



RIGHTS OF DAUGHTER UNDER HINDU SUCCESSION ACT IN INDIA

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ABSTRACT

In patriarchal civilizations, property and inheritance rules for Indian women have historically been founded on exploitation of their gender. Women's property rights are willfully disregarded by the ancient Indian patriarchal society, which places her at a disadvantage in both social and economic spheres of human interaction. Women were systematically denied economic freedom under ancient Hindu law. It is emphasized that Manu, the first law-giver, established that "A woman must be dependent upon her father in childhood, upon her husband in youth, and upon her sons in old age." This is evidence in favor of the premise. She ought to never be liberated. Compared to their male counterparts, she has always been viewed as a lesser being. In addition to their homes and communities, women also experience a lower status in terms of her rights and advantages. As the democratic citizens of the country, women are to be treated equally to their male counterparts in all spheres of their lives, according to our constitution. Several changes to the rules of succession were made to achieve the Constitutional goals. However, it has led to inequality for women. The condition of several categories of women, including mothers, widows, and daughters, under the previous succession legislation and following the new modified Act, is examined in this study.

Keywords: *Hindu Succession, daughter's rights, coparceners, property, inheritance.*

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Introduction

The HSA went into effect on June 17, 1956. This relates to inheritance and property inheritance and is relevant to followers of Sikhism, Jainism, Buddhism, and Hinduism. It codifies the regulations governing intestate succession. The statute establishes a centralized succession process. According to the stipulations of this legislation, property is passed down through three generations of males. This statute was the first after Independence to address the disparity in property rights between men and women, but it disqualified girls from the title of coparcener, which was extremely discriminatory against them and one of their primary complaints.

After gaining independence, this was much truer, but recently, circumstances have begun to turn around. Properties and rights of succession claims in India are subject to the claimants' religious convictions because the country lacks a unified civil law. However, inheritance regulations for women were slightly different from those for males, regardless of the faith, society, or sect they belonged to.

Hindu inheritance regulations for women now have some pause for wives and daughters. However, Islamic regulations are stronger and distinct for women, and have made some minor modifications recently, but they do not deal with inheritance or property rights. Christian law is more lenient¹.

Rights of Inheritance

Whether the daughter took birth prior to or subsequent to September 9, 2005, when the Hindu law of inheritance was altered, doesn't matter if the father passed away before that date. The daughters will share the same rights to those of the boys. A daughter would be entitled to a part of ancestral or communal property under the Hindu Inheritance (Amendment) Act 2005 even though her father passed away before the law's publication, the Supreme Court declared in a recent historic decision on August 11, 2020 amendment.

When the inheritance is divided equally from birth by the son or the daughter, depending on whether it is ancestral property. The father, however, has the right to dispose of the property whatever he pleases if he personally acquires it. Regarding his own property, father has the option of not transferring it to either of his children or to anybody else. Property is separate into inherited and self-acquired categories under Hindu law. Up to four generations of males can inherit ancestral ownership, which is held undivided during this period. His father bought

¹ J. Starli, M.L., Critical analysis of disparity in property rights of women in India: A glimpse
<https://www.tnsja.tn.gov.in/>.

for the actual property out of his pocket².

Division of Assets According to Section 6(3) of the HSA Act of 1956, a dead accomplice's interest in Hindu Undivided Family's assets shall be terminated by intestate succession or a will. These are the distributions: The share of the deceased's wife is distributed among her living children in the same manner as it was during her lifetime; the share of the dead accomplice's deceased children will be distributed to his children in the same manner as it would have been distributed during the time when he was alive. The daughters share the same share as the sons.

In the case of **Prakash v. Phulvati**³, the defendant (according to SC cases) filed a petition before the Belgaum Magistrate's Court in 1992, securing her right to inherit the property from his father, who passed away in 1988. His trial was generally allowed by the trial court. She moved to the SC to request her succession under the Amendment to the Hindu Succession Law because she was unsatisfied with the judgement she had to abide by. She will have the right to inherit the family's and her father's property since the amendment's main goal is to remove the current conflict between the children in common freedom. The High Court upheld the modified conditions.

The SC denied the HC's motion, stating that the legislation will be implemented programmatically and prospectively unless otherwise specified in the act.

What Do the Property Rights of Women Mean Under Indian Law?

Because India lacks a unified civil code, different religious groups have separate rules governing inheritance and property partition. The Hindu Inheritance Act 2005 and the Indian Inheritance Act 1925 are two significant legislation that deal with property sharing. We must comprehend two legal concepts before digging into the specifics of these laws: wills and intestacy. In testamentary succession, the registered will is crucial and supersedes all other rules. For instance, it is ultimate if someone's father formally leaves his kid with his whole wealth through a will.

When someone passes away without leaving a will, they are intestate. According to the abovementioned law, in this scenario, the property is divided equally among all of his offspring, without regard to gender. In the absence of a will, the Hindu Inheritance Act of 2005 is applicable. In the absence of a registered Will, the Muslim Personal Law (Sharia) Act of

² SCC Online, www.scconline.in, (27th July, 2023) Prachi Bhardwaj, SCC Online, <https://www.scconline.com/blog/post/tag/coparcenary-property/>

³ Prakash v. Phulavati AIR (2016) SC 769.

1937 is applicable. Muslims adhere to their religion's laws.

According to Section 14 of the 1956 law, any Hindu woman enjoys complete ownership of whatever property, whether it be moveable or immovable, that she has acquired. She can get it before or after marriage in one of the following ways: inheritance division alimony in place of late gifts from any relative or buy prescription not made with her own talent or work, etc. Accordingly, every Hindu woman has the right to use her property under Section 14 of the 1956 without her husband's, her father's, or any other person's permission, and as she pleases.

Existing Scenario

In the latest ruling from **Vineeta Sharma vs. Rakesh Sharma**⁴ on August 11, 2020, the Women's Conspiracy Act's status has altered. In these circumstances, it is decided that women, either born before or after the amendment, shall be entitled to the same cohabitation status and the same freedoms as boys.

Any Hindu lady with full title is also allowed to dispose of her possessions through intestacy or testamentary succession. This is recalled in Article 30 of the 1956 statute. Before, only Hindu men had the legal right to make a will. However, Hindu women now enjoy the same rights as other women owing to a 2005 amendment. does not impose the requirement that the father must be alive on the law's adoption date, which is September 9, 2015 (09.09.2015). The statute was given "retrospective" application by the court. Following the rejection of the Prakash v. Phulvati court ruling, women were given equal rights. To provide women an equal right to personal liberty and paternal life on the effective date of the amendment, the court first had to decide between these two viewpoints. The murkiness and confusion surrounding women's inheritance rights have been eliminated.

(2018) Case of Dhanammar v. Amar Singh⁵

In this case the appellants in this case are the two daughters of Shri Gurulingappa Savadi, who passed away, and his widow Sumitra. The couple also has two sons: Vijay and Arun Kumar. Son of Arun Kumar,

For the sixteenth portion of the Savadi estate, Amar Singh filed a lawsuit. The land is held by a widow, two sons, and him, which supports his claim. He contended that because the two daughters were born before the Hindu Succession Act (the Act), as revised in 2005, went into effect in 1956, they were not complicit. The appellant appealed the First Court's decision in

⁴ Vineeta Sharma vs. Rakesh Sharma (2020) 9 SCC1.

⁵ Danamma @Suman Surpur V Amar Singh, (2018)3SCC 343.

Arun Kumar's favor to the High Court. The appellant then filed an appeal with the Supreme Court after the SC upheld the trial court's decision.

Recently, Vineeta Sharma and Rakesh Sharma (2020) filed a lawsuit. The appellant in this instance lost his father in 1999. She has a mother who is a widow and three brothers. She filed a lawsuit for co-ownership of her father's estate and a quarter stake when one of her brothers passed away unmarried in 2001. The Supreme Court, however, rejected her petition, stating that her father passed away prior to the 2005 amendment.⁶

Conclusion

As a secular nation, India guarantees everyone the freedom to practice their own religion in accordance with Article 25 of the Indian Constitution. Each person is free to obey their own personal law since their religion specifies that they have a property right to do so, and this law is also listed in the Concurrent List (Entry 5). Muslim law and the Indian Succession Act of 1925 both gave women the ability to own property, but before to 1956, Hindu law did not do the same. Therefore, the Hindu Succession Act, 1956 gave property rights to female Hindus as well, using the principles outlined in Articles 14 and 15 of the Indian Constitution. However, the only person who is qualified to obtain a property right in relation to coparcenary property at birth is the son. The Hindu Succession Act (amendment) Act, 2005 also eliminated this difference by granting the daughter the ability to inherit and eliminating the pious requirement that was only applicable to the son. Things have altered gradually but certainly. Women now have equal inheritance rights to their sons after a long, laborious process. Regulations against gender discrimination are now a thing of the past. the start of the Mitakshara statute, which discriminates against women by keeping them out of the property partition process. The Hindu Heritage Act of 1956 did not adhere to social legislation standards and was not gender neutral. Women now have the status of joint heirs because to the HSA amendment act of 2005, which made substantial adjustments. However, despite divergent legal options and perplexing views, the Vineeta Sharma case provides a definitive declaration on the subject at hand. The SC has made the ultimate determination, and it is up to the courts and authorities to carry out what has been decided.

⁶The Hindu, [www.thehindu.com](https://www.thehindu.com/opinion/editorial/right-by-birth-the-hindu-editorial-on-daughters-and-hindu-succession-act/article32347299.ece), (27th July, 2023), 8:00 PM, <https://www.thehindu.com/opinion/editorial/right-by-birth-the-hindu-editorial-on-daughters-and-hindu-succession-act/article32347299.ece>.