



JOURNAL OF INTERNATIONAL LAW, POLITICS AND SOCIETY

An International Open Access Double Blind Peer Reviewed

ISSN No.: 3108-0464

Volume 2 | Issue 4 (Oct.-Dec.) | 2026

Art. 1

Critical Analysis of Hindu Women's Right to Property in India

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Recommended Citation

Dr. Gunjan, *Critical Analysis of Hindu Women's Right to Property in India*, 3 JILPS 1-12 (2026).

Available at www.jilps.in/current-issue/

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Critical Analysis of Hindu Women's Right to Property in India

ABSTRACT

This abstract provides an overview of the evolution of Hindu women's rights to property, focusing on the historical, legal, and legislative aspects. It begins by explaining the concept of succession in Hindu law and explores the sources of Hindu law, specifically the Yajnavalkya smriti, which is divided into the Dayabhaga and Mitakshara systems. The Mitakshara system's principles regarding ancestral and self-acquired properties are outlined, emphasizing the male-centric inheritance structure. The narrative then traces the evolution of women's rights in India, starting with social reforms initiated by Lord William Bentinck, the Widows Remarriage Act of 1856, and the Married Women's Property Act of 1874. It highlights the pivotal Hindu Women's Right to Property Act of 1937, marking a significant step toward securing economic rights for Hindu women. The discussion intensified with the introduction of the Hindu Succession Act of 1956, a landmark legislation that granted Hindu women absolute rights over property, challenging traditional gender norms. This Act, backed by the vision of Pandit Jawaharlal Nehru, aimed at achieving gender equality and empowering women economically. The abstract delves into the key provisions of the Hindu Succession Act, of 1956, emphasizing the absolute property rights granted to Hindu women and their place in the heir classification. It also outlines the general rules of succession for female Hindus, clarifying the devolution process in case of intestacy. The narrative concludes with a focus on the Hindu Succession Amendment Act of 2005, which brought about significant reforms in agricultural land transfers, recognition of daughters as coparceners, and changes in the definition of class 1 heirs. Notable cases post-amendment, such as Prakash vs. Phulavati, Danamma vs. Amar Singh, and Vineeta Sharma vs. Rakesh Sharma, are discussed to elucidate the judicial interpretation and impact of the amendment. Finally, the abstract addresses the recent case of Arunachala Gounder vs. Punnoswamy in 2022, which solidifies the rights of daughters to inherit self-acquired property and establishes a comprehensive order of succession. The paper underscores the importance of this case as a landmark decision that completes the rights of Hindu females in succession.

KEYWORDS

Property, Succession, Will, Deceased, Amendment

INTRODUCTION

The meaning of the word Succession is “an order in which the property or title will be delivered or succeed to another”. The succession is the process by which the property or the title will be delivered or succeed to another in an order of Successors. The Successor is the person who is entitled to take the right and authority of deceased property. However, a successor is not always a near relative but also can be an Agnates or Cognates of a deceased.

The main sources of the Hindu Law are the Manu smriti & Yajnavalkya smriti. The Succession is covered under the Yajnavalkya smriti which is divided into two parts that are Dayabhaga and Mitakshara. The Dayabhaga is written by Jimutavahana and it describes the procedure of inheritance but it is mainly applied in the area of West Bengal & Assam.

The Mitakshara is defined by the Vigyaneshwar which is popularly known for the inheritance by birth and the applicability of this system in the whole of India. The principles of succession in the Mitakshara system are:-

1. Properties are of two kinds under the Mitakshara system which are (1) Ancestral Property and (2) Self Acquired Property. The Mitakshara recognizes two modes of devolution of these properties (a) devolution by survivorship and (b) devolution by succession. Ancestral property is devolution by survivorship and Self Acquired property is devolution by succession.
2. The successor under the Mitakshara system is a son and he has this right by his birth and the daughter has no right over the property by the succession.
3. The son also has a right to ask for partition even when his father is alive this right gives control over property to the son.
4. The Mitakshara system doesn't give any rights to the daughter but it gives an equal share with a limited right to the mother. The limited right means the mother can enjoy the share but cannot alienate of property.¹

EVOLUTION OF WOMEN'S RIGHT

The condition of women in India of either any religion is not well when it comes to the rights of women or the socio-economic conditions of the women. The Patriarchal society has always dominated women in the

¹ Serena Vantin, “The prism of equality. From legal feminist critiques to the Digital Era,” 86 Women's Studies International Forum 102469 (2021).

houses or the participation of women in public life even the education is not the right of women. After the Mughals treated the women as objects and misbehaved with them, the Governor-General of East India Company Lord William Bentinck got civil rights and on the request of Raja Ram Mohan Roy passed an act The Bengal Sati Regulation 1829 which banned the sati practice. This is the first step in the history of India for women's reformation. In 1856 the Widows Remarriage Act was passed by Lord Dalhousie at the request of Ishwar Chandra Vidya Sagar the second reform for women which gave courage to the British Government to pass more laws on women's rights. This is the point from where Hindu women got their economic rights.

Married Women's Property Act 1874

This act was passed to give property rights to Hindu women first time in the British government but this is only a baby step towards the absolute right to property because this act explained only Stridhan. The Stridhan is the property owned by the woman by her service or the gifts that she received in her marriage. The drawback of this act was that the right was not absolute.

The Hindu Inheritance (Removal of Disability) Act 1928

This is the act that talks about women's rights to property for the first time but this was also a basic act that removed the disability in inheritance and recommended women to get the right.²

Hindu Women's Right to Property 1937

This was the first major action for the women's right to property which was also known as the Deshmukh act who is the author of the act. Some provisions in the act brought the major points of women's rights into the light and these are:-

1. In this act women get the absolute right over Stree Dhan and no one can get that property from her without her consent also she has the right to the alienation of property.³
2. The women also get the major right by this act was the right to property in the process of succession but provided was this right was limited estate which means no right to the alienation of property.
3. Widows also got the right which she even can't imagine at that time and that was the right to property by the succession over her

² Amy Antonio and David Tuffley, "The Gender Digital Divide in Developing Countries," 6 Future Internet 673-87 (2014).

³ Caroline Starkey, Emma Tomalin and Anna Halafoff, "Women, religion, and digital counter-publics: introduction," 37 Journal of Contemporary Religion 1-8 (2022).

husband's property provided that the right was a limited estate with no right to the alienation of property and also, she cannot demand the share but can appeal for it if doesn't get the share.

After the 1937 act, Britishers understand the situation of the women in India and they are not very happy with the response of the above activities they want some more deep study on this with some more recommendations so that they can reform the Hindu code bill. In 1941 they finally set up the committee under B. N RAO and the committee is known as Rao Committee (Hindu law committee).

BN Rao was an ICS officer and also an advisor in the constituent assembly because he was in the constituent assembly the committee recommendations were on hold till 1950 and after the enforcement of the Constitution of India Lok Sabha listened to the recommendations of the committee on Hindu code bill. Dr. B.R. Ambedkar was also a law minister of an interim government of India and he was also going through the miserable conditions of scheduled castes so he was the only one who wanted this bill as an act, as soon as possible. Some members don't support Prime Minister Pandit Nehru in this because of his traditional and orthodox thinking and appeal to the government not to interfere in the matter of Personal law.

After the first general election when Pandit Nehru was fully satisfied with the conditions of the country and tried to fulfill the promise of the citizens of the country which was done before the independence for their support and in return, they got their fundamental rights and one of them was right to property of Hindu women. After accepting some recommendations, the government of India passed the Hindu Code bill in four different acts.

On 17th June 1956, The Hindu Succession Act came into force and it brought about comprehensive and radical changes in the law of intestate succession amongst Hindus. It comes with the major changes in the economic scenario of Hindu society where the men get their right over the property and the females get their recognition equally like males with this effective legislation which gives the right of inheritance and succession.⁴

THE HINDU SUCCESSION ACT, 1956

This is a milestone for every Hindu woman because, by this act, she gets the absolute right over the property, and also, she gets a place in the heir class 1 list. This act gives hope to the women of independent India of

⁴ Elisa Ughetto et al., "Female entrepreneurship in the digital era," 55 Small Business Economics 305-12 (2020).

gender equality and economic women empowerment because the power to the alienation of property that the woman gets was a big achievement for them. Pandit Nehru was a very socialistic person and he always wanted to give rights to women and the backward classes. He accepted some recommendations of the Rao committee which he supposed to be the best reforms for the women of that time and the male citizens of the nation also didn't raise their objections. Male citizens also can adjust to this act and the traditional or orthodox people are also happy with this act.⁵

In the 1956 Act, we discuss the points of the act and also the process by which the devolution of property of women has happened if she dies without a will. The points of the 1956 Act, are mainly focused on Women:-

1. A female has the absolute right over the property she owns by the succession or by gift or by will from any person whether relative or not; the property she purchased herself; her stridhan; and the gifts she got in her marriage. The word property includes the movable and immovable property on which she has an absolute right which means she has the power to the alienation of property. (Section 14)
2. According to section 14(2) of the act, if any gift or will award or instrument gives a restricted right to the Hindu female then she doesn't have absolute right over it.
3. Only a son is a coparcener and a daughter cannot be a coparcener and this was the birthright that was given to the son only. (Section 6)
4. In class 1 heir two generations for predeceased sons are recognized but only one generation was recognized for predeceased daughter. (Section 8)
5. The right to claim for the partition was given to the son only and daughters only have the right to residence and only if she was unmarried, deserted, separated, or widowed. (Section 23)
6. The widow of a pre-deceased son or a pre-deceased grandson or a brother was not entitled to inherit the instate as a widow if, on the day of succession open, she got re-married. (Section 24)
7. Testamentary rights are equal for both genders it means if a person gets the property by the will, he or she is an absolute owner of the property. (Section 30)

General rules of Succession in the case of female Hindus:-

As we discuss above section 14 of the Hindu Succession Act, 1956 gives

⁵ Kim Andreasson, *Digital Divides: The New Challenges and Opportunities of e-Inclusion* (CRC Press, 2015).

absolute ownership over the property to the female and now we discuss how the devolution process takes place in the case of female Hindus. Section 15 and section 16 talk about the rules and manners of distribution among heir respectively.

Section 15 does not apply to the property which was in the meaning under sub-section 2 of section 14 as it is a restricted estate, which does not give total control to the female Hindu. Section 15 sets out the rules of devolution by their class list according to the devolution that takes place.

Section 15(1) describes that:-

- a. Property devolves firstly upon the sons and daughters including the children of any pre-deceased son or daughter and the husband.
- b. If clause (a) heir is not available then secondly upon the heirs of the husband.
- c. If clause (b) heirs are not available then thirdly upon the mother and father of the female
- d. If clause (c) heirs are not available then fourthly upon the heirs of the father of the female
- e. And lastly if none of the above heirs are available then upon the heirs of the mother of the female

Section 15(2) said that anything which is contained in sub-section (1) is not applied on:-

- a. Any property which is inherited by a female Hindu from her father or mother shall devolve in the absence of her any son or daughter of the deceased including any children of a pre-deceased son or daughter not upon the heir according to sub-section (1) but upon the heir of the father
- b. Any property which is inherited by a female Hindu from her husband or her father-in-law shall devolve in the absence of her any son or daughter of the deceased including any children of pre-deceased son or daughter not upon the heir according to sub-section (1) but upon the heirs of the husband.

The above order of succession is devolved according to the rules set out in section 16 in which the intestates' property among the heirs takes place according to the following rules:-

1. The First rule talks about the sub-section (1) of section 15 that those in one entry shall be preferred to those in any succeeding

entry and those included in the same entry shall take simultaneously.⁶

2. If any son or daughter of the intestate had pre-deceased the intestate leaving his or her children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.
3. The devolution of the property of the intestate on the heirs referred to in clauses (b), (d), and (e) of sub-section and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husbands as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

These are the rules which are followed before the devolution of the property of a female Hindu if she dies without a will and intestate. The above act was successfully driven for many years in some cases but as time passes and our civilization becomes more modern and we try to improve our concept of women empowerment to gender equality and we find that some people in our society find the loopholes of our system and our old laws are not suit in the present scenario and the equal status we promise to our female citizens that status should be given to them because the cases like Vellikannu vs R. Singa Perumal (2005) where the judiciary can't help female because they have to hold what is written in the law. So, it is the responsibility of the legislature to make some amendments for the betterment of females and that is what every female wants.⁷

HINDU SUCCESSION AMENDMENT ACT, 2005

On 9 September 2005, this amendment was enforced with some reforms for females and we discuss the changes that are introduced in this act we also discuss how much this act helps females and what the challenges are there for females to get their share in the property.

Key points of the 2005 Amendment Act:

- a. The First Amendment is made in section 4(2) which talks about Agricultural land previously agricultural land could only be transferred through state tenorial laws but now if a landholder

⁶ Caroline Starkey, Emma Tomalin and Anna Halafoff, "Women, religion, and digital counter-publics: introduction," 37 Journal of Contemporary Religion 1-8 (2022).

⁷ Reecha Jral and Kiran, "Women Empowerment In Modern Age Intervention of Technology in the Modern Era: A Potent Factor in Empowering Women in India," 2022.

converts his or her property from agricultural to industrial, commercial, or residential land by writing a letter to a collector than the property will be governed under Hindu Succession act 1956.

- b. The second amendment is made in section 6 which doesn't recognize the daughter as a coparcener prior but now sons and daughters both have independent birth rights and liabilities as coparceners in the joint family property.
- c. The third amendment is to change the definition of class 1 heir in the schedule regarding section 8 prior there was only one generation for a daughter and two generations for a son but now both sons and daughters are going down to two generations of pre-deceased.
- d. The fourth amendment is made in section 23 regarding the rights of married and unmarried daughters because before the amendment only unmarried, deserted, separated, or widowed daughters had the right to residence and they could not claim for partition, after the amendment now both married or unmarried have the same rights as a son to reside in and to claim of the parental dwelling house.
- e. The fifth amendment is made in section 24 that the categories of widow before 2005 the widow of a son or grandson is not entitled to inheritance if she remarried when the succession is open but now it doesn't matter whether she is married or not she is entitled to inheritance even if she remarried.⁸

The amendments in any act, are made with the view that it will be beneficial for mankind and there must be some reforms in these amendments that are necessary for citizens and 2005 amendment is also an example of reform that the legislature wants to give to the Hindu female that is her rights over her property and many other benefits which they don't avail previously. Till now this is the recent reform for Hindu females in the matter of succession which was started in 1874. This 134-year journey will come to an end with equal rights but after this everything is not cozy, now we have some other issues because the Hindu male don't want to share their right but the judiciary comes as a shield. Now we discuss that issue which was raised after the 2005 amendment and we see how the judiciary deals with it.

⁸ Dr Venkateswararao Podile, "Digital India Initiatives for Social and Economic Emancipation of Indian Women," 08 59-61 (2018).

LEADING CASES ON ISSUE

1. Prakash And Others vs Phulavati and Others 2013⁹

Issues

- a. Whether the Hindu Succession Amendment Act 2005 applicable to the notional partition?
- b. Whether the Hindu Succession Amendment Act 2005 will have retrospective effects?

Judgement

The Supreme Court held that the Amendment Act itself suggests that a daughter has a right in Coparcenary property from the commencement of the Hindu Succession Amendment Act 2005. The High Court order was overruled by the Supreme Court.

2. Danamma vs Amar Singh 2018¹⁰

Issues

Whether the Hindu Succession Amendment Act 2005, will have retrospective effects?

Judgement

Supreme Court held that if the father is the coparcener who passed away before 9th September 2005, and a prior suit is pending for partition, then the female is entitled to a share, and also the Supreme Court said that this amendment has a retrospective effect which is contrast with phulavati case.

3. Vineeta Sharma Vs Rakesh Sharma 2020

Issues

- a. Whether after the 2005, Amendment Act is this necessary for the coparcener to be alive on 9th September 2005, for the daughter to claim her right as coparcener?
- b. Whether the 2005 Amendment Act will affect Prospective retrospective or retroactive?

Judgement

This case was listened to by 3 judge benches because the above two cases

⁹ 1 (2016) 2 SCC 36

¹⁰ 2018(4)ADJ406

have two different judgments on the same issue so this judgment will override on above judgment and the Supreme Court held that there are:

- The daughters have coparcener rights by birth, so this is not mandatory that the father must be alive on 9th September 2005. *Prakash vs Phulavati* is overruled and *Danamma vs Amar's* decision is partly overruled.
- The amendment of section 6 of the Hindu Succession Act is Retroactive.

The first big problem was solved with the case of *Vineeta Sharma vs Rakesh Sharma* that the amendment has a retroactive effect and also that it is not mandatory that the father to be alive on 9th September 2005, but there is still one question left which is pending in court that time but today we have the answer of that question so let's discuss the case:-

4. Arunachala Gounder vs Punmoswamy 2022

Issues

- Whether the sole daughter has the right to inherit the property of the father after his death
- Order of Succession after the death of such daughter

Judgment

In this case, the trial court and High Court both held that the daughter has no right to inherit over the father's self-acquired property but the Supreme Court set aside the judgment of the High Court and held that-

- a. If a male Hindu dies without will so his self-acquired property will be devolved by the rule of succession, not by survivorship, and hence daughter also has right over the property like a son.
- b. If a female Hindu dies issueless without the will, then the property, she inherits from her parents will be inherited by her father's heirs and if she inherits from her husband then it will go to her husband's heir.

So, in this case, the plaintiff gets her right over the property with her brother and this judgment becomes a landmark because it completes the rights of Hindu females in succession.

CONCLUSION

The narrative concludes with a focus on the Hindu Succession Amendment Act of 2005, which brought about significant reforms in agricultural land transfers, recognition of daughters as coparceners, and changes in the definition of class 1 heirs.

Finally, the research addresses the recent case of *Arunachala Gounder vs. Punnoswamy* in 2022, which solidifies the rights of daughters to inherit self- acquired property and establishes a comprehensive order of succession. The paper underscores the importance of this case as a landmark decision that completes the rights of Hindu females in succession.