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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HOW HAVE CHANGING SOCIETAL STRUCTURES INFLUENCED LEGAL REFORMS IN INHERITANCE LAWS TO PROMOTE GENDER EQUALITY, WITH A FOCUS ON THE INDIAN CONTEXT?

AUTHORED BY: SRINIVASULA GOUTHAM

Introduction:

India is a nation with vibrant customs and ancient traditions. This is why it always faces a unique challenge i.e., balancing its rich heritage with the evolving needs of a modern society. A deep respect for tradition and following the methods that have been followed for ages, while admirable, can sometimes lead to the continuation of discriminatory and outdated practices. Inheritance law is one such area where tradition has clashed with changing societal values. Before 1956, inheritance rights within the Hindu legal system were largely governed by Hindu Uncodified Law. This uncodified law reflected the patriarchal norms of those times. Women were placed at a significant disadvantage when it came to inheriting property, a practice that constrained their financial independence. However, the rise of feminism and a growing public awareness of gender equality have actively incentivised efforts to reform these laws. In this paper, I will explore how these social forces have pushed for the modernisation of succession laws aiming to achieve a more just and equitable distribution of property across genders.

Rise of Feminism:

The late 19th and early 20th centuries saw the rise of the first wave of feminism, with a core focus on achieving equal rights for women. Obtaining voting rights became a central theme. In Britain, this struggle was headed by the Suffragettes. Their tireless campaigning efforts finally gave results in 1918 with the Representation of the People Act. This act initially granted voting rights to women over 30 who met property ownership qualifications. However, the fight for full equality continued, and by 1928, the right to vote was extended to all women over the age of eighteen.¹ Colonial rule

¹ Rekha Pande, *The History of Feminism and Doing Gender in India*, 26 ESTUDOS FEMINISTAS 1, 2-3 (2018).

in 19th-century India triggered a wave of social reform movements. These movements were driven by a new Indian middle class fighting with the realities of colonialism.² The campaigns for woman suffrage in India in the early twentieth century were undoubtedly influenced by the successes of the British women's rights movement and the activism of British women reformers residing in India.³ However, Indian campaigns also drew inspiration from indigenous feminist ideas and the work of pioneering Indian women like Savitribhai Phule, Kamini Roy etc. The early 20th century witnessed a rise in feminist movements in India, influenced by both internal and external factors. Subhas Chandra Bose saw this growing women's movement as a crucial element in India's struggle for independence. Bose believed that mobilizing women, drawing inspiration from powerful figures in Indian mythology and history was a prerequisite for national liberation. These figures served as role models for Indian women, growing a sense of empowerment and duty towards the nation.⁴ While some envisioned a nation rooted in a romanticized & static past, a burgeoning feminist movement dared to dream of a "new Indian modernity." These women, far from yearning for a bygone era, rejected the notion that tradition should dictate their roles. Instead, they supported a vision of a modern India where women could flourish, empowered with greater rights and freedoms. Their voices resonated deeply during the interwar period, fuelling the nationalist movement. By challenging the very fabric of traditional gender roles, these Indian feminists not only carved a path for their own liberation but also pushed for a more progressive and equitable future for the entire nation.⁵ The growing influence of feminism in the early 20th century coincided with another significant development i.e., the Government of India Act of 1935. This Act, while not directly addressing inheritance rights, marked a step forward in recognizing women's political participation. The Act established separate electorates for women in provincial assemblies. This allowed women to directly elect female representatives, potentially amplifying their voices within the political system. Also, the All India Women's Conference founded in 1927 (AIWC) emerged as a powerful force for positive change in India. Initially focused on improving education and social welfare, the organization soon broadened its agenda to tackle social injustices. AIWC

² Ambalika Guha, *The 'Masculine' Female: The Rise of Women Doctors in Colonial India, c. 1870–1940*, 44 SOCIAL SCIENTIST 49, 49-51 (2016).

³ Barbara Southard, *Colonial Politics and Women's Rights: Woman Suffrage Campaigns in Bengal, British India in the 1920s*, 27 MODERN ASIAN STUDIES 397, 399-403 (1993).

⁴ Carol Hills and Daniel C. Silverman, *Nationalism and Feminism in Late Colonial India: The Rani of Jhansi Regiment, 1943- 1945*, 27 MODERN ASIAN STUDIES 741, 743-750 (1993).

⁵ Mrinalini Sinha, *Refashioning Mother India: Feminism and Nationalism in Late-Colonial India*, 26 FEMINIST STUDIES 623, 631-633 (2000).

members became vocal advocates for legislative reforms, pushing for the eradication of child marriage and securing women's rights to divorce and **inheritance**.⁶

Influence of Feminism on Inheritance laws:

The growing influence of feminism, alongside a growing public recognition of gender inequality, paved the way for long-awaited changes in inheritance law. The Hindu Women's Right to Property Act of 1937, stands as a landmark achievement in this journey. While it granted widows only limited rights within the existing joint family property system, it marked a critical first victory.⁷ This act differed from traditional structures that had previously excluded women from inheritance, setting the stage for further advancements in the fight for equal inheritance rights for all women in India. The Act primarily focused on improving the inheritance rights of widows. It granted them a "limited interest" in their deceased husband's coparcenary property. This meant that they could use the income generated by the property but not sell or dispose of it themselves. Notably, the Act did not extend inheritance rights to daughters. They remained excluded from coparcenary property rights, a significant limitation that continued to disadvantage them. By granting widows limited property rights, it began to take away the absolute control held by male members of the family. Despite its limitations, the Act represented a challenge to the traditional patriarchal structure of the Hindu Undivided Family. A Hindu Undivided Family is a family unit consisting of all lineal descendants of a common ancestor. Property within the family is considered "coparcenary property", jointly owned by all male members by birth. This includes sons, grandsons and great-grandsons of the founding ancestor. Traditionally, the eldest male member would act as a "Karta" who managed the family property and finances. Inheritance rights within the Hindu Undivided Family System were historically discriminatory towards women. Traditionally, the dominant view suggests that families before the 20th century were structured around patriarchy. Sociologist Goren Therborn defines patriarchy as "the rule of the father and the rule of the husband, in that order".⁸ In simpler terms, the male figure held the most authority within the family unit. He controlled decision-making for both children and women & served as the family's representative in the wider

⁶ BRITANNICA, [All India Women's Conference \(AIWC\) | Description, History, & Work | Britannica](#) (last visited Apr. 26, 2024).

⁷ Vijay P Singh, *Safeguarding the property rights of Hindu women in India: analyses of legislative and judicial efforts*, 30 TRUSTS & TRUSTEES 1, 1-7.

⁸ Bert N. Adams, *Themes and Threads of Family Theories: A Brief History*, 41 JOURNAL OF COMPARATIVE FAMILY STUDIES 499, 499-501 (2010).

community. Though limited, the ability to access income from the property provided widows with a degree of financial independence and potentially improved their bargaining power within the family structure. The limitations of the 1937 Act fuelled further activism by feminist groups who continued to push for broader reforms that would ensure equal inheritance rights for all daughters.

The Hindu Women's Right to Property Act of 1937, though a significant first step, left much to be desired. Daughters remained excluded from coparcenary property, and widows' rights were limited. Dr. B.R. Ambedkar, referred to as the “chief architect” of India's constitution, supported social reform through his proposed Hindu Code Bill. This comprehensive legislation aimed to modernise Hindu personal laws, particularly regarding inheritance. A central tenet of the Bill was a radical departure from traditional practices. It proposed granting equal inheritance rights to widows, daughters, and the widows of predeceased sons, placing them on an equal footing with sons in inheriting property.⁹ This revolutionary proposal, alongside other planned reforms, aimed to create a more equitable and just legal framework for Hindu families. However, the fight for reform continued, resulting in a more comprehensive overhaul of inheritance laws with the Hindu Succession Act (HSA) of 1956. The HSA ensured women inherited a share of their parents' property alongside sons. However, this inheritance came as an "absolute interest," distinct from coparcenary rights.¹⁰ This meant they received ownership of the property but did not become coparceners with the existing coparcenary body (usually sons and male descendants). Section 14 of the Hindu Succession Act 1956, established the principle that any property, movable or immovable, possessed by a female Hindu (daughter, widow, etc.) would be considered her absolute interest.¹¹ This section protected women's property from control by male family members. Previously, a woman's property might be managed or controlled by her father, husband, or other male relatives. Section 14 ensured she had complete ownership and decision-making rights over her belongings. By granting complete ownership, Section 14 empowered women financially. It challenged the existing patriarchal system and safeguarded women from potential exploitation by family members who might try to claim rights over their property, as the feminists always aimed for.

⁹ ARCHIVE, [64A1. On The Hindu Code Bill \(archive.org\)](#) (last visited Apr. 24, 2024).

¹⁰ The Hindu Succession Act, 1956, § 14, No. 30, Acts of Parliament, 1956 (India).

¹¹ *Id.*

Urbanization and Nuclear Families:

The rise of feminism was not only the reason for such reforms in inheritance laws. Urbanization and the growing number of nuclear families also contributed to the change. The rapid growth of cities in India over the 20th century has been a defining force in shaping society. This urbanization has had a significant impact on traditional family structures. As people migrate from rural areas to urban centres in search of work and opportunity, the extended joint family system, prevalent in many parts of India, has begun to see a shift. The challenges of urban living, such as smaller living spaces and higher costs of living, often favour the formation of nuclear families consisting only of parents and their children. This trend towards smaller, more independent family units reflects a broader societal change as India transitions towards a more urbanized future. A 1962 study conducted by I.P. Desai in the town of Mahuwa, Saurashtra, provided evidence of this changing landscape. The study found that over half (53%) of families resided in nuclear structures, while only a third (32%) remained in traditional joint families and the rest 15% were in a transition stage.¹² This data, while specific to a single town, offers a glimpse into the trend of nuclear families becoming increasingly prevalent in urban areas of India during the mid-20th century. In traditional joint families, property remained within the larger family unit, even if daughters married and left. They were expected to join their husband's family and contribute to their new household. Under this system, there was an argument that since daughters wouldn't contribute to their parental property after marriage, they didn't deserve inheritance rights. The rise of nuclear families significantly weakened the traditional justifications for excluding daughters from inheritance. In these smaller family units, daughters' potential contributions became more crucial. However, the Hindu Succession Act of 1956, while granting daughters an equal share, did not grant them full coparcenary rights. This, coupled with the realities of urbanization and social change in India, created a growing demand for a more equitable system. The Hindu Succession (Amendment) Act of 2005, addressed this need by finally recognizing daughters as coparceners with equal rights in ancestral property.¹³ The Hindu Succession (Amendment) Act of 2005 ushered in a groundbreaking transformation of Hindu inheritance law. The act revolutionized Hindu inheritance law by granting daughters coparcener status in joint family property. This empowers

¹² Sudha Kaldate, *Urbanization and Disintegration of Rural Joint Family*, 11 SOCIOLOGICAL BULLETIN 103, 107-110 (1961).

¹³ The Hindu Succession (Amendment) Act, 1956, § 6, No. 39, Acts of Parliament, 2005 (India).

them with equal rights and responsibilities alongside male heirs, including the potential to become the "Karta" (head) responsible for managing the property. For centuries, the ancient law text Manusmriti dictated that Hindu women were dependent on men throughout their lives on their fathers, husbands, and even sons.¹⁴ This created a deeply ingrained belief system that finally shattered in 2005 with the Hindu Succession (Amendment) Act. This landmark legislation marked a turning point for women's inheritance rights. The Act dismantled the outdated notions of female dependence. Women can now claim their rightful share of ancestral property, regardless of their marital status whether they are unmarried, married, or widowed. Wives gained equal rights to their husband's property, ensuring greater financial security. Most importantly, women have complete control over any property they acquire, whether through inheritance, partition, or their own means. This empowers them to build a more secure future, especially as they age.

Conclusion:

India's journey towards equal inheritance rights for women stands as a testament to the power of social movements, legislative reform, and evolving social structures. While the initial steps, like the Hindu Women's Right to Property Act of 1937, were crucial in breaking down the foundations of a discriminatory system, they fell short of complete equality. However, sustained efforts by feminist organizations, legal scholars, and changing demographics ultimately culminated in the landmark Hindu Succession (Amendment) Act of 2005. This amendment, granting daughters coparcenary rights, marked a turning point, dismantling the last bastions of legal inequality within inheritance laws. The impact of these reforms extends far beyond just legal rights. By empowering women financially, they foster greater independence and self-reliance. Women are no longer solely dependent on husbands or male family members for financial security. This newfound agency allows them to make informed choices about their lives, careers, and education. Additionally, the recognition of daughters as coparceners challenges outdated notions of female dependence within the family structure. It paves the way for a more equitable distribution of resources and decision-making power within families.

¹⁴ Debarati Halder and K. Jaishankar, *PROPERTY RIGHTS OF HINDU WOMEN: A FEMINIST REVIEW OF SUCCESSION LAWS OF ANCIENT, MEDIEVAL, AND MODERN INDIA*, 24 JOURNAL OF LAW AND RELIGION 663, 685-687 (2008).

However, the journey towards complete gender equality in inheritance rights is not over. Issues surrounding the retrospective application of the 2005 amendment and potential challenges within the joint family system remain topics of debate. Looking ahead, continued awareness campaigns and legal education initiatives are crucial to ensure women understand and exercise their inheritance rights effectively. Additionally, fostering a societal shift that embraces these reforms as a step towards a more just and equitable family structure is essential.

