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**LEGAL BARRIERS TO WOMEN'S PROPERTY RIGHTS: A STUDY OF
THE TRANSFER OF PROPERTY ACT**

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Abstract

Indian laws are continuously thriving to restore women status equivalent to men however, legal reforms being prevalent in country, gender disparities in property rights is still a challenge. The blackletter of property law that is, The Transfer of Property Act of 1882 (TPA), lacks explicit provisions addressing gender-related issues in property transactions. While the Hindu Succession Act of 1956 and other religious personal laws have amended to give women equal inheritance rights, practical barriers such as patriarchal attitudes, ignorance, and social opposition persist in hindering their effective implementation. This article aim to highlight at the intersection of gender rights and property transmission laws, specifically how legal provisions do not ensure equal ownership, inheritance, and transferability of property by women. Social and cultural constraints prevents women from exercising their legal rights, especially in rural areas where property is still largely controlled by male family members. This paper also brings light on the impact of religious personal laws, which sometimes contradict the principle of gender equality in property ownership. through this article we will aim to criticize the lacunas of said act with respect to transfer of property focusing on gender equity. With overiewing the judicial precedents, this article will offer recommendations by analyzing the legal frameworks, in order to make such laws more inclusive and equitable to women in India.

Key Words- Transfer Of Property Act Of 1882 (TPA), Intersection Of Gender Rights, Equal Ownership, Deficiencies

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I. Introduction

Women in Indian society has always been treated as goddess, where they are being worshiped and respected. By the time, evolution of patriarchal norms and society drastically changed this aforesaid mentioned scenario. Now the women has to fight for their status, respect and dignity in the society. However, there has been a continuous efforts and notable advancements made in legal reforms, women's rights concerning the property ownership and transfer in India, challenges still prevails due to entrenched patriarchal norms and complexities of statutes.

The Transfer of Property Act, 1882 (TPA), which governs the transfer and ownership of property and it's incidentals, is one of the most prominent legal instrument in the Indian property law regime. Though this act is gender neutral in it's bare language yet it contains grey area which fails to recognize the socio-economic disparities and structural barriers faced by women in accessing and controlling property.²

This act primarily governs the transfers concerning immovable property, between living persons, conveyed through either sale or mortgage or lease or gift or exchange. This act is not gender biased, it applies uniformly on men and women and tries to ensure equal participation of women in property transactions.³

It can be observed that how women in the society is coerced, forced and manipulated to relinquish all their rights from the property. Besides, the diversity of laws that we have in our country, prevailing today like personal laws are also somewhere obstacles in ensuring woman's equal status. Hindu Succession Act, 1956 (amendment 2005), remarkabaly elevated the social status of women by granting daughters equal status and right as coparceners in ancestral property. However, the implementation of such laws still remains uneven, specially in rural areas where the people still have a rigid and primitive mindset and practices customary culture, social conditioning and has male dominated structure of society. These factors significantly obstructs and hinders the ascertainment of legal rights of women. Moreover, religion, caste, class, legal

² Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge University Press, 1994.

³ Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).

awareness, bureaucratic hurdles, lack of education, geographical regions, primitiveness, challenges in implementation of laws and likewise also contributes in creating hurdles and obstacles in ensuring rights of a women equally.

Therefore, the laws isolated are not sufficient in themselves in achieving the desired equality, it has to be collaborated with the socio economic realities of a woman's life, following with the efficient and strong enforcement mechanism.

II. Legal Framework Governing Property Rights in India

The laws of land which governs the property are complex and intersected between codified civil laws and religious or personal laws. They distinctly plays their individual role in defining women's role and rights with respect to ownership, control, access and transfer of property rights. Transfer of Property Act, 1882 comes into an action which primarily regulates the transfer of immovable property inter-vivos. This act was aimed to bring uniformity in property laws. Though it not contains any gender specific provisions or measures but, it also lacks in considering the socio-economic vulnerabilities of women, informal power structures and gender imbalances prevailing in the society. These aspects often influences property transactions especially between family arrangements.

This gives rise to the need for cohesive and harmonized special provisions, addressing discriminatory practices or gender biasness. Along with TPA, constitutional provisions and various other laws which governs succession and inheritance like, Hindu Succession Act, 1956 (HSA)- amendment 2005 which recognized daughters as coparceners in the Hindu Undivided Family (HUF), Muslim personal law, based primarily on the Quran and Sharia principles are critical in determining women's rights in property. These diversified legal frameworks lead to significant disparities in women's property rights and confusion among community-specific inheritance laws.

III. Practical and Social Barriers to Women's Property Rights

Legal or constitutional recognition of rights to women are not sufficient to standalone. In fact, there is a significant proportion of women in India, who are

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deprived of their property rights because of lack of de facto access to property. All because of social norms, cultural traditions, structural inequalities and deeply-rooted patriarchal norms that governs the families and community life, the practical enforcement and exercise of women's rights on property of having an actual ownership and control can not be guaranteed and assured in proper sense leading to relinquishment of their property rights, being the legal owner.

This problem is not limited to the urban areas but also extended upto rural areas and semi-rural areas, where the land is the primary source of livelihood, bargaining power and social status, marginalized sections of the society, tribal communities, who are still unaware of the the existing laws due to their lack of access to society and its norms .⁴ One of the reason that why TPA came into an act is to prevent benami transactions but nowadays in such areas, the women's name are barely recorded on land ownership documents, even they significantly contributes to agricultural labour. This not not makes them excluded from economic independence but also from decision making power in households, community matters, accessing institutional credit, government subsidies, or legal remedies in cases of dispossession or domestic violence.⁵

Moreover aforesaid mentioned barriers, there are other barriers which also exists like social barriers which are fostered by institutional apathy and procedural hurdles. Government offices, like land revenue departments and registration offices acts as doorstoppers for property related documentations which is often dominated by male officials. It discourages women's rights of perusing their claims, addressing technicalities or invoking customary practices.⁶

Inheritance process are intentionally being hurdled by inputting bureaucratic hurdles which deters women from asserting their rights. This also reflects a failure in our country's system that there is a gap between legal reforms with social empowerment

⁴ National Sample Survey Office (NSSO), Ministry of Statistics and Programme Implementation, Key Indicators of Land and Livestock Holdings in India (70th Round, 2013)

⁵ International Center for Research on Women (ICRW), Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience 18–19 (2006)

⁶ Poonam Pradhan Saxena, Property Rights of Women in India: A Comparative View, 4 N.U.J.S. L. REV. 563, 570–72 (2011).

and institutional accountability which further weakens the women's ability to navigate property regime.⁷

IV. Judicial Interpretation

Indian judiciary has played a transformative role in interpreting, ascertaining and establishing women's rights in property ownership through various laws and special provisions, making constant efforts to bridge the gap between statutory interpretation and constitutional provisions ensuring equality and non-discrimination by setting judicial precedents. These efforts can clearly depicts the picture where the Indian judiciary is trying tirelessly by making necessary amendments and rulings based on progressive approach to challenge the primitive and traditional patriarchal customs and traditions. It has not only affirmed but also asserted women's entitlements under various property and inheritance laws.

However, judicial efforts are not sufficient alone, legislature is also expected to make similar efforts with the help of administrative enforcement and implementation of such laws, rules and regulation. Where the jurisprudential fragmentation creates challenges, the landmark pronouncements are crucial for reshaping legal discourse of women's property rights.

V. Landmark Cases

1. Vineeta Sharma vs. Rakesh Sharma, (2020) 9 SCC 1

In this case, the issue that whether, "the amendment 2005" in HAS,1956 has a retrospective effect or not was in controversy. It was held by the supreme court that, the daughters has a vested interest and coparcenary rights in the ancestral property same as sons regardless, that her father was alive or not at the time of amendment or not. This landmark judgment upholds women's equality rights by eliminating long-standing patriarchal biases.⁸

2. Prakash vs. Phulavati, (2016) 2 SCC 36

In this case, applicability of 2005 amendment to Section 6 of HAS,1956, where the father had died before the amendment was discussed. The court ruled that amendment has a

⁷ Law Commission of India, Consultation Paper on Reform of Family Law

⁸ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 (India).

prospective effect in nature when applied to section 6 of the act and held that the benefits of the amendment were not applicable if the father had passed away prior to 2005. This ruling of the court failed to align with the fundamental rights guaranteed under constitution of india and was conservative and regressive in nature in my opinion.⁹

3. Danamma @ Suman Surpur vs. Amar, (2018) 3 SCC 343

In this case, the court held that, regardless the date of filing of partition suit, daughters born before 2005 can claim coparcenary rights. This judgment was in contradiction to Phulavati's claim and led to inconsistency and confusion requiring further judicial interpretation and clarifications.¹⁰

4. Vineeta Sharma v. Rakesh Sharma, (2020) 9 S.C.C. 1

This case overruled the supreme court's judgment in Vineeta Sharma vs. Rakesh Sharma and settled the conflicting views on prospective or retrospective nature of 2005 amendment in HAS, 1956, where the court observed and held that this amendment will not affect daughter's coparcenary rights in ancestral property under section 6 of the said act. It is her vested right which has nothing to do with the life of father on the date of amendment. This amendment is independent in nature and has retrospective effect. This landmark judgment established and ensured daughter's equal rights and independent rights in ancestral property and all the related liabilities and responsibilities as of sons.¹¹

5. C. Masilamani Mudaliar vs. Idol Of Sri Swaminathaswami Thirukoil, (1996) 8 SCC 525

Overriding effect of personal laws denying property rights to women over constitutional provisions was issue in this case where, the supreme court established the constitutional supremacy and primacy over personal laws and held that, in case of conflicts arising in any such case then the personal laws provisions or customs or practices which adversely

⁹ Prakash v. Phulavati, (2016) 2 SCC 36 (India).

¹⁰ Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343 (India).

¹¹ Saptarshi Mandal, Coparcenary Rights of Daughters in Hindu Law: A Case of Judicial Rectification, 55(38) ECON. & POL. WKLY. 22, 24 (2020).

affects women's rights to property and denies constitutional rights are invalid. This ruling challenged the gender bias personal laws.¹²

VI. Critique of the Transfer of Property Act, 1882

TPA, 1882 is a foundation of property laws in India which was enacted before independence with the aim to consolidate and codify the laws with respect to immovable property. It governs transfer of property between living persons. Though the language used in this act is not gender biased on its face but also remains silent on gender inequalities which affects the ownership, control and access over property in India.

The judicial pronouncements and the provisions of this act appear progressive in nature but it somewhere fails to consider and recognize the social context of patriarchy, where the women are still in deprivation and lacking in their lack independent economic resources, bargaining power, or knowledge of legal procedures to participate equitably in property transactions.¹³ This failure adversely affects the safeguard of women's rights and contributes to their **continued marginalization** in property ownership.

It can be observed that women's names are rarely registered in the property register as owners or in sale deeds, leases, or gift deeds. There is no such provision in the act which ensures and mandates transparency, informed consent, safeguard measures against coercion neither ensures or encourages joint ownerships, nor safeguards the position of vulnerable women in the society like, widow, deserted wives, unmarried

¹² C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil, (1996) 8 SCC 525 (India).

¹³ Bina Agarwal, A Field of One's Own: Gender and Land Rights in South Asia 21–25 (Cambridge Univ. Press 1994).

daughters, single mother and others during transfers which makes this situation more vulnerable to women.¹⁴

Despite constitution guarantees equality under Article 14 and protection against discrimination under Article 15(1), TPA falls short as it lacks in required gender sensitive provisions. The instances where women being the owner of the property, manipulated, coerced, pressured socially or misinformed and likewise, to transfer their property, signing away their rights without their knowledge and consent, there is a lack of provision to control such happening and instances.¹⁵

Though judiciary has played a significant role in shaping and interpreting laws which has largely included the gender neutral laws and principles. The supreme court has also emphasized on the need to interpret property laws in light of constitutional mandates of equality¹⁶ but, TPA in fact works on more formalistic approach whereas we need more inclusive and diversified approach concerning women of the country. Exclusion of gender considerations and irregularities creates more vulnerable situations for women in property rights. There is an urgent need to critically re-examine the TPA and make necessary amendments which are actually just, equitable and aligned with constitutional values and socio-economic realities.

VII. Role of Religious Personal Laws and Their Inconsistencies with Constitutional Principles

Personal laws or customary laws are based prominently based on customs, traditions and religions. And as far as we are aware of the fact that our society is deeply rooted in the patriarchal norms and primitive and traditional mindset. Although, we are

¹⁴ Usha Ramanathan, Women, Law and Property: Institutional and Structural Barriers, 31 ECON. & POL. WKLY. 40, 41–43 (1996).

¹⁵ Nitya Rao, Land Rights for Women: Making a Case for Pro-Poor and Gender-Inclusive Reforms, 42(10) IDS BULL. 45, 48 (2011).

¹⁶ V. Tulasamma v. Sesha Reddy, (1977) 3 SCC 99 (India).

lining in a modernized world but the said problem still subsists. Where our constitutional provisions guaranteeing us with the fundamental rights ensuring equality (Equality before law, Article- 14) and equal status irrespective of gender, sex, cast, religion (Prohibits discrimination on grounds of sex, Article- 15), our personal laws governing Hindus, Muslims, Christians, and Parsis often override these guarantees. These personal laws are in advantage and in shield of protection under Article-25, Right of religious freedom.

Granting of equal rights to daughters in coparcenary property through 2005 amendment in HAS,1956 was a progressive step towards safeguarding women's rights, interest and social status. However, the implementation and actual exercise of such provisions is an actual challenge due to prevailing customary practices and social pressures. Daughters being the owner of such part of property, manipulated in pressurized in such a way that they renounce or relinquish their such right or property. Lack of awareness and bureaucratic resistance stifling women's claims are the major obstacles at the implementation level of such laws.

Although it recognises women's right to inherit, Muslim personal law, which is founded on the Quran, Hadith, and Islamic jurists, stipulates unequal shares. A widow may only receive a portion of her late husband's estate, whereas a daughter receives half of her father's share. Citing that personal laws are exempt from Part III of the Constitution unless specifically codified by statute, Indian courts typically uphold these provisions.

Christian women are entitled to equal inheritance under the Indian Succession Act of 1925, but this law has not always been applied consistently, especially in places with low legal literacy or traditional community norms. The Indian Succession Act governs Parsi personal laws, which are more gender-neutral; however, widows of Parsi men who marry non-Parsis have few rights to inherit. Concerns about widows, adopted daughters, and illegitimate children are still unresolved throughout religious personal law regimes, often placing women in precarious legal positions.

These inconsistencies between the constitutional provisions and personal laws constantly crying for uniform civil code under Article 44 of the Constitution¹⁷ but it is still at halt due to communal sensitivities and political resistance.

In *Shabnam Hashmi v. Union of India*, the Supreme Court held that a Muslim woman could adopt under the Juvenile Justice Act, 2000, despite contrary religious prescriptions—illustrating that statutory law can override personal law when public interest or fundamental rights are at stake.¹⁸ This intervention of judiciary clearly depicts that the government is moving towards progressive approach which is an exception to such norms.

Therefore, it can be concluded that religious laws in India is still a hurdle and act as structural barriers to women's equal property rights. Their immunity under the provisions of constitution challenges the perpetuity in systemic inequality, particularly when they are used to justify gendered discrimination under the guise of religious freedom. Any serious effort toward gender justice in property rights must confront these inconsistencies and move toward harmonizing personal laws with constitutional values of equality, dignity, and non-discrimination.

VIII. Policy Recommendations

To achieve and maintain a balance in property rights concerning women in the society between personal or customary laws and TPA, 1882, it is necessary for legislature, judiciary and administration to adopt inclusive strategic approach in order to create more transparency in the procedures and effective implementation and safeguard of women's rights in the society irrespective of her caste, gender, religion and others.

Following are the policy recommendation which can be considered as follows :

¹⁷ INDIA CONST. art. 44.

¹⁸ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India); see also Aparna Chandra, *Personal Laws and the Constitution: A Critical Review*, 7(3) INDIAN J. CONST. L. 83, 96 (2015).

- TPA must be amended to include gender sensitive standards, keeping in mind the provisions for joint ownerships.
- Provisions which can address and challenge the issues of economic independence of a woman, deprivation from the title of ownership, requiring express consent and knowledge of woman and likewise.
- Codification and unification of personal laws with TPA in harmony to eliminate discriminatory and conflicting provisions.
- Ensuring provisions that they are in compatible situation with the provisions of constitution of India.
- Where there is any provision in violation or contravention of any fundamental right guaranteed under constitution shall be declared void.
- In case of confusion or conflict between personal laws and TPA, the special law will get an advantage of primacy and supremacy over latter.
- Making people aware and knowledgeable by spreading awareness of their legal property rights under TPA, HAS and other relevant acts and fundamental rights guaranteed by constitution of India, specially focusing on women in rural and semi-rural areas.
- By simplifying the documentation and procedural works at registration offices.
- Educating and encouraging people about the advantages they can get if they register their property in the name of their woman member in the family like tax subsidies or tax waivers or other incentives.
- Enactment of uniform civil code (UCC), containing gender equitable laws harmonizing with diversity of personal laws and religions.
- Drafting of such UCC should be done by a specialized committee which must be led by a woman as chairpersons, woman representatives from each community or religion with other members
- Dedicated legal aid cells, fast-track tribunals for inheritance disputes, and ombudspersons within revenue departments can improve women's ability to assert their rights.
- Including property rights as a part of education within women's self-help groups (SHGs) and Panchayati Raj institutions would ensure community-level support.

IX. Conclusion

Despite legislative and judicial efforts, women's property rights in India remain hotly contested and under threat. The Transfer of Property Act of 1882 remains gender-neutral but discriminatory, and religious personal laws frequently clash with constitutional values, perpetuating gender hierarchies in inheritance and ownership. While judicial interpretations have paved the way for the progressive realisation of women's rights, the gap between the law and lived experience remains significant. To ensure women's full citizenship and autonomy, India's legal system must transition from gender neutrality to gender justice in all aspects of property law, necessitating a transformative vision that balances constitutional principles, values diversity, and addresses systemic inequality.

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