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ABOUT US

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

CONSTITUTIONAL PROVISIONS AND OTHER LAWS EFFECTING STATUS OF WOMEN

AUTHORED BY - DOORVA DUBEY & AVANTIKA MADHESIYA

“Woman is born free and remains equal to man in rights. Social distinctions may only be based on common utility.”

-Olympe de Gouges, in her *Declaration of the Rights of Woman and the Female Citizen*
(1791)

“I am in no sense a feminist, but I believe in women being able to do everything... Given the opportunity to develop, capable Indian women have come to the top at once.”

-Indira Gandhi, former Prime Minister of India, reflected on women's capabilities

1. INTRODUCTION-

Without a woman, the world would be incomplete. As per said women is precious for the world, government of every state of the world make special rights for women in the Constitution. The Constitution is a collection of laws that are enforced to regulate people's conduct. Women have been regarded as a less significant part of society from the authoritative point of view, from the beginning of civilisation, and they have been victims of crimes such as rape, eve teasing, female infanticide, dowry, domestic violence, child marriage, and acid throwing.

They were only permitted to live in their husbands' and fathers' shoes. Women's lives are being protected by laws designed to protect them from the violence of their families and communities, as well as to give them with the rights to which they are entitled. In this chapter we will explore the legislative evolution of the Hindu Succession law, the need and its impact, and the progression towards Hindu Succession (Amendment Bill) 2015. The Constitution of India guarantees equality of status and equal opportunities for all nationals, regardless of whether they're males or females.¹ It specifies that no individual will be denied equal rights and equal rights inside this territory of India to ban discrimination on the grounds of sex, race, place of origin and so on. There has been an increasing desire for laws to be free of gender

prejudice and for law equality to be provided in all areas of life. It directs because women should have equal rights or advantages with males and the State might provide some for women's welfare in a specific way.² But equality is indeed a long cry in practice. The entry of British in the land of India had made a revolutionary change in the social life of the people of this country. They made challenging effort towards the legal system of the country.³

In the early years of British rule, the family and the succession laws and customs of the Hindus, Buddhists, Jains and Sikhs had come to be known by the compendious expression 'Gentoo'⁴ which means the laws of native. Later they were called the 'laws of the shastras' and finally referred to as 'Hindu law' after the popular name of the numerically largest and predominant group among these four communities.⁵ From the very beginning of their rule in India the British had adopted the policy of non- interference to all Indian communities and apply their religious based laws. The earliest Regulations of that period had laid down that the 'Gentoo's' would in matters of family law be governed by the 'Law of the shastra.

The ancient legal texts of India had given custom and usage an overriding status over religious law, and this legal position was to be maintained by the British Indian courts⁹¹. Taking note of this feature the Privy Council of England had observed in the case of *Collector of Mathura vs. Mootoo Ramalingam*⁶ that 'under the Hindu system of law clear proof of usage would outweigh the written text of the law'.

The dictum, however, was translated into the provisions of Acts passed in 1872 to regulate the working of the Civil Courts. For instance, section 5 of the Punjab Laws Act 1872, laid down as, 'The rule of judgment in respect to matters of succession, women's special property, wife, marriage, divorce, adoption, guardianship, minority, bastardy, family ties, wills, legacies, gifts or gifts shall be:

The custom applicable towards the parties which hasn't been amended, abolished, and therefore not declared invalid through any competent authority, that is not adverse to justice, fair, & good conscience'; The Bengal, Agra and Assam Civil Courts Act 1887 had issued directions to the courts to apply personal laws, without reference to custom, but in practice custom was allowed by the courts supremacy over personal law also in the regions covered by it.

Hindu law and custom with priority for the latter were thus recognized, but both were subjected to the contrary provisions of State legislation. “With the passage of time and development in the field of law, a number of legislation has been passed by the British to bring the reformation in the field of women emancipation. Although the legislature has enacted number of laws for protecting the interest and dignity of women, conversely these laws have not able to protect the women from the sphere of injustice. The discrimination against women is increasing day by day. Traditionally the birth of a daughter within the household is not welcomed, as the various references in the religious texts will reflect in the upcoming chapters. The traditional undesirability towards a female child, at least in preference of boys, is made clear through the distribution of property and rights of females in the Hindu household.

The study is related with the women’s right to property under Hindu legal system. If to traced the concept of Hindu legal system from their origin in elaboration, the sources, the development, the decided cases and the commentaries, have to be analysed, among which, sources and decided cases too numerous that it may not be practicable to cover all of them. However, an attempt has been made in concise to analyse and better understanding of the position of women under Hindu society.

2. CONSTITUTIONALISM IN CONTEMPORARY TIMES-

Today, Constitutionalism has surpassed the importance of effective government in evolving women rights in contemporary times. Constitutionalism may be described as a ‘belief in Constitutional governance’ in everyday language. But, exactly, what does constitutional governance imply? Is it a government with a constitution, a government founded on a constitution or a government that acts by a constitution? The idea seems to be unclear. Constitutionalism is the theory that regulates the validity of government activity, and it entails something much more essential than the concept of legality, which requires officials to follow pre-determined legal standards.

In other words, Constitutionalism examines whether a government's actions are legal and if officials carry out their responsibilities in line with laws that have been pre-determined. The latter definition demonstrates that just possessing a constitution does not guarantee or bring about constitutionalism. Apart from a few governments that have unwritten constitutions, virtually every nation/state in the world now has a constitution. This does not, however, imply

that all these states adhere to the rule of law. That is why constitutionalism, rather than a constitution, is much more essential.

2.1 Features of Constitutionalism-

Constitutionalism according to Barnett, entails power restraint (limited government), division of powers (checks and balances), and responsible and accountable governance. Henkin⁹⁵ Under the property rights of Indian women discussed in his chapter, “identifies popular sovereignty, rule of law, limited government, separation of powers (checks and balances), civilian control of the military, police governed by law and judicial control, an independent judiciary, respect for individual rights, and the right to self-determination as essential features (characteristics) of constitutionalism.

2.2 Panoramic Constitutional Framework and Legal Protection to Women in India-

In the Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles, the concept of gender equality is entrenched. The Constitution not only guarantees women's equality but also allows the government to take affirmative discrimination measures in their favor. Our laws, development strategies, plans, and programmers have all sought to promote women in many areas within the framework of a democratic democracy. India has also ratified a number of international treaties and human rights instruments that pledge to ensure women's equality. The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 is one of the most important.

2.3 Mainstream Constitutional Provisions for Women in India

The Indian Constitution not only guarantees women's equality, but also allows the government to implement measures of positive discrimination in their favor in order to mitigate the accumulated socioeconomic, educational, and political disadvantages they suffer. Fundamental rights include, among other things, ensuring equality before the law and equal protection under the law; prohibiting discrimination against any citizen on the basis of religion, race, caste, sex, or place of birth; and ensuring equal job opportunities for all people. The Constitution's Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42 are particularly important in this respect.

2.4 Special Initiatives For Women⁷

Women in India are being provided with the legal security to secure their economic, social and cultural lives. These are few acts which show the efforts made by Indian Government in interest of women's life safeguard. Dowry Prohibition Act 1961, Maternity Benefit Act 1861, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013, Hindu Widows Remarriage Act 1856, Muslim women (protection of rights on divorce) Act 1986, Guardians and Wards Act 1890, Indian Penal Code 1860, Christian Marriages Act 1872, etc. having major implication to understand.

Table 1: Legislation for Women's Rights

Law	Year	Key Provisions
Dowry Prohibition Act	1961	Prohibits giving or receiving dowry
Maternity Benefit Act	1861	Provides maternity leave and benefits
Births, Deaths & Marriages Registration Act	1886	Registers births, deaths and marriages
Medical Termination of Pregnancy Act	1971	Allows medical termination of pregnancy
National Commission for Women Act	1990	Establishes a commission to protect women's rights
Pre-natal Diagnostic Techniques Act	1999	Regulates and prevents misuse of prenatal diagnostics
Protection of Women from Domestic Violence Act	2005	Provides protection from domestic violence
Sexual Harassment of Women at Workplace Act	2013	Prevents sexual harassment at workplaces
Hindu Widows Remarriage Act	1856	Allows remarriage of Hindu widows
Muslim Women (Protection of Rights on Divorce) Act	1986	Protects Muslim women's rights after divorce

3. PROPERTY RIGHTS OF INDIAN WOMEN-

Women's property rights empower them and contribute to society's economic growth. Property refers to a person's or legal entity's right to possess anything they own. Ancestral property and self-acquired property may be moveable or immovable, tangible or intangible, blocked or unobstructed. It also covers property obtained via wills, leases, mortgages, charges, sales, gifts, exchanges, stridhan, and women's estates, as well as partition. Without the economic empowerment of women, societal progress is impossible. This is where property comes into

play.⁹⁹ Property rights are a subset of human rights that include all of the elements required for an individual's growth. The main components in guaranteeing women's empowerment include educational achievement, economic involvement, decision-making authority, self-consciousness, and property. However, the issue of women's property rights will be addressed here.

As women from these other countries, Indian women's property rights have developed into continued fighting here between the status quo as well as the progressive forces. Or, as is the case with women's property rights abroad, Indian women have also uneven and unjust property rights: though Indian women having gone well ahead within previous century, their property rights are still lower than males, on both amount and quality.⁸

What might be slightly significant with respect to just the property rights of Indian women was whether Indian women were, along with most other personal rights, greatly divided within area of property rights. India has thus far failed to develop a consistent civil code, home to several religions. Each religious community also continues, in various areas - property rights are just one of those - to be controlled by its own individual personal legislation. There seem to be subgroups or local customs and standards with the distinct property rights, even between the many religious groups. Hindus, Sikhs, Buddhists, and Jains are indeed controlled solely in 1956 by one code of property rights, whereas Christians see another code, while Muslims, Shia, and Sunnis haven't yet defined respective property rights. Furthermore, addition, tribal women of different religions and states continue to have access to the conventions and standards of their tribes concerning their property rights. To complicate things further, both central and state governments are authorized to adopt succession legislation there in Indian Constitution, and so States have sometimes implemented their own forms of proprietary laws in each law.⁹

And there's no unified body of Indian women's property rights. Depending on either the faith and religious class, married or unmarried, whatever region of the nation of origin, whether this is a tribal or non-tribal and on and on, the rights to just the ownership of Indian women are decided. Their irony is the fact that now the property rights of Indian women have become immune to constitutional protection throughout these divisions; because in fact they are already in multiple ways, the diverse proprietary rights may be discriminatory and arbitrary, despite the constitutional guarantee of equal rights as well as equity. Overall, with some exceptions,

the Indian courts had already refused, in accordance with the mandate of a Directive Principle of Article 44, to test the personal laws upon this corner of the Constitution to strike that which is clearly unconstitutional and left its wisdom of lawmakers with a choice of time to establish a uniform civil code.¹⁰

This is followed by an effort to map this interaction of socio-legal dynamics, which led to the property rights and the issues facing Indian women today

3.1 Indian Constitution: Equal, Established and Appropriate Framework, Through Action, Good Legislation-

Our Constitution is a very well structured to maintain equality between its inhabitants. It not only ensures equality as basic right for any and all individuals in accordance with Article 14¹¹, but it also extends this to include positive action and positive discrimination in the future Articles. Article 14 of the Indian Constitution stipulates that: 'The State ought not to deny equality or equal protection of legislation within the Indian territory for any individual well before law.' This provision would have in practice been taken to deduce 'substantial' equality rather than 'formal' equality, as even the Supreme Court of India and indeed the Indian High Court judicially stated and enlarged on in various rulings.

The latter specifies that equality alone must still be considered being equal & inequality shouldn't be equal. This broad paradigm itself allows positive action by specific legislation that creates rights and positive discrimination through reservations in favour of the lower groups of society. Article 15 of the Constitution provides for the prohibition of discrimination on just about any arbitrary grounds, especially sex, as well as affirmative action parameters and positive discrimination: "This perspective is reinforced by the following: 'Article 15: Ban on discrimination based on religion, race, caste, sex, place of birth or indeed any such:

1. This shall, for reasons relating to religion, race, caste, sex and location of child, and any of those, never discriminate against every citizens.
2. No citizen having regard to just about any disability, responsibility, restriction or condition relating to just the grounds of religion, race, caste, sex, place of birth or any other of them: a) Shops, public dining, hotels & entertainment places are accessible; b) To use of, entirely or partially out of State funds and to the department of wells, tanks, bathing-ghats, streets and public resorts;

3. The State did not permit any arrangements for women and children under this Article.
4. The State may not provide for both the promotion, under this article or in paragraph, of a socially or educationally disadvantaged citizen class, and the promotion of Scheduled Castes and Scheduled Tribes (2) of Article 29.

Firstly, women are amongst the groups designated, vulnerable and so specifically protected against discrimination in just about any form or manner. Second, women are entitled to particular protection or privileges by laws, if necessary, to compensate for the social and historical disadvantages they have experienced just because of their sex. The Indian courts also have used Article 21 of the Constitution as an umbrella provision, defining the fundamental right to privacy as ‘the right to everything that makes life meaningful as well as prevents from becoming a mere existence,’ including right to food, clean air, water, roads, health, and, most importantly, the right to shelter/housing.¹²

Therefore, due to constant very strong constitutional assurances of equality for women, Indian women's property rights are far from gender-just even today, despite the fact that several disparities have also been worked out in courts. Some of Indigenous women's rights are highlighted here, mixed with historic judgments that have made them less unequal in sex.

3.2 Customary and religious recognition of women's property rights-

Since unprecedented times, women all over the world have been proven to be subject of concern. Half of the people in the world population “the women” since the unwritten times had struggled and fight for their basic rights. Somewhere in the patriarchal establishment or elsewhere because of the natural role of women he had to play, her compromised circumstances moved her to encourage them to claim her rights.¹³

4. LEGISLATIVE EVOLUTION OF THE HINDU SUCCESSION LAWS

The journey towards giving a concrete form to the traditional laws, moving from customs to legislation started in 1865 with the Indian Succession Act 1865 (Act X of 1865)¹⁴. The Act was also first in a series of legislations that strengthened the position of proprietary rights of women, which were earlier non-existence. “The Act laid down that ‘no person shall, by marriage, acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if not married to that person.’¹⁵

This was followed by the Married Women's Property Bill 1874. The Act declared that any earnings of a married woman or any property acquired by her from her own labour and skills will be her own property and she can file a suit for the same under her own name. The Act however, didn't receive criticism from the general public as initially, Hindus, Muslims and Christians were excluded from the scope of its application.

However, in 1923, Hindus were also brought under the Act. This was the first time when independent right to property was created for the women. Thereafter, the Hindu Law of Inheritance Act 1929 (Act 2 of 1929) was passed. The Act did not make any material change, but was only restricted to the separate property. These are aimed not at changing the law regarding a woman's property, nor 'only to ensure that when a husband succeeded to his wife's stridhan property, it descended in the same way as if it had belonged to the husband himself, after her death.'¹⁶

Following this, the Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937) was passed which made a great impact. The Act granted life interest in the property to the women i.e. they were entitled a right in the property of her husband's separate property after his death. The right allowed a widow, precedence over other heirs of the husbands. The Property would however, revert to the heirs of the husband once the widow dies as her interest was only limited. The Act was however not a solution to all the problems in the traditional laws and the law had to be developed further. This prompted the Rau Committee to revamp the laws among Hindus in all respects." The Hindu Code of Succession obtained the President's approval and that on 17 June 1956 became legislation of both the country.

Table 2: **Progress of Hindu Succession Laws**

Year	Legislation	Impact
1865	Indian Succession Act	Introduced property rights framework
1874	Married Women's Property Act	Allowed women to own property
1929	Hindu Law of Inheritance Act	Allowed inheritance of separate property
1937	Hindu Women's Right to Property Act	Granted life interest in property
1956	Hindu Succession Act	Created unified succession laws for Hindus
2005	Hindu Succession Amendment Act	Gave equal rights to daughters in coparcenary property

4.1 Hindu Succession Act, 1956: A Watershed Moment

The Hindu Succession Act of 1956 followed certain principles of the classical Hindu law and made certain necessary changes, in consonance with the constitutional rights enshrined under part III of the Constitution of India. E.g. the doctrine of survivorship was continued in the statute exactly as it was in the classical Hindu law in a Mitakshara coparcenary, but an exception was made to protect the rights of the female heirs of a coparcener. This has been dealt with in detail a little later in the chapter. That Act led to reforms toward the law of succession and granted rights to women's property which were not yet understood. Nevertheless, the specific rights of members of either a Mitakshara coparcenary just hasn't been interfered with save in rare circumstances to lay out regulations for the transfer of interest on a corpse.¹⁷ This Act establishes a single, comprehensive heritage system and applies inter alia to people who've been previously ruled by the Mitakshara and Dayabhaga Schools including in some regions of south India: Murumakkattayam, Aliyasantana and Nambudri Systems. As regards intestate succession, the aim of the 1956 Hindu Succession Act is to provide a reasonably consistent legal regime for certain Hindus. That removes gender disparities in property law and develops a list among heirs who are entitled to still be successful on the basis of natural love and devotion rather than religious effectiveness. This lists the main item as below:

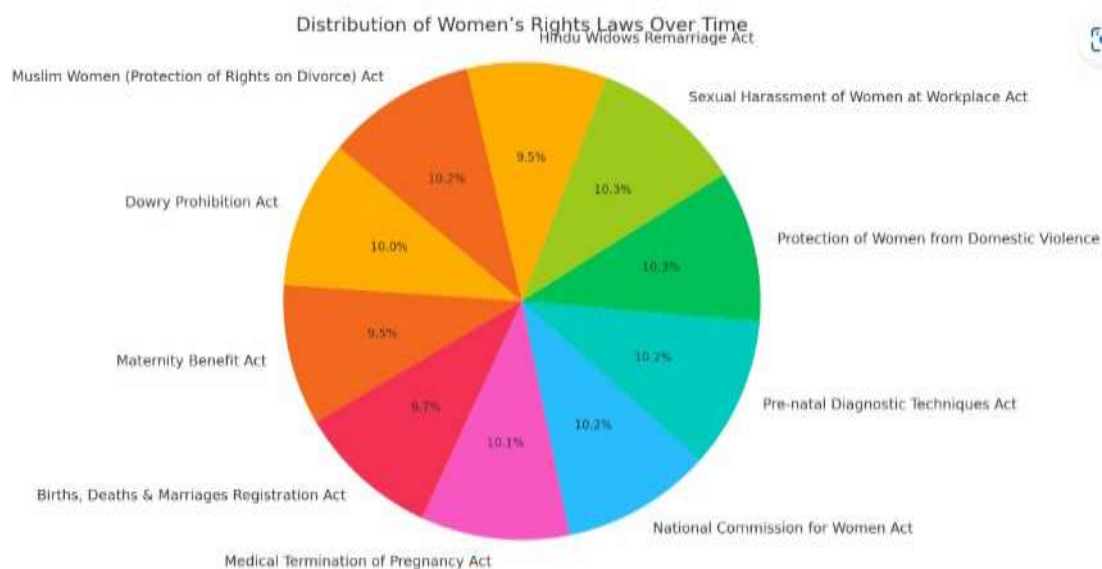
- a) 'To create, in respect of Intestate Succession, a reasonably consistent law system for all Hindus, that is, succession to property wherein the individual who died did not make a will.
- b) Give a daughter a right of inheritance because it was not previously attainable to her under all systems the pure Hindu law.
- c) To develop a list of successful successors on the basis of natural affection and love but instead of religious effectiveness.
- d) as found also on statute book the law should be implemented, and customs law ought not be impeded or changed.¹⁸

4.2 Division of property among heirs in class II of the schedule:

Even in case of no successors of both classes I, then property of such an indiscriminate male Hindu die goes on to the heirs of class II. With respect to the succession of those same class-II heirs, Section 11 of the Act stipulates that the property of the intestate will be divided into one of those heirs in class II I of the schedule. The first entry must be followed by the second

entry. And there is just one heir in a specific entry, that heir takes the entire estate; however, if there are more than just heir inside the entry, these all heirs share equally.¹⁹ Illustrations:

1. Father, brother, and sister's daughter are indeed the surviving heirs. In this case, father will inherit the entire estate as either an heir in class II, entry (I), to both the exclusion for two other heirs in entries II and IV.²⁰
2. Brother, sister, father's brother, and mother's mother are the remaining heirs. Nothing will be given to the final two. Being the heirs in item II, the first two will get the estate simultaneously as well as in equal parts, rather the other two heirs in entries VII and VIII.



4.3 Order of succession among agnates and cognates:

Section 12 of the Hindu Succession Act lays down rules of preference establishing the succession order between agnates & cognates the following are indeed the rules: **Rule 1:** Of two heirs, it is desirable to choose something with fewer or no degrees of ascent.

Rule 2: When the number the degree of climb is equal or none, an heir with the fewest degrees in descent is selected.

Rule 3: When neither heir has the right to be favoured over others under Rule 1 or Rule 2, they both take at the very same time.

In light of the above discussion, section 13 of the Act establishes the following rules for degree computation: (1) Relationship must be reckoned from of the intestate towards the heirs in terms degrees either in ascent or degrees in descent or even both, as even the case may well be, again for process of identifying the order of succession amongst agnates and cognates. (2) The

intestate is included in computation of degrees of climb and descent. (3) Each generation represents an increasing or decreasing degree. Female intestate succession As stated earlier, a Woman had two types of property: (a) (b) Stridhana Hindu Women's Estate The Act introduced two modifications to the word 'Stridhan.' One was that under law of succession, all stridhan of various types would indeed be treated as one. Second, the boy being given the same right as the girl to inherit the stridhan. The Select Committee changed the previous norm that, under Hindu law, a woman's husband comes significantly later with in case of succession - a clause contained in the original Rau Committee.²¹ The spouse was added to the line of several other stridhan heirs by the Select Committee. In Hindu law, a woman previously acquired what's been known as a 'life estate' because when property went to her husband's reversion following her death. Two modifications were made as a result of the Act. It changed the limited estate to an absolute estate, and this also removed the reversionary's power to claim its property if the widow died or remarried. The impact of section 14 of the Act is that it gives a female Hindu total ownership, i.e., The latter male widow, though all property bequeathed to and in her possession by the Hindu male for both date of initiation of something like the Act, even when a Hindu husband or male has died long before from the beginning of this Act. From a basic reading of paragraph 14(1) either this is obvious that, except for circumstances, the estate gained under this clause either by Hindi women is absolute without in justification. Every written regulation or interpretation of Hindu law may restrict both estates' extent. The Supreme Court¹³² ruled the section 14 plainly states that if any property owned by such a female Hindu on the date th Act went into effect, whether purchased or during the Act's inception, shall be kept from her as full owner. As a result, Section 14 of the Act is retrospective.

4.4 General rules of succession to the property of a female deceased

In some exceptional cases, though, the sequence of succession becomes bound to alter. Section 15 of the Act includes the following provisions:

1. Whilst there is no son or daughter (including nearly any predecessor's son or daughter) of a deceased, whatever possessions acquired by only a Hindu woman from their father or mother will become heirs to either the father and just never to another heirs and in order provided for it;
2. In the absence from any son or daughter of either of these two, "each of these properties inherited by that husband or father-in-law Hindu female shall be transferred to not only heirs subparagraph 1(1) of its order indicated herein or to the inherits of both husband or father-in-law, and not to all of them sub partly.

The Joint Committee, in amending the order of succession amongst Hindu female heirs, specified the property inherited through her father reverts toward the father's family inside the absence of issue, but property inherited through her husband or father-in-law reverts towards the husband's heirs there in absence without issue.²²

5. NEED FOR BRINGING HINDU SUCCESSION AMENDMENT

ACT 2005 AND ITS IMPACT

The need for bringing an amendment was long overdue and the Law Commission of India had also highlighted the issue in its previous reports. The first draft of the Hindu Succession Amendment Bill 2004 was based on the 174th Law Commission Report 2000 titled 'Property Rights of Women: Proposed Reforms under the Hindu Law'. As is evident from the title of the report, the focus of the report was majorly on the rights of women under the Hindu law. Discrimination against women has become so prevalent that this may sometimes be found by only reading the legislation. All property rules have been framed entirely for such advantage of males since the beginning of time, and women have already been considered as second-class citizens who rely on male assistance. The right to property is critical to a person's independence and growth.

This one is especially true when it comes to rules governing property inheritance and succession between members of such a Joint Hindu family. This discrimination appears to be so pervasive & systematic that it would have disproportionately affected women. Recognizing the above, the Law Commission chose to study certain specific provisions Hindu women's property rights under the Hindu Succession Act, 1956, in accordance with its terms of reference, of the kind that, among other things, oblige and empower that to make recommendations for such removal with anomalies, ambiguities, and inequalities within law.

5.1 Hindu Succession Amendment Act 2005 (Act 39 of 2005)

The Hindu Succession Bill 2004, adopted on 29 August 2005¹⁵⁵ by both chambers, was adopted by that of the Parliament in Rajya Sabha on 20 December 2004, and became effective on 9 September 2005. The changes made in the original Act by way of the amendment have been covered at length below and are as follows:

- a) Section 4(2) was repealed¹⁵⁶. The 2005 amendment abolished gender disparities also in legacy of agricultural land by removing section 4 (2) of the Hindu Succession Act of

1956 and legal equality between men's rights in Hindu women's land across countries. Prior to that the land inheritance were governed by state tenures rules which, in six States - Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab and Uttar Pradesh, constituted severely gender unequal. Millions of women have suffered from these injustices. We tend to overlook however many women farmers depend significantly on farming to survive.²³

b) Section 6 was revamped and the new provision is as follows:

Table 3: Comparison of Property Rights Before and After 2005 Amendment

Aspect	Before Amendment	After Amendment
Daughters' Coparcenary Rights	No coparcenary rights	Equal to sons
Right to Inherit Property	Limited inheritance rights	Equal inheritance rights
Right to Alienate Property	Limited rights to alienate property	Full rights to alienate property
Doctrine of Survivorship	Applied to male heirs	Abolished

5.2 'Section 6- Devolution of interest in coparcenary property-

1. On or from the beginning of the Hindu Succession Act 2005, the coparcener's daughter would become an ordinary Hindu family ruled by Mitaksharalaw, (a) But by time she is born, she will become a coparcino in itself as a son; (b) she has the same coparcino property rights as if she were a son;²⁴ (c) The same coparcenary assets as the son, and also any reference to the Hinduc Mitaksharacoparcener shall be taken to have included reference to a coparcener's daughter: Subject to the same obligations as a son, If nothing about that subsection affects or nullifies any provisions or alienations, such as any partition or willing dispose of property which occurred before 20 December 2004.
2. Females were now made coparceners in the joint Hindu family by virtue of section 6(1). Needless to say, they acquired this right by birth i.e. similar to that of a male coparcener. There are however confusions regarding the application of the Amendment Act as to whether it should be prospective or retrospective. This has been discussed in the following chapter. The Act also does not touch any alienation or disposition made before 20th December 2004 from the scope of such amendment. It simply means that any property that has been alienated or disposed of before 20th December 2004 cannot be claimed by such female coparcener from being included in the coparcenary property. The intention of the legislature to fix 20th December 2004 was to prevent the karta from disposing or transferring of the entire coparcenary property so as to exclude the female counterparts to

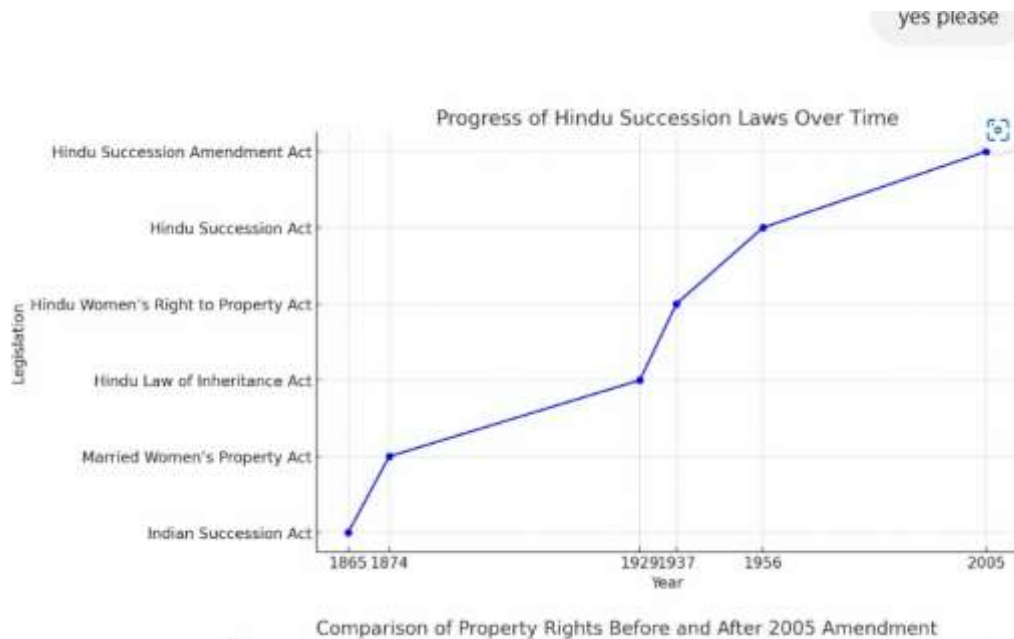
claim a share in the coparcenary property¹⁶⁰. 20th December, as stated earlier, was the date on which the bill was first tabled in the Rajya Sabha. Section 6(2) states that any female coparcener that now becomes entitled to any property by virtue of section 6(1) is at liberty to alienate or dispose of such property including testamentary disposition under section 30. Section 6(3) brings about a major change in the law. As shown earlier, the original section 6 validated the rule of survivorship where any property of a coparcener shall revert to the remaining coparceners. The Act however provided for an exception where a deceased coparcener dies leaving behind a female class I heir or a male claiming through such female. In such a case, the property shall not be governed by the doctrine of survivorship but by the provisions of the Act, as has been explained earlier. After the amendment, the section was turned upside down, as the rule which was originally an exception was now made the general law without any exceptions. Hence, doctrine of survivorship was abolished entirely, which constituted an important aspect of the traditional Hindu law of succession. Section 6(4) considers the situation of pious obligation. As discussed earlier, pious obligation is considered as a debt that a son, son has to discharge of his father, father's father, father's father. Pious obligations were valid in the traditional laws but by section 6(4), they were made non-effective. However, any obligation, which a son had to discharge before the commencement of the Amendment Act of 2005 were not touched.

Simply put, the provision was not given retrospective effect but only prospective effect. It is also important to consider that pious obligation has not entirely been abolished. In a simple sense, the Act validates such obligations that required any alienation to be made in context of such obligation. Thus, only those obligations have been invalidated that do not involve disposition of any property. Section 6(5) provides that no partition effected before 20th December 2004 shall be re-opened. Explanation to section 6(5) provides that only those partitions shall be valid that are either affected by way of a partition deed which is duly registered and partition by a decree or order of court. There are no traces of oral partition here. This however is an anomaly. The hasty manner in which the Amendment Act was enacted is reflected in the changes made as they're surrounded by clouds of suspicion. These anomalies under section 6 have been discussed in the later chapter.

- a) Section 23 was repealed as was recommended by the Report.²⁵
- b) Section 24 was unexpectedly repealed. This was probably a knee-jerk reaction and

will be discussed in the later chapter.

- c) Section 30 has been amended to include female coparceners as well. Now, even female coparceners could dispose of their property by testamentary succession.



¹ HENRY J. ABRAHAM, THE JUDICIAL PROCESS 30 (5th ed. 1986).

² Article 39 of the Constitution of India

³ H.L.A. Hart, The Concept of Law 110 (2d ed. 1994).

⁴ Tahir Mahmood, Principles of Hindu Law, Universal Law Publishing co. Pvt. Ltd., New Delhi, 2014, p.8

⁵ Ibid.

⁶ (1868) 12MIA 397

⁷ http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_statices_division/Constitutional&Legal_Rights.pdf

⁸ H.L.A. Hart, The Concept of Law 110 (2d ed. 1994).

⁹ Louis Henkin, Constitutionalism, Democracy and Foreign Affairs, 1 OHIO ST. J. ON DISP. RESOL. 117, 122 (1985).

¹⁰ **Shamnad Basheer et al.**, *Gendering Equality: Court Decisions on Women's Rights in India*

(Centre for Law and Policy Research 2024), <https://clpr.org.in>.

¹¹ Article 14 of the Constitution of India

¹² For instance in *Shantistar Builders v. Narayan Khimalal Tortame*: (1990) 1 SCC 520), *P.G. Gupta v. State of Gujarat* ((1995) Supp 2 SCC 182), *Chameli Singh v. State of U.P.*: (1996) 2 SCC 549, *Nawab Khan's case* (*Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*: (1997) 11 SCC 121)), right to education (*Bandhua Mukti Morcha v. Union of India* (1984 3 SCC 161), *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666) and *Unnikrishnan J.P. & Ors. v. State of Andhra Pradesh & Ors. Union of India* (1993) 1 SCC 645), right to health (*C.E.S.C. Ltd. v. Subhash Chandra Bose* (1992) 1 SCC 441, *Consumer Education & Research Centre & Ors. v. Union of India & Ors.*: (1995) 3 SCC 42), right to food (*People's Union for Civil Liberties v. Union of India & Ors.*: Writ Petition No. 196 of 2001), right to clean water (*Attakoya Thangal Vs. Union of India* [1990(1) KLT 580])

¹³ Sonia Lawrence, *Feminist Constitutionalism: Mapping a Discourse in Contestation*, 20 INT'L J. CONST. L. 611 (2022), <https://academic.oup.com>.

¹⁴ Indian Succession Act 1865 (Act X of 1865)

¹⁵ Indian Succession Act 1865 (Act X of 1865), s. 4

¹⁶ Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937)

¹⁷ Zahra Namati & Ruchi Bhargava, *Challenges and Legal Protections: Women's Rights in India and Afghanistan*, SSRN (May 5, 2024), <https://papers.ssrn.com>.

¹⁸ Louis Henkin, *Constitutionalism, Democracy and Foreign Affairs*, 1 OHIO ST. J. ON DISP. RESOL. 117, 122 (1985).

¹⁹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Nandini Singh, *Constitutional Provisions for Women Empowerment in Atmanirbhar Bharat*, 14 INDIAN INST. OF PUB. ADMIN. J. 145 (2024), <https://www.iipa.org.in>

²³ Nandini Singh, *Constitutional Provisions for Women Empowerment in Atmanirbhar Bharat*, 14 INDIAN INST. OF PUB. ADMIN. J. 145 (2024), <https://www.iipa.org.in>

²⁴ *Ibid.*

²⁵ Law Commission in its 174th Report of 2000.

