal opportunity to inherit ancestral property and equality in accessing said property will not only empower women but also boost economic growth. As such, the 2005 amendment did bear significant results but its implementation continues to be plagued by a multitude of legal loopholes and societal constraints that deprive women of exercising their right to inherit ancestral property. Therefore, the government should undertake a rigorous policy evaluation to detect and fix any and all factors presently hindering women from exercising their rights and spread greater awareness to normalize the practice of daughters inheriting property.



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