

# Women's property rights: An unyielding incessant struggle

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**Abstract:** The position of females in India can always be regarded as circumspect. The suspicion arises because while they have been given the responsible titles of mother, sister and the like, real economic currency has been withheld from them. Ancient times speak of what looks like unfathomably favourable laws for women to hold land rights vis-a-vis today's times. The authority women possessed, however, has gradually fallen and risen like fluctuating stocks drawn on a graph. It may sound and appear extremely derogatory to describe them as such commodity like and it is, but the logic of her being a father's property transferred to her husband is very much an idea picked up from the Hindu beliefs. What is heartening in the review the paper makes is that both the word and spirit of law has been employed to do away with this discriminatory and utilitarian attitudes and provide women, the personhood, they have long deserved. And this is done with retrospective effect to atone for the earlier unequal treatment. The paper will chart the codification of property laws and how and when women begin to attain their rightful shares.

**Keywords:** Women's property rights

## I. POSITION OF HINDU FEMALE

It is common knowledge that the Indian society is predominantly patriarchal and the preferential rights given to men with respect to property, both movable and immovable, are just another manifestation of the male centric societal structure. Giving women the right to inherit, own, use and dispose of property is a fairly recent phenomenon. Although this project deals specifically with the right to property of Hindu women, the absolute lack of such rights or the presence of only limited rights regarding property, where women are concerned is common across religions<sup>1</sup>.

In ancient times, Hindu women, irrespective of their marital status were not deprived from the use of their property. It has been found from Manusmriti that the right of women to hold property was respected (Kanaka LathaMukund, Turmeric Land, women's property rights in Tamil society since early medieval times.<sup>2</sup>

Prior to 1937 there were no codified laws to deal specifically with the Hindu women's right to property. The Hindu women's Right to Property Act came into force on the 14th April, 1937 and has no retrospective operation. As the Act was considered to be defective, it was amended by the Hindu Women's Right to property (Amendment) Act XI, 1938, which was declared to have retrospective effect, from the 14th April, 1937.

Ever after the amendment, the Act remained defective and obscure in some respects<sup>3</sup>.

The Act of 1937 conferred new rights on the widows in modification of previous decisions. It recognized three widows, viz. intestate's widow, his son's widow and the widow of a predeceased son of a predeceased son.<sup>4</sup> Under this Act, "a Hindu man's widow, his widowed daughter in law and widowed granddaughter in law are entitled to inherit to his estate, not only in default of, but along with, his male issues. The widow in a Hindu coparcenary succeeds to her husband's claim irrespective of the existence of male heirs. The right of survivorship of his collaterals is hence defeated. However, the claim granted to the widow is a limited one and it is such a limited interest that has come about to be called as a Hindu woman's estate. It is incorrectly presumed that a widow has an interest for life in the estate she inherits. Hindu Mitakshara law does not measure estates in terms of time but on the basis of usage of the estate<sup>5</sup> Under the Act a Hindu widow had no doubt a demonstrable right to obtain the entitlement to which her husband was entitled to either in his self-acquired property or in the coparcenary in which he was a member. She could demand a partition of her share from the other sharers or coparceners. But the overall limitation or circumscription which was conceived by the Act was that she should not for reasons not contemplated and accepted by the then personal law of

<sup>1</sup>(<https://www.lawctopus.com/academike/right-propertyhindu-women/>)

<sup>2</sup>,Economic and Political Weekly, WS-2 (1992)

<sup>3</sup>([http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/7870/10/10_chapter%203.pdf))

<sup>4</sup> (ibid)

<sup>5</sup>Vasonji V ChandaBibi (1915) 37 All 369 PC

the Hindus, sell or alienate her share except for accredited and sanctioned purposes<sup>6</sup>

## II. HINDU SUCCESSION ACT 1956

The Hindu Succession Act, 1956, originally did not give daughters inheritance rights in ancestral property. They could only ask for a right to sustenance from a joint Hindu family. But this disparity was removed by an amendment to the Act on September 9, 2005.<sup>7</sup>

The idea of limited estate as propagated by the Hindu Women's Right to Property Act was abolished in 1956 by the introduction of the Hindu Succession Act. The Hindu Succession Act was a progressive act that brought about many reforms, the most important being the granting of absolute rights to women, over the property that they held. The benefits of the Act were twofold as held by the Supreme Court in an attempt to put all controversy at rest. The Supreme Court declared that as under section 14 of the Act, the disability of women to hold property absolutely, was removed. In addition to this, it converted the limited estate of a female owner to an absolute estate irrespective of the fact that the creation of the estate occurred at a point of time before the enactment of the said legislation, which was retrospective in nature. It has been said that this Act "abrogates all the rules of the law of succession hitherto applicable to Hindus whether by virtue of any text or rule of Hindu law or any custom or usage having the force of laws in respect of all matters dealt with in the Act. Therefore, no woman can be denied property rights on the basis of any custom, usage or text and the said Act reformed the personal law and gave woman greater property rights<sup>8</sup>

(Section 14 of this Act provides for the conversion of the limited interest of a Hindu female is into absolute rights. If she gets property from her husband she can sell it and the purchaser gets absolute right in the property, which prior to this Act, she could sell it only for the necessities of the family or to perform religious ceremonies for the benefit of her deceased husband. Section 14 is wide in its ambit. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as

stridhanam immediately before the commencement of the Act. Prior to the enactment of this legislation, women were deprived of the right to alienation of property. The concept of survivorship lost much of its effect due to this Act, which provided for the devolution of a coparcener's property unto his mother, widow and daughter, i.e. his female heirs in addition to his son if he dies intestate. However, section 6 of this Act still retains the Mitakshara coparcenary excluding women from survivorship as a result father and sons hold the joint family property to the total exclusion of the mother and daughter despite providing a uniform scheme of intestate succession.<sup>9</sup>

## III. AMENDMENT ACT 2005

Earlier, once a daughter was married, she ceased to be part of her father's HUF. Many saw this as curtailing women's property rights. But on September 9, 2005, the Hindu Succession Act, 1956, which governs the devolution of property among Hindus, was amended. According to Hindu Succession Amendment Act, 2005, every daughter, whether married or unmarried, is considered a member of her father's HUF and can even be appointed as 'karta' (who manages) of his HUF property. The amendment now grants daughters the same rights, duties, liabilities and disabilities that were earlier limited to sons.

## IV. EQUAL RIGHT TO BE COPARCENERS

- Under the coparcenary, the coparceners acquire a right over the coparcenary property by birth. The coparceners' interest and share in the property keep on fluctuating on the basis of the number of members according to the birth and death of the members in the coparcenary.
- Both ancestral and self-acquired property can be a coparcenary property. While in case of ancestral property, it is equally shared by all members of the coparcenary, in case of self-acquired, the person is free to manage the property according to his own will.
- A member of the coparcenary can also sell his or her share in the coparcenary to a third party. However, such a sale is subject to the Right of Pre-emption of the remaining members of the coparcenary. The remaining members, however, have the "right of first refusal" over the property, to stop the entry of an outsider.
- A coparcener (not any member) can file a suit demanding partition of the coparcenary property but not

<sup>6</sup>Narasimhachari vs. Andalammal, (1978) 2 M.L.J. 524

<sup>7</sup><http://indianexpress.com/article/india/india-news-india/supreme-court-sets-2005-cut-off-on-womenright-to-ancestral-property/>

<sup>8</sup>Available at <http://newcenturyindianlaw.blogspot.in/2011/02/womens-right-toproperty.html> (Last

visited March 10, 2014). (<https://www.lawctopus.com/academike/right-property-hindu-women/>)

<sup>9</sup>Amrito Das, "Notional Partition, A critique, Section 6 of The Hindu Succession Act 1956", J 149 AIR (2004)

a member. Thus, the daughter, as a coparcener, can now demand the partition of her father's property<sup>10</sup>

**Conclusion**

In 2005, women had been given the right to be a coparcener, as yet denied but it was silent on her taking up the role of a karta. Traditionally, women have been taking care of households on the most minimal of incomes and it was only natural to see that women were actually very efficient managers apart from the argument of equality. Thus, rightly so Sujata Sharma Vs Manu Gupta considered and recognized that woman are capable of being a karta.

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<sup>10</sup>(<https://www.makaan.com/iq/legal-taxeslaws/what-are-property-rights-of-daughters-in-hufs>)