

# Women Property Rights in India

## *(With Reference to Hindu, Muslim and Christian)*

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**Abstract :** This chapter proposes to examine the property rights of Hindu and Muslim women in their personal laws. An attempt has also been made to compare the inheritance rights of women in their respective personal laws. The chapter also highlights the drastic reforms brought about in the Hindu women's right to property by the Hindu Succession (Amendment) Act 2005 that conferred birth right to Hindu women in the Mithakshara joint Hindu family property. The property rights of Muslim women are also analyzed to bring forth the disparity in the property rights of women belonging to Communities.

**IndexTerms** – Indian Constitution, Law, Succession Act's, Property Rights of Women.

### I. INTRODUCTION

Women's right to property has been recognized as an important development issue. Property rights for women can have an impact on decision making, income pooling, acquisition, and women's overall role and position in the community. Moreover, land is a critical resource for a woman when the household breaks down; for example, in the event of desertion by husband, abandonment, divorce, polygamous relationships, illness or death.

Women's right, to access and control over property, is determined through women's overall living conditions, economic security, and physical safety. Gender discrimination is related to lower per capita income, life expectancy, and literacy. The problem of gender inequity is due to the deep cultural bias against women.

The proprietary position of woman in any system of law represents the thought and the feelings of the community. Hence the proprietary status which a woman occupied in Hindu law was not only an index of Hindu civilization but also correct criterion of the culture of the Hindu race ( Kulwant Gill, 1986 p. 528).

The position assigned by the Shastras to the widow and even to the women in general, both in her family and society, was a state of dependence and submission. "Day and night" says Manu, "must women be held by their protectors in a state of dependence; even in lawful and innocent recreations, being too much addicted to them, they must be kept by their protectors under their own dominion." "Through independence, the women go to ruin though born in a noble family....." (Narada, XIII, 30.)

It was believed that the dependant and subservient status of women was because of the fact that they were incompetent to perform sacrifices and to read Vedas. Because of her dependent status her right of having property was also treated with dislike or disfavour as there was general reluctance displayed by the ancient Rishis to allow females to hold property. The cause of reluctance was that in Smritis, property was intended for the performance of religious ceremonies. The primary obligation of a person holding property was to perform religious rites and ceremonies and a person was considered as a sort of trustee for the performance of those rites and ceremonies. Since the females were declared by the Smritis to be incompetent to perform religious ceremonies (Manu, Chap. IX. Verse 10). Therefore, her right to. property was very nominal and whatever little she used to get, that too was hedged with limitations. For instance, her husband could exercise his veto even over certain kinds of Stridhan. So the question of having absolute ownership in the true sense of the term (which includes right of alienation) did not arise with regard to the property which did not form her Stridhan. She had only the right to have and enjoy, that property for her sustenance and maintenance during her lifetime and this type of right in property was known as "Woman's Estate".

The seed for personal law was sown by the British with the Bengal Regulation of 1772 providing that in disputes relating to family like inheritance, marriage, divorce, adoption etc, the courts should apply the laws of Quran with respect to Muslims and for Hindus, the Shastric law. As far as Christians were concerned, there was no specific law for them. Hence disputes were settled as per English principles of Justice, Equity and Good conscience. The British policy of non-interference with the personal laws of different communities took its deep roots in the communities and the Government of India has been continuing the policy of non-interference even though it has ratified the CEDAW convention. So the Constitutional mandate of Uniform Civil Code under Article 44 of the Constitution went into oblivion. This Article proposes to examine the property rights of Hindu and Muslim women in their personal

laws. An attempt has also been made to compare the inheritance rights of women in their respective personal laws. It also highlights the drastic reforms brought about in the Hindu women's right to property by the Hindu Succession (Amendment) Act 2005 that conferred birth right to Hindu women in the Mithakshara joint Hindu family property. The property rights of Muslim women are also analyzed to bring forth the disparity in the property rights of women belonging to Communities.

The Indian Constitution, both the Central and the State governments are competent to enact laws on matters of succession. Some of the states have enacted their own variations of property laws within each personal law. Hence, there are no single uniform laws to govern the property rights of Indian women. Each religious community is governed by its respective personal laws. Among each religious group, there are sub-groups and local customs and norms with their respective property rights. Property rights are often viewed in the narrow sense of ownership the right to completely and exclusively control a resource.

Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified as the Hindu Succession Act, 1956 for Hindus, while, Christians are governed by Indian Succession Act, 1925 and the Muslims have not codified their property rights, neither the Shias nor the Sunnis. Tribal women of various religions and states continue to be governed by the customs and norms of their tribes. There are a few restrictions on their mobility but Women have considerably freedom of choice in the selection of marriage partners. Tribal cultures have liberal norms related to divorce and remarriage by women. Among most Tribes, property, particularly land, passes through the male lineage and under customary laws. Women do not have inheritance rights to land (Swati Sharma, 2007).

Religion plays a major role in the succession of property in India. The personal laws of religious communities are mostly dominated by the scriptures of the religions. During the earlier period, the law of succession was mostly un-codified and followed according to the traditions of the communities. As the society moved towards civilization, the Governments started to codify the laws of succession. The codification mostly depended on the existing traditional practices. Hence, there is no uniformity in the succession laws. But, Religion plays a very important role in the formation of succession laws. The succession laws which are codified separately to different religions, neglected women and gave an unequal status to them.

## **II. PROPERTY RIGHTS OF HINDU WOMEN**

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property. Even in Manusmriti one can see that right to hold property had been respected. Jurists like Yajnavalkya, Katyayana and Narada further promoted the concept of women's right to property. Women's property rights improved and defined during their time (Kanakalatha Mukand, WS-2,1992) The Smritikars created a unique type of property to women, the stridhana. Since ancient times stridhana was treated as women's separate property. Jimutavahana went to the extent of stating that woman has absolute control over her property even after marriage (Alla di Kuppaswami(ed), 1986). The ornaments, the wealth she receives at the time of marriage from her father and relatives constitute her share. The gifts from her own and husband's family would also be added to her own.

### **II.1.Hindu Law of Inheritance Act 1929**

This was the earliest piece of legislation, bringing woman into the scheme of inheritance. This Act conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister.

### **II.2. Hindu Women's Right to Property Act 1937**

This was the landmark legislation which conferred ownership rights on women. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 enabled the widow to succeed along with the son and to take a share equal to that of the son. But, the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights. Despite these enactments having brought important changes in the law of succession by conferring new rights of succession on certain females, these were still found to be incoherent and defective in many respects and gave rise to a number of anomalies and left untouched the basic features of discrimination against women.

### **II.3. The Hindu Succession Act 1956**

The Hindu Succession Act enacted in 1956 was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the area of inheritance. It was therefore a process of codification as well as a reform at the same time. The Hindu Succession Act 1956 was made to codify the law relating to intestate succession among Hindus.

Women's right to property has been substantially improved by the Hindu Succession Act 1956. The concept of women being entitled to a limited estate when they acquire property by inheritance is abolished and women are entitled to an absolute estate like

men when they inherit any property. Again the daughter of a predeceased son and the daughter of a predeceased daughter are raised to a higher rank. They became Class – I heirs and get a share along with the son, and other Class – I heirs. The daughters are included in the Class – I in order to remove the discrimination on the basis of sex. Similarly succession to a women's property or stridhanam of whatever nature is made uniform irrespective of the nature of stridhanam. In the same way the distinction between male and female heirs in the case of succession has been taken away and now they are treated on equal basis if they belong to the same degree of relationship. Women will no longer be disinherited on the ground of unchastity.

Hindu Succession Act 1956 applies to both the Mitakshara and the Dayabhaga systems. The retention of the Mitakshara coparcenary without including females in it meant that females couldn't inherit ancestral property as males do. If a joint family gets divided, each male coparcener takes his share and females get nothing. Only when one of the coparceners dies, a female gets a share of his share as an heir to the deceased. Thus the law by excluding the daughters from participating in coparcenary ownership merely by reason of their sex not only contributed to an inequity against females but has led to oppression and negation of their right to equality and appears to be a mockery of the fundamental rights guaranteed by the Constitution. Hence, this very fact necessitated a further change in regards to the property rights of women, and which was done by the Hindu Succession (Amendment) Bill, 2004.

The Hindu Succession (Amendment) Act, 2005 is a landmark. After 50 years, the Government finally addressed some persisting gender inequalities in the 1956 Hindu Succession Act, which itself was path-breaking. The 2005 Act covers inequalities on several fronts: agricultural land; Mitakshara joint family property; parental dwelling house; and certain widow's. The amendment has come into operation from 2005.

#### **II.4. The Hindu Succession ( Amendment) Act 2005**

The Amendment made in 2005 was based on the recommendations made by the Law Commission in its 174<sup>th</sup> Report on Hindu women's property rights. The Hindu Succession (Amendment) Act, 2005 seeks to make two major amendments in the Hindu Succession Act, 1956. First, it is proposed to remove the gender discrimination in section 6 of the original Act. Second, it proposes to omit section 23 of the original Act, which disentitles a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares therein.6(1) Devolution of interest in coparcenary property-

1. On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right 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 20<sup>th</sup> day of December, 2004.

2. Any property to which a female Hindu becomes entitled by virtue of subsection 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. It is a very good law to provide the property to women by birth. But there is a gradual development in conferring property rights to Hindu women. However it remains as a paper tiger and the implementation is very poor.

### **III. PROPERTY RIGHTS OF MUSLIM WOMEN**

India is a multicultural and multi religious society and its citizens are given an opportunity for their complete development irrespective of their sex, caste, religion or race by ensuring the various fundamental rights in part III of the constitution. In spite of constitutional assurances, the status of Muslim women has not improved because of the religious ordain with its conservative approach. The Muslim women could not benefit from the various welfare legislations since they are still governed by their own Islamic laws. The centuries old principles of Islam are still applicable on various matters concerning marriage, divorce and polygamy (Dr.A.K.Srivastava, (2007) Muslim women rights have been a topic of discussion ever since the Constitution came into force in 1950. Islamic law (Shariah) is considered by many as patriarchal and oppressive to women. However the Quran has addressed women's issues fourteen hundred years ago by creating some reforms to improve the status of women though these reforms do not seem to be

practiced in Muslim society today. Though Islam as revealed to the prophet Mohammed is not oppressive to women its interpretation enacted in the family law, and every day living is patriarchal.

The property rights of Muslim women differ from other religions as it is based on the Islamic Law of Succession on the tenets of Holy Quran.

### Islamic Principles of Succession According to Prophet

The Principles are:

1. Husband and wife being equal are entitled to inherit to each other.
2. Some near females and cognates are also recognized and enumerated as heirs.
3. Parents and certain other ascendants are made heirs even when there are descendants.
4. The newly created heirs are given specified shares along with customary heirs, who are reliquaries.

**III.1. Inheritance According to Hanafi Law :** According to Hanafi Law of inheritance, there are 3 classes of heir namely: (1) Sharers (2) Residuary, (3) Distant kindred.

**1. Sharers:** They are persons whose shares have been specified by the Koran. They are entitled to receive a fixed share allotted to them in a certain order of preference and mode of succession.

**2. Residuary:** They are persons who take no prescribed share but succeed to the residue after the claims of the sharers are satisfied. After the payment to the sharers the residue is to be distributed among the residuaries.

**3. Distant Kindred:** They are those relations by blood who are neither sharers no residuaries. This class includes the cognates of the deceased i.e. those who are related through a female. They are not entitled to succeed so long as there are shares or residuaries.

**III.2. Inheritance According to Shia Law :** According to Shia Law the heirs are divided into two groups, namely - Heirs by consanguinity or asaba i.e. by blood relations. They consist of;

I. (i) Parents, (ii) Children and other lineal descendants how low so ever.

II. (i) Grandparents how high so ever (true and false), (II) Brother and sisters and their descendants how low so ever.

III. (i) Paternal uncles and aunts of the deceased, and of his Parents and grandparents how high so ever and their descendants how low so ever. (II) Maternal uncles and aunts of the deceased and his parents and grandparents how high so ever and their descendants, how low so ever.

Of these three groups of heirs, the first excludes the second from inheritance and the second excludes the third. Among the Shias, there is no separate class of heirs corresponding to the Distant Kindered of Sunni Law.

**The shares according to Shia Law** are nine in number-1) Husband 2) Wife 3) Father 4) Mother 5) Daughter 6) Full sister 7) Consanguine sister 8) Uterine brother, and 9) Uterine sister. The descendants how so ever of shares are also sharers. Residuaries are all heirs other than sharers. The descendants how so ever low of residuaries are also residuaries. Sons, brother, uncles and aunts are all residuaries. Their descendants, therefore, are also residuaries.

In this context we should appreciate the contributions of Islam to the well being of women. Islam removed all the yokes on women. Quran asserted the dignity of women and holds the view that man and women are equal and they complement each other. The Muslim women were also denied property rights under the pre-Islamic customary laws; wife and children were excluded from inheritance. In fact the law of inheritance was based on the principles of agnatic preference and exclusion of females. Thus a daughter or a sister or a daughter's son or sister's son could not succeed to the property.

## IV . PROPERTY RIGHTS OF CHRISTIAN WOMEN

The laws of succession for Christians are laid down in the Indian Succession Act, 1925 . Sections 31 to 49 deal with Christian Succession. The Indian Christian widow's right is not an exclusive right. It gets curtailed as the other heirs step in. Only if the intestate has left none who are of kindred to him, the whole of his property would belong to his widow. Where the intestate has left a widow and any lineal descendants, one third of his property devolves to his widow and the remaining two thirds go to his lineal descendants. If he has left no lineal descendants but has left persons who are kindred to him, one half of his property devolves to his widow and the remaining half goes to those who are of kindred to him.

The Indian Succession Act, 1925 provides that succession to immovable property in India of a person deceased who is not a Hindu, Mohammedan, Buddhist, Sikh or Jain, shall be regulated by the law of India. Section 27 of The Indian Succession Act, 1925 states that there is no distinction for the purpose of the succession—

- a) Between those who are related to a person deceased through his father, and those who are related to him through his mother; or
- b) Between those who are related to a person deceased by the full blood, and those who are related to him by the half- blood; or
- c) Between those who were actually born and those who were only conceived in the womb; but who have been subsequently born alive.

The Christian women are deprived of equal rights to parental property because of the continuance of the dowry system under Section 28 of the repealed Travancore Christian Succession Act 1916 which provided that the male shares shall be entitled

to have the whole of the interstate's property divided equally among themselves subject to the claims of the daughter for streedhanam. Section 29 further provides, the female heirs or the descendants of the deceased female heirs will be entitled to share in the intestate's property only in the absence of the male heirs.

the Christian families with ancestral properties still continue the custom of partitioning the properties among the members of the family. Here also a daughter who has been given streedhanam will be excluded from partition. It is to be noted here that the father / testator can disinherit a daughter through a Will also. These two practices are still unabashedly going on in the Catholic families. The Constitution of India recognizes equality of status and in fact provides for certain provisions under the chapter on fundamental rights more favourable to women but in actual practice they are observed more in breach than in compliance (Js.Rajendra Babu, 145 AIR, 2007). This is absolutely true in the case of Christian women.

## V. SUMMARY

An analysis of the inheritance rights of the Christian, Hindu and Muslim women brings forth the reality that only the Christian women alone are deprived of the right to inherit a share of the ancestral property. This is the mere callousness of the Legislature. The international Conventions on women always focus on women's inheritance rights. However neither the community nor the Church would ever take any step to plug the existing loopholes in the Indian Succession Act 1925 because they are up in arms against women inheriting property. The Law Commission also has been enthusiastic in the reforms of Hindu Succession Law. No such enthusiasm is shown in reforming Christian Personal Law. In tune with the Law Commissions recommendations, even the Government has made an effort to make reformatory laws in Hindu Succession, though it is not implemented effectively. To make matters worse Christian women are still being controlled by the Church through its Canon laws which ensure women's subjugation and subordinate status.

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