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**PROPERTY RIGHTS OF WOMEN IN INDIA- WHAT EVERY INDIAN  
MUST KNOW**- Muskan<sup>1</sup>**ABSTRACT**

A woman is the epitome of love, resilience, and delicacy. She has the power to create, foster and alchemize. But it is ironic to say that in Indian society women are discriminated against and excluded from their property rights. In the patriarchal society, women are seen as a burden to the family and are completely denied any share in their family's property. However, after a continuing struggle between a patriarchal Indian society and the developing Indian society the property rights of women have now evolved and women are fighting for their rights. Throughout Indian history, property rights were only associated with males and women have been treated as acquiescent and reliant on male support. The dominance of males in Indian society has made it more difficult for women to grow independently as an individual. But things are changing now, women are becoming independent, fierce, decisive, and empowered. Women are now understanding that they are equal to men and have equal rights too. From playing different roles of daughter, sister, wife and mother women have different responsibilities but the main responsibility of a woman is to recognize herself as an individual and an important part of this country. All this struggle to fight for women's rights will go in vain if one doesn't discuss the property rights of women in India because despite sacrificing everything for the family women are not seen as an important part of the family.

**INTRODUCTION**

Women have been suppressed all along and are made to believe that property rights do not belong to them. Despite all the laws and amendments, it still becomes a moral and social issue for a woman to claim her share in the family's property. The patriarchal male dominating society is so prevalent that it sometimes suppresses the law governing the succession/inheritance of property amongst the female members of the family. The discrimination between men and women has always made women suffer. In our country, many

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women are unaware of their rights regarding the share of the family property and even if they know their rights, they either deny to claim their rights or don't know how to implement them. Women's lack of ownership is one of the most important contributors to women's low social status and also their poverty and the violence they are subjected to. The male dominating society takes no notice of the women's right to property and does not consider her important in the social and economic aspects of human relationships. However, attempts have been made in India to improve the position of women about her succession and endowment rights with different legislative and enactments. But, still, India where half of the population are women does not have a uniform civil law regarding the property rights of women. The property rights of an Indian woman are determined depending on her caste, religion, nationalism, marital status and whether she is tribal or non-tribal and so on. To intricate it further under the Indian Constitution, both the central and state government can approve laws on matters of property rights. Hopefully, what binds them is the fact that despite all this division the property rights of Indian women are protected and immune from Constitutional Protection.

### **Property rights of women in India: -**

#### **A. Hindu women's right to property: -**

Anyone who is not Muslim, Christian or Parsi is governed by Hindu Law in India.

The property rights of Hindu women depend on various factors, it varies depending upon the status of the woman in the family whether she is a daughter, sister, wife, mother, deserted, divorced or widow. It

also depends on the category of property one is looking at; whether it is lineal or self-procured, land or residence or the nuptial property.

#### **The Hindu Succession Act, 1956: -**

1. It did not give daughters inheritance rights in ancestral or parental property.
2. Wife is only entitled to a share in the husband's property after his death along with her children.
3. Upon separation or divorce, an Indian woman is only entitled to maintenance she has no right on husband's possession and holdings.
4. It granted the ownership of all the properties acquired either before or after the signing of the act to the females, therefore, removing the limited owner status and making them an absolute owner of the property.

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The Hindu succession act 1956, revolutionized the old concepts of inheritance with its flaws while dealing with the property rights of women since it does not give rights to daughters to claim in the father's property.

However, in Hindu Succession (Amendment) Act, 2005; daughters were given equal inheritance rights in their fathers' property as sons.

#### **B. Muslim women's rights to Property: -**

1. The property right is claimed on a person's death and not by birth.
2. A Muslim woman gets a share as stated in the personal laws. Generally, she gets one-fourth of the property when the husband dies if she has no children and one-eighth of the property with children.
3. The daughter share in her father's property is half of that of the brother.
4. A Muslim mother is entitled to one-third of her son's property if he dies and has children and if he dies and has no child then the share of the mother will be one-third.

#### **C. Christian women's rights to Property –**

1. The Indian Succession Act, 1925 controls the endowment and succession laws relevant to Parsi Christians.
2. The Christian Law for both men and women are the same in terms of inheritance and succession. A person's property is treated as self-acquired during his/her lifetime no one else can claim any share on it.
3. In simple words there is a claim on someone's property only after their death.
4. A widow has a claim on one-third of the property of the deceased husband and two-third of the property goes to the legal heirs.
5. In case of no children or grandchildren a widow gets one-half of the property of the deceased husband.

#### **Tribal woman's Rights to Property:**

It is relevant to mention that in the matter of property rights of tribal women they are ruled by an even more obsolete system of customs under which they are completely denied their rights in succession or separation. Unfortunately, they do not have any share in the agricultural land also and rectify to make the property rights of both tribal men and women equal are restricted in the names of tribal cultures and traditions.

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In *Madhu Kishwar and others v. State of Bihar and others*<sup>2</sup>, there was a public interest petition filed by a leading women's rights activist who challenged the customary laws of Bihar and other parts of the country that restricted tribal women claiming their share in father's or husband's property.

In the judgment in this case the court refused to be convinced by the argument that giving property rights to women would lead to the crumbling of lands.

"The reason that was given by the State Level Committee is that if one permits women to succeed and claim on the property then in the case of inter-caste marriages their land will be separated from them and someone else would acquire their land. But there is no such restrictions or statement in the case of the men they are allowed to fragment or partition their land. So why is the daughter/widow denied the same rights as par with the son?

Therefore, the Supreme Court said that women would get equal rights in inheriting property as per the Hindu Succession Act 1956, as amended and interpreted by the court.

### **Why is the property rights of Indian women replenished?**

Despite all the Laws and Amendments property rights of women is still not equal to men. This is because of the traditional, cultural and social view of the society which puts women at the receiving end. According to a survey report done by the UN in the states of Bihar, Madhya Pradesh and Andhra Pradesh: -

- A. Women who would like to inherit land are only 11%
- B. Parents who would not like to bequeath land to daughters is 42%
- C. Brothers who do not wish sisters to inherit land is 51%
- D. Panchayat officials who don't recognize daughter's right to inherit land is 47%
- E. Community that does not recognize women's right to inherit land is 45%

Also, there is no mentioning of any law under which the property rights of a divorced woman are protected. According to the law, a woman in case of a divorce is only entitled to maintenance and she has no right to claim on the property of the husband.

In 2010 Hindu Marriage Law (Amendment) Bill, 2010 was proposed which aimed at providing a just and equitable share to the wife in the husband's property upon divorce. However, this bill was never passed and has now lapsed.

### **Important Judicial Proclamations**

<sup>2</sup> (1996) 5 SCC 125)

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### 1. <sup>3</sup>The Case of Mary Roy Vs. State of Kerala: -

In Kerala, women from the Syrian Christian Community were prevented from inheriting property due to the old norms and patriarchal traditions. This edict was challenged by Mary Roy a woman's rights activist and educator. After the quietus of her father, she filed a case against her elder brother when she was denied any share in her father's property.

Though the appeal was rejected by the lower court, the Kerala High Court overruled the previous judgement.

In 1986, the Supreme court of Kerala gave a landmark judgement that gave Syrian Christian women the right to claim an equal share in their father's property.

### 2. <sup>4</sup>Smt. B.P. AchalaAnand– Civil Appeal No. 4250 of 2000

The case was that B.P. AchalaAnand was the legal wife of H.S. Anand due to some issue H.S. Anand deserted his wife and left her in the tenant where they were residing and started living in a lodge alone giving her no maintenance. Then B.P. AchalaAnand filed a case against his husband in the supreme court. The Supreme Court under this case stated and observed that the rights of a woman to residing in the in-laws' home come under personal laws. The supreme court also mentioned that a wife is entitled to maintenance from her husband in case of a divorce. She is also entitled to live in the house and be protected by her husband. The right to reside in the matrimonial house is a wife's right and maintenance after the divorce. She has the right to get separated in any phase of her married life.

### 3. <sup>5</sup>Mangatmul V. Punni Devi (1995) scale 199 SC

In this case, the supreme court stated that every woman is entitled to maintenance and a roof to reside by her husband. It is the responsibility of a husband to give a roof to reside, food, clothes and other basic requirements to fulfil the daily necessity of his wife.

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<sup>3</sup> Supreme court judgement 1986 <https://yourstory.com/2018/01/8-landmark-judgements-that-changed-th>

<sup>5</sup> (1995) 199 C

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#### 4. **<sup>6</sup>Vineeta Sharma V. Rakesh Sharma 2020**

The case moves around the idea and concept of a joint Hindu family and the succession rights of a daughter. In this case, a three-judge bench was formed to decide the case. On 11/08/2020 the Supreme Court passed a landmark judgement, in this case, stating that the Hindu Succession (Amendment) Act, 2005[2] will have a **retrospective effect**. Section 6 of the 2005 amendment act was amended to align with the belief of the constitution in gender equality.

#### **Evolution of status of Indian Women in Property Rights:**

After a continuing struggle, and with the evolution of time women have come at par with men. Now women are more concerned about their rights, they are becoming Independent, stable and powerful. Education has made it possible for women to understand their rights as an individual and take a stand for them.

There is a prominent quote by a well-known Women's Rights Activist Maya Angelou: -

**“Each time a woman stands up for herself, without knowing it possibly, without claiming it, she stands up for all women.**

All the struggles and brawl for women's rights have facilitated women to be who they are. Every law and amendment by the constitution made for the amelioration of women is proof that the time is evolving and things are changing for women. There are many laws and amendments made to grant inheritance rights to women. Some of them are: -

#### **1. Hindu Woman's Right to Property Act, 1937: -**

In this act, the widow now had a right over the property of the deceased husband. Unlike before, where the property of the deceased was distributed among the surviving coparceners. But now, it was the widow who had the solitary right over the property of his husband.

#### **2. <sup>7</sup>Hindu woman's right after the Hindu Succession Act, 1956:**

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<sup>6</sup> (2020) 11/08/20

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Section 14 of the Hindu Succession Act, 1956 states:

“Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as limited owner,”

In the explanation, it states that all the property of the Hindu woman which is either movable or immovable is acquired by succession or devises at the time of partition, division, divorce or maintenance, whether gifted or acquired by her cannot be challenged by any of the heirs. She has absolute ownership of that property.

### **3. Hindu woman`s right after Hindu Succession (Amendment) Act, 2005:**

Earlier in the Hindu Succession Act, 1956 daughters were not given any share in their father`s property. Then came the Hindu Succession (Amendment) Act 2005. The revolutionary landmark in this amendment was that now daughters were not only given a share but also had the equal right as a coparcener in the father`s property at par with the sons.

“Slowly but surely things are changing and evolving. Now women are becoming shareholders of their family`s property. They are now seen as an important part of the family and now they are getting valued for the things they do to build and grow a family This has become only possible because of the support from our Constitution and Laws that have unified the variable civil laws regarding the property rights of woman.”

### **4. Muslim woman`s law of inheritance**

In Muslim Law, both men and women are equal as per the law of inheritance but the share of the brother is double that of the sister. This is because the sister during her marriage will get a “Mehr” from her husband (can be either cash or property)

But the brother will have only the ancestral property with him this is why the share of the brother is double that of the sister.

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<sup>7</sup> Hindu Succession Act, 1956

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**Supreme Court`s verdict on Inheritance Rights of Hindu women**

A three-judge bench headed by Justice Arun Mishra rules that the Hindu women`s right to property is by birth and does not depend on whether the father was alive or not alive at the time of the enactment of the Hindu Succession (Amendment) Act, 2005.

It also states that a Hindu woman becomes a Coparcener at the time of birth just like the son.

**How did the case come about?**

The case came when questions were raised on multiple cases that whether the 2005 act was applied retrospectively, and if the inheritance rights of women depended upon the living status of her father.

In Prakash V. Phulwati (2015) a two-judge bench headed by Justice A K Goel decided that the property rights are only granted to living daughters of the living coparceners as on Hindu Succession (Amendment) Act, 2005 made on Sep 9.

In conflict with the 2015 judgement, a two-judge bench headed by A K Sikri decided that the share of the deceased father who died in 2001 also belong to his daughters as coparceners at the time of partition of the property as per the 2005 Law.

Then in April that year, yet another two-bench headed by Justice R K Agarwal restated the position taken in 2015.

These conflicting views were made to a reference of another three-judge bench in 2015 made in the current case.

The bench overruled the verdicts of 2015 and 2018 and now expands on the intentions of 2005 legislation “to remove discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights to the daughter as a coparcener in the father`s property.

**CONCLUSION**

The journey of a woman from eviction to acceptance in society is astonishing.

Women have come far, from being excluded to becoming an important part of society. The

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status of women in inheritance and succession has undergone unrivalled changes.

After the Hindu Succession (Amendment) Act, 2005 some progressive changes occurred which allowed women to claim their rights. But still, there is an ongoing struggle for a uniform civil code under which the property rights of every woman is covered and secured. To create an equal and uniform law for women, education is important. Creating awareness among women about their property rights is necessary so that they can fight for their rights. This is only possible through legal campaigns and social awareness programmes about their property rights. Due to a lack of knowledge and patriarchal society, many women are denied their rights and silence and self-denial from some women leads to exploitation of their rights. Every organization whether governmental or non-governmental, public, and women themselves should take a stand to bring an evolutionary change in the mindset of the society.

I believe that if the mindset and idea of the patriarchal society changes then no women will suffer for their rights.

