

# Women Inheritance Rights In India: Some Reflections

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Received: February 04, 2019

Accepted: March 10, 2019

**ABSTRACT:** Access to inheritance rights to women is relatively new in India. Although equal property rights for men and women are crucial for closing gender gap, women face discrimination in formal, informal and customary rights for owning ancestral property. Historically, women held limited opportunity and right to own ancestral land or property in India. The paper aims to trace the history of women inheritance rights along with the concepts of streedhan and the development of pro-women acts in order to provide equal space for women in inheritance rights. The paper also explores the traditional social structuring and patriarchal schools such as Mitakshara and Dayabagha which inhibits women from claiming their rightful share in the ancestral property. The paper highlights the intersectionality of gender and inheritance rights in India and calls for the need to recognise gender differences in inheritance rights.

**Key Words:** property rights, Hindu Succession (Amendment) Act 2005, women inheritance rights, streedhan, gender, women land rights

## Introduction

Status of women in India is slowly improving socially and economically in urban cities but the scenario remains different in the rural India even today. Women are struggling with suppression, denial of equal opportunities and access to resources in the present times. Men have occupied large socio-economical and political space leaving little possibilities for women to explore and grow. This resulted in the introduction of various laws and legislations to achieve gender parity in every sphere such as the Hindu Succession (Amendment) Act, 2005. It provides equal property rights to women and thereby enables women empowerment. The article aims to track the impact on women status through various periods in history of India with regard to women inheritance rights. It enables us to understand what led to the deterioration of women conditions and how drastically it impacted their socio-economic well-being. The religious texts and ancient literature reveal strong women status in the past. They were valued, respected and prospered with equal access to resources and opportunities as well as were never considered as a burden. In fact, earlier women were much empowered to take informed decisions and were not limited within the boundaries of the household. The chapter will also allow us to trace the worsening of the status of women and locate systematic exclusion of women from the property rights. It will underscore the adverse impacts caused on women position in the society due to ripping away of women property rights.

## Status of Women in the Primitive Age (Late 19 Century CE)

In Indian history we have heard great stories of Indian women, some completely untrue and others partially true. When we go through literature and evidence from the primitive age, there was no example to show that men had control and dominance over women. Men and women were on equal terms in many spheres. Eventually, men gained new skills using stones, iron tools and hunting. They steadily invented agriculture and domestication of animals. Hence agriculture and rearing of animals became main livelihoods for most people, while women continued to help men in all the tasks as equal partners. Consequently, men started settling down in one place and establishing life. The aspect of staying in one place with partner generated the formation of family, institutions and concept of property. To protect and safeguard their family, belongings, institutions and properties people fought with each other frequently.

Men took over the responsibility of hunting and farming which required physical vigor while women took the responsibility of household works such as nurturing children, taking care of family, cooking and maintenance. Hence, through a man's and woman's life style in primitive age, it was found that both had equal opportunities and the division of labor between them. The division of labour continued and was regularized in the primitive stage. In fact, there were many examples where women's right of owning and managing property was encouraged and recognized. Most of the tribes established at that time were known to follow matriarchal system. If a man died in the family, the entire property would be entrusted to his mother or wife or daughter, hence giving women equal treatment, rights and respect in the primitive society.

### **Status of Women in Ancient Period (1500 BCE to 500 BC)**

In Manusmriti, Manu wrote, “A woman in her childhood must be protected and cared by her parents, in her youth by her husband, and in old age by her son and relatives”. In similar context, the wife of Buddha said, “Good women need no veiling more than sun and moon”. Sir Monier Williams writes, “It must be noted that the seclusion and ignorance of women, which were once mainly due to fear of Mughal conquerors, do not exist to the same degree in provinces unaffected by conquerors”. Indian wives often possess greater influence than the wives of Europeans”, he further says “One old grandmother can rule a whole household with a rod of Iron”

Interestingly, the Hindu Law allows legal powers to woman. In Shakuntala, one of the best dramas ever written in Indian history, Shakuntala was allowed to plead her own cause at the court of king Dusyanta and she boldly rebuked after pointing out his faults. The Hindu laws allow such privileges to women. The great epic Mahabharata, mentions, “The wife is half the man, his truest friend, a loving wife is a perpetual spring of virtue, pleasure, wealth, a faithful wife his best aid in seeking heavenly bliss. A sweetly speaking wife is companion in solitude, a father in advance, a mother in all seasons of distress, a rest in passing through life’s wilderness.” These writings clearly emphasize upon the respect, dignity and honour given to women in the ancient period in India.

### **Middle Age (6<sup>th</sup> Century to 13<sup>th</sup> Century)**

The situation of women in the Indian society suffered drastically through the many changes as a result of social changes in the country. The arrival of the Mughal rule in India exaggerated the Hindu women costumes and their position deteriorated further. The evil practices like, Sati, prohibition of widow remarriage, prevalence of child marriage, and covering the face of the woman in the veil had become mandatory in Hindu culture. At the same time, the emergence of the caste system and extension of capitalism exacerbated the suppression and oppression of women on the basis of gender. It was expected that a woman must obey a man and consider him superior to women.

The arrival of the Mughals left a deep impact on the Indian society leading to the drastic changes in clothing, eating styles, food, social habits, personal habits, and in culture and traditions as well. Slowly, the male members in families took the lead role as the dominating members in the martial system, domestic affairs as well as in political and administrative spheres. Subsequently, all property rights were protected with the male members, and females were dependent on men for their basic needs. In this period, the demise of a male member in the family would mean that the property would go to the next male members in line, such as, sons, grandsons or other male relatives. Hence, this system made all women dependent upon men. The only property which women could own were ornaments, jewels, household things, some cash etc. However, if we go through the history of South India, like in the state of Tamil Nadu, women enjoyed improved status. They played an active part in the political, social, cultural, religious, and economic fields, as there were no restrictions for them. Tamil literature also gave evidence of the prevalence of property dealings such as gifts to the temple, sales and assignment of revenues to the devaradiyars for their services.

### **Concept of Dayabhaga and Mitakshara**

The Indian Sanskrit scholar and notable writer of legal and religious treatises Jimutavahana from the early medieval period wrote the Dayabhaga. Dayabhaga is considered as the Hindu thesis which mainly deals with the inheritance system in India. It was the dominant authority for consideration in the modern British Indian courts in the Bengal region of India. Mitakshara, on the other hand was written by Vijnaneswara, on the Yajnavalkya Smriti. The word Mitakshara is derived from the word ‘commentary’. The Dayabhaga schools of law mainly applied in Bengal and Assam, whereas the Mitakshara school of law was prevalent in other parts of India. The Mitakshara school had four sub divisions that administered the law of inheritance of the Hindu joint family under the Indian Law. These are the Benaras School, Mithila School, the Maharashtra School and the Dravida School. The main variation between the Dayabhaga and the Mitakshara schools of law pertained to dealing with the family style. The Mitakshara School of Law deals only with joint family, wherein the property is given to the male member of a family and extends to include his son, grandson and great-grandson. Therefore all men held equal rights in a joint family. An adult son can ask for division during his father’s lifetime or his three immediate ancestors. He has full right in the disposition of the family property and can be against any unauthorized disposition of ancestral property. However, under the Dayabhaga School of Law, the son has no power or right in the ancestral property. He can only claim his share in the property after his father’s demise. Hence, the father carries uncontrolled and unlimited power over his family property until his death.

In the ancient Hindu joint family system, the property was entirely controlled and managed by the male members of the family. Men managed the entire property of the family and had full control over the family

property. Women were given no property rights and were not involved in any property dealing process as well. Under the Mitakshara system, the wife had no right to ask for partition or her share from the family property. The only possibility for her to claim her share was when partition would happen between her husband and her sons. However, under Dayabhaga, women did not even have this right. It was observed that under both the systems, women did not have any agency to make any claim over the property. They were treated merely as a recipient of the systems and traditions made for them by the men, and their decisions, needs and desires were heavily regulated.

### Concept of Streedhana

Before the Succession Act, 1956, women were given nominal rights over certain assets, which were referred to as "Streedhana". The word "Streedhana" means women's property. According to Smritikars, the "Streedhana" comprises of those properties and materials which a woman receives from her parents or relatives as gifts at the time of her wedding. This included, by and large movable properties, though sometimes a house or a piece of land was also given as a gift to a woman along with ornaments, jewelries and dresses. Jimutvahana had given details of "Streedhana", which included:

1. Gifts and bequests received from relations
2. Gifts and bequests received from strangers
3. Property acquired by self-exertion and mechanical arts
4. Property purchased with "Streedhana" money
5. Property acquired by compromise
6. Property obtained by adverse
7. Property obtained in lieu of maintenance.

He mentions that a woman has complete right on her "Streedhana". It is considered as woman's property on the basis of sources from which the property was acquired, her status at the time of acquisition and the school to which she belongs. Therefore, women had the absolute right of ownership over the "Streedhana". This also meant that women could dispose or decide to do anything with their property as their wish. In case, the property is not mentioned as "Streedhana", in that case the woman did not have any right to dispose it off, as she held only limited authority.

The word 'Streedhana' was mentioned for the first time in the Bhrama Sutra of Gautama. It is a compound word made of Stri-Women (Female) and Dhana- Property. He further mentions that finding from its derivation, it is capable of denoting any kind of property belonging to a woman. Likewise, Mack Naghten and Sir Thomas Strange also had the opinion that female's wealth does not necessarily mean money; it may contain anything such as valuables, land, jewels or other ornaments. But it must be the gift given from a husband and her relatives. Thus, in course of time land and property also began to be conveyed to women as "Streedhana" property. According to Yajnavalkya, he defines "Streedhana" as "what was given to a woman by the father, the mother, the husband or a brother or received by her before the nuptial fire or presented to her on her husband's marriage to another wife and the rest (adya) is denominated "Streedhana". Hence "Streedhana" is only given by family members, even gifts obtained from strangers except at the time of marriage and her acquisition of property by labour and skill was not considered to be "Streedhana". It is divided into different types;

- The property given by parents at the time of marriage.
- Gifts given by the parental family when she is going to her husband's house,
- Gifts given by her husband out of affection during or after marriage, and
- Property given separately by brother, mother, father, in laws any time after marriage or during marriage.

In case the groom is given bride price in excess of the amount that the two families actually agreed upon, then the excess amount belongs to the bride alone and is considered as "Streedhana". It is mentioned that these gifts would become woman's property which means that she would have absolute control over the property. However, in ancient India "Streedhana" was only considered as woman's property. Various schools have given different percepts to the concept of "Streedhana". Manu elaborated six kinds of "Streedhana". Vigneshwara has defined Streedhana in Mitakshara as, "Gift that which was given by the father, by the mother or by the husband or by the brother and which was presented by the maternal uncle and rest at the time of wedding before the nuptial fire and a gift on a second marriage and property obtained by inheritance, purchase, partition, adverse, possession and finding". According to Madras School, Streedhana takes its sense from the definition of Mitakshara. According to Dayabaga or Bengal schools, all gifts from relations and family are considered as Streedhana, except a gift of immovable property made by the

husband and the gifts from strangers also constitute as Streedhana if it is gifted before the nuptial fire or at the bridal procession.

The Arthashastra of Kautilya not only describes Streedhana, but also mentions that it was the property of a married woman besides, he also laid down that a woman could not own money more than 2000 silver panas or any sum that being held by her husband in trust on her behalf. Streedhana can consist of Vritti or means of subsistence or Abandhya such as ornaments. Vritti includes bhumi, agricultural land and cash [Hiranyadi] above a minimum of 200 Karshapanas, which can be invested and can get an income from its investments. Woman's property can only pass on to her daughters, and not her sons or she has the right to give the part of the Streedhana to her daughter-in-law as a gift, if she wishes to give.

Further, Arthashastra mentions that a remarried widow can hold her claim on Streedhana given to her by her husband and husband's family only if she remarries with her senior in-laws permission, otherwise it should be handed over to her sons. There were instances of men trying to marry rich widows. Hence in Arthashastra, the king was advised to hire spies in the residence of rich widows. So that, widows get to know the person better and avoid losing their Streedhana by remarrying and many were left comfortably off.

There were comprehensive laws about women's Streedhana. Mainly there were two types: Maintenance (in this money or land would be given by husband) and any other materials like ornaments given to her by her family, husband or in-laws and friends of her husband. There is no fixed amount by in-laws in this practice. It majorly depends on the laws of the particular kingdom or state. However, in another type, there is a pre-decided limit. As the second type mainly consists of gifts, pre-nuptial contract between parents where the groom would agree on certain amount of bride price. Hence, the categories of Streedhana modified with time and also differed from state to state. The Rig Veda society had identified few items as woman's Streedhana. Those are: gifts received from parental family, gift received before the nuptial fire, woman earning made by mechanical, arts, gifts in the bridal procession. There are many cases which mentioned that daughters growing old in their father's house have a share in father's property. Similarly a child-less widow can also claim share in husband's property. In the Taittiriya Samhita of Yajur Veda, there are references of father making gifts to daughter at the time of daughter's marriage.

Buddhism and Jainism did not have any personal code to administrate the property inheritance. Their perception was more spiritual and dynamic than material. In particular, they seemed to follow the local laws of inheritance and succession, irrespective of their religious affiliations.

In the Gupta's period, the woman had the right to get the property from her husband once she bears him sons. Her girl child also was given the right to property. From the 7th century, the scope of Streedhana has extended. Yajnavalkya had described at the list of the usual six types of Streedhana.

### **Modern age – History and Development of Pro- Woman Acts**

In the year 1498, the entry of Vasco Da Gama brought everlasting changes in the lives of Indians. The British merchants arrived in 1600 A.D. and slowly they occupied the entire India. The first era of the British rule in India propelled awareness in the minds of Indians. Social reformers like Raja Ram Mohan Roy, Eswar Vidhyasagar and other pioneers started working for the welfare of women and their empowerment. They fought to eradicate evil systems and practices such as Sati; ill treatment and discrimination against widows; prohibition of widow remarriage; dowry; child marriage; no property rights for women' and women's education etc. These socio-religious reforms provisioned opportunities to women to stand up for their rights. Raja Rammohan Roy initiated the issuance of property rights for women. He said "that all ancient law givers had awarded the woman as mother, an equal share with her son, in property left by a person." He emphasised that financial disability of women after her husband's demise is leading to the intentional practice of Sati system in few cases. He indicated the linkages between the practices of Sati with the problem of property rights for women. Further, he also insisted upon making laws on inheritance right for woman to the common people. Raja Ram Mohan Roy advocated that the government should take active measures to remove such restrictions for women and put an end of such practices, as also empower economic freedom and education to women. However, it did not work. The structure of gender did not change; and the status of women remained the same.

The British rulers did not prevent or interfere in the religious beliefs and systems of India, but they introduced some restrictions in the domain of family and social relationships. They presented few reforms to the Indian society such as the "Bengal Sati Regulation Act of 1829, Widow Remarriage Act of 1856, and the Child Marriage Restraint Act of 1929 etc." In 1850, for the first time, British India invalidated the Hindu Law of Succession Act by central legislature in the form of the Caste Disabilities Removable Act, 1850.



Although the Widow Remarriage Act of 1956 did not gain much success, as only a small number of widows were able to remarry. Even the financial status of woman did not show much improvement.

Even though the 1856 Act brought some reforms in India, there were few limitations in the Act, such as the Section 2 of the Act did not give opportunity to the Hindu widow with significant rights on the property of her deceased husband, and she remained unprivileged once she got married to another person. Secondly, the right on the husband's property also had few restrictions. Few acts like, the Act of 1872 was the first act which recommended the limitations on early marriages. The Act of 1891 had raised the consent age from ten to twelve years. The Saradha Act of 1929 reconsidered fourteen as the girl's marriageable age; hence in the Hindu Code book, fifteen years was fixed as the minimum age for a girl's marriage. These acts helped in improving the status of women minutely in some regions, while making minimal impact on the ongoing practices of that time.

The British not only emphasised on the women's empowerment, they also expanded their welfare measures in two other fields. However, it did not attain much attention. During social progressive reforms, the reformers demanded civil laws on marriage. The section of conservative tradition group opposed these activities. The Special Marriage Act 1872 was introduced; and it gave scope to Indians to get the opportunity for civil marriage. However, it had one condition which was that both the parties had to clearly mention that they had given up the practices of their own religions. This came as a main obstruction for the people who wanted to go for civil marriage, but most of the couples did not want to renounce their religion. So, in 1912, there was an urge to erase this particular provision, and in 1923 an amendment was passed to erase this practice.

In 1858, the British Parliament initiated the social reform process in India and due to this initiation many laws were introduced. During this time, the word 'personal' was brought in the legal field. They are the laws relevant to the person according to his/her religion. Few of those personal laws indicate strong characteristics of discrimination against women. Laws administering marriage, divorce, succession, adoption and inheritance were mentioned as 'personal'. Furthermore, it mentioned that personal laws are 'religious'. However, most of the laws were state enacted. These laws were outdated and reflected the rigid Victorian code of morality. Moreover, it was a historic moment, as after the implementation of Victorian code of morality, a smaller section of women got the right to opt for divorce through state enactment. This was a progressive act for the Hindu women, which was accepted after great deal of exchange of views and opposition, almost a century later in the year 1956.

During the second half of the 19<sup>th</sup> century, the first step was taken towards woman economic independence and security. The Hindu Law of Inheritance had huge drawbacks for women from the perspective of the right to own the property. Except for the right to have Streedhana, women were completely dependent on their husband, father, brother and son. To enhance the status of Indian women in society, the Indian Succession Act 1865 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.

In 1874, the Married Women's Bill was passed, this was the first law on Streedhana during the modern times and extended the range to Streedhana. It announced that salaries and earning wages of any married woman, property obtained by her own money through employment of her skills and her savings and investment shall be woman's separate property. This act was a major reform, but did not create significant mark in the Indian society as it was not applicable to Hindu, Muslim, Sikh and Jain communities, and only applied to the Indian Christian women.

The Women's Property Act of 1874 was amended in 1923 to involve Hindu and other women within the limits of this Act. The year 1923 was considered as a remarkable year, as the Hindu women's independent right to property was identified for the first time. Section four of the Widow Remarriage Act 1856 provided a childless widow a share in her husband's property. This right was earlier limited, hence this step was considered as the first and foremost move toward women's empowerment in economic rights.

The Married Women's Property Act of 1874 was additionally amended in 1927 by Act No XVIII of that year. Apart from protecting the interests of wives and husbands by the Act of 1923 and 1927, respectively, another act was passed in 1929. Its goal was to provide preference for female heirs over certain remoter degrees of male heirs. The Hindu Women's Rights to Property Act made further important changes in the matter of succession in the year 1937. The important characteristic of the Act impacted widows as now they were entitled for a share in the property of their husbands, just as that in their son's share.

### **Important Acts related to Women Property Rights**

**Indian Succession Act 1925:** The movements of social reform elevated the concern for women's rights on property. Hence in 1925, the Indian Succession Act was passed. It was a landmark law for empowering

women, as it provided women an opportunity for equal share in property rights. The Act can be recognised as the most valuable piece of legislation even when tested against the present day parameters of women's rights.

**Hindu Law of Inheritance Act, 1929:** Following the Succession Act 1925, the legislation developed for women to facilitate them to procure their rights of inheritance was the Hindu Law of Inheritance Act 1929. It administers only the property of the Hindu male who dies without making a will. The provision of the act reads as follows: 'A son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified be entitled to rank in the order of succession next after a father's father and before father's brother, provided that a sister's son shall not be included, if adopted after the sister's death.'

**The Hindu Women's Right to Property Act, 1937:** "The undivided interest of a coparcener on man's death did not go by survivorship to other coparceners, but his widow took it as heir, though she took it as a limited estate." Before the Act of 1937, the undivided interest of a coparcener on man's death is passed by survivorship to the other coparceners. But after the Act of 1937, the condition changed. Section 3(3) of The Hindu Women's Right to Property Act, 1937 declares the equal right of a widow in the partition of the property.

In the case of *Sahadeo Singh v. Chhabila Singh*, the Patna High Court held that "a widow cannot be a *Karta* of the joint family as she is not a coparcener. She has no legal qualification to become *Karta*. Therefore, the mother cannot alienate the share of a minor in Joint Hindu Family property. It is possible only with the permission of the court."

According to Dayabhaga and Mitakshara schools, inheritance cannot start with women. However, under Dayabhaga, women can ask of the partition of coparcenary property, hence she can become a coparcener. However, in *Kandammal v. Kandish Khevar*, Madras High Court held that "The gift made by the father (*Karta*) in favor of his wife of an immovable ancestral property is void". According to Hindu Joint Family system, a woman does not have the right to be a *Karta*, however, once the Nagpur High Court shared the view that woman can become a *karta*, but not a coparcener.

In the matter of the Commissioner of Income Tax v. Seth Govind Ram, the Supreme Court declared that a mother or any other female is not fit to designate to *Karta*ship. However, in *Gangoji v. H. K Channappa*, the Karnataka High Court held that since the mother is a natural caretaker of her minor sons, so she can manage the joint family property.

In India, the Constitution provides gender equal acts and laws, but the reality is different when it comes to their implementation. Further, the will before husband's demise has limitation in Mitakshara system which has been modified through the Amendment of 2005. This provides the Hindu woman to get equal status with men. It has provided freedom with regard to the rights of inheritance of property from the male dominated dynasty. These amendments were enacted by some South Indian states like Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu in 1986, 1989, 1994, and 1994 respectively. The state of Kerala banned the joint family property altogether in the year 1975.

**Hindu Succession Act 1956 and Amendment of 2005:** The Hindu Succession Act, 1956, was the first and foremost law which provided equal rights of inheritance among Hindus, Sikhs, Buddhists and Jains. It also recognised gender in equalities in the area of succession. However, it covers only in the case where the husband dies without a will; the children (married or unmarried daughter or son) of intestate's mother and widow get the equal share. This act is not applicable for the testamentary succession (where there is a written will).

Section 14 of the Hindu Succession Act, 1956, declares, "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 a limited owner." This statement makes a woman a complete owner of her properties. But very few women are aware of their rights of full ownership on their property. Most women are unaware of these rights. The Act advises complete rights, including the rights of transfer of property, which includes movable and immovable acquired *Streedhanas* such as ornaments, apparel, gift received at the time of wedding, property acquired out of her earnings or by inheritance, demise of husband, partition, in lieu of maintenance, arrears of maintenance, gift, property acquired by her own skill, purchase, prescription or in any other manner.

This Act was amended in the year 2005 to provide equal opportunity to women. This came into effect on September 9, 2005, and is relevant to the various other sections and castes of Hindus, apart from Sikhs, Buddhists and Jains. It declared that Indian women will have an equal right to a share in property as men; it granted daughters inheritance rights in ancestral property along with her male relatives. The main feature of the 2005 Amendment is that it enables the daughter to become a coparcener by birth in her own right,

and in the same manner as sons. Although the earlier section stated that when a male Hindu dies after the commencement of the Act, then his property will pass to the remaining members of the coparcenary. The 2005 Amendment has provided many benefits, such as, the daughter is given equal share as the son, and the share of the pre-deceased brother or sister will be distributed between the remaining siblings, be it a male or female.

However, in granting equal property rights to woman, there are still many complications. Section 8 and 9 of the Act deal with the transference of property in case of the death of a male; while Section 15 and 16 deal with rights, in case a woman dies. In the case of woman's death her husband and her own parents would be considered as her heirs. While in the case of man's demise, his property inheritance would go to his relatives. To emphasise women empowerment, the laws should be made gender-neutral, and there should be no distinction between the order of succession and rules of succession for men and women.

In India many religious communities are administered by their personal laws, including inheritance rights. Although Hindu, Sikhs, Buddhist and Jains are administered by property law based on the 1956 Act, Christian and Parsis are administered by the Indian Succession Act 1925. In Muslims both (sects) Shias and Sunnis do not have clear property rights for women.

The Supreme Court lawyer Arti Singh says "Despite the enactment of such legislations, instances prevail where women have not been made aware of their rights the urgent need is to communicate to the people the importance and significance of laws so that the future of rights and liberties become richer,". There are many studies on how these property rights acts are actually working and the extent of awareness among women about it. The International Land Coalition (ILC) member Landesa Rural Development Institute and UN Women, India, in December 2013 submitted a report on formal and informal barriers in the implementation of the Hindu Succession (Amendment) Act, 2005 in the context of women agricultural producers of Andhra Pradesh, Bihar and Madhya Pradesh. The study focused on women as agricultural labourers. The result finds that there are many barriers in the actual implementation of the law. There are several formal barriers. Despite the amendments, the law itself is biased; for example, the devolution of a woman's property still remains biased towards her husband's heirs against her natal family. Further, Hindu women continue to be deprived of their inheritance through wills. Adding to that, there are many informal barriers as well, in the form of social and cultural impediments. Due to the prevalence of traditional patriarchal societies, like that in the state of Haryana, local authorities for girls do not agree to provide legal rights to ancestral property. The surveys conducted in many parts reveal many insights; It suggests that after the Amendment of 2005 Act also, there are many women who have not benefited anything from it. Due to some traditions, parents themselves decide to dishonour the daughter's inheritance rights in favour of sons with the explanation that they spend on marriage and pay dowry which is equivalent to property. They consider dowry as an alternate for land and other properties which may accrue as inheritance. Due to these practices and attitudes, many women are denied of their inheritance right, which in turn implies a denial of their economic equality and security in the family. The understanding and knowledge of women about the present inheritance law is very low. This awareness needs to be generated among the larger group.

To address the many challenges related to the inheritance of women, mere legal remedies are not enough. Hence many non-government organisations and civil society organisations are working on disseminating information and promoting inheritance rights for women and girls.

## **The Scenario of the Position of Women in Context of Other Religions**

### **Muslim Women Property Rights**

Muslims are administered under their Personal Law (Shariat). It administers all their personal matters such as property rights, marital issues and divorce. The Act of 1937 which would replace the customary law needs to be codified, although the Muslim law has given some independence rights to Muslim woman. A Supreme Court lawyer Shamshad explains, "The Islamic concept's landmark is that when most part of the world treated woman herself as belonging to the man, Islam gave two independent rights to women-the right to have marriage legally dissolved by mubarat, talaq, khula, and right to inherit property."

Unlike Hindu traditional laws, Muslim Personal law provides the woman to have inheritance right, A daughter's inheritance is equal to one-half of the son's share of her father's estate. Although the daughter has complete control on her share of property and has the legal right to manage, administer and dispose of her part as per her wish in her life or after death. Even unmarried girls have the right to stay within their parent's home and receive their support and help. If a married girl gets divorced, the maintenance comes on her parents after completion of the Iddat period, If she has children old enough to support her, then it is the children's responsibility. Excluding maintenance and maher, a divorced woman, has inheritance rights to the extent of one-fourth, when she has no child, and in case of a child, she can ask for

one-eight extension in her inheritance property. In the case of a widow or divorced women have complete right to get maintenance from her children and one sixth of share from her deceased husband's property. The quranic laws of inheritance are remarkably defined well, while Muslim law is an uncodified law, there are many uncontrolled inequalities towards women. The Quranic verse states that "the male shall have the equal of the portion of two females." A daughter who is a Quranic heir takes her share as a residuary in presence of son, whose share is double because share of each son has to be double of each daughter. According to Hindu law, all persons who have some share in the property are necessary parties to a suit, however this is different in the case of Muslim law.

Muslim law might have provided a daughter to be a successor of the property of her parents in both Sunni and Shia sects. However, some rigid customs and traditions make her lose the opportunity to procure her inheritance. These kinds of traditions and statutes are different in Quranic principles, which treat daughters as non-existent at the time of succession. In the state of Jammu and Kashmir, some communities follow the rule in which daughter get inheritance rights in the absence of a male successor of the family. But in other communities, if a woman is a 'Khananashin' then she receives her inheritance right. In Muslim tradition daughters do not qualify to inherit the watan land under the Watan Act 1886 (Bombay). Under Sunni laws, a daughter or woman is not allowed to inherit more than one third of the property. This means that men get the double portion when compared to women. Hence each son's son will carry double the share of each son's daughter. The woman or daughter will get the residue when there is absence of other residuary such as, the son, the son's son, father, and grandfather and brother. And a consanguine sister would only get a residuary share if a consanguine brother were not present, instead of inheriting with one. This shows the discrimination between the male and female child. The son gets his inheritance share by birth where as daughter inherits in the absence of a son.

### **Christian & Parsi (Zoroastrian) Women's Property Rights**

Laws for succession in Christians and Parsis are coded in the Indian Succession Act, 1925. Sections 31 to 49 largely deal with the Christian inheritance rights whereas sections 50 to 56 speak about the Parsi succession. According to the Act, Christian children, male or female, inherit equally in property. The Act has provided equal right of inheritance for daughter with any brothers in her father's or mother's estate, when the father or mother pass away without will. If the deceased has left behind both a widow and genetic heir, the woman would receive one-third of the share in his property and the remaining two-thirds would go to the latter. In case of no genetic heir but other blood relatives, one-half of the property would go to the widow and the rest to the kindred. In case no blood relatives are left either, the complete estate shall go to the widow.

Supreme Court lawyer Sunil Fernandes says, "The Indian Christian widow's right is not an exclusive right and gets curtailed as other heirs step in. If the intestate has left none (family members), the whole of his property would belong to his widow." Prima facie, the property rights of Parsi women are gender neutral. A widow and all her kids, be it sons or daughters, married or unmarried, they all get equal share of property of intestate, while parents, mother and father, get half of the share of each child. However, the widow of deceased husband who dies without any child, gets no share.

### **Conclusion**

The development of pro-women inheritance Acts aim to target the discriminatory and unfair treatment and practices against women inheritance rights which came into existence since the ancient period of India. Coparcener rights given to women with the 2005 amendment enabled women equal inheritance rights as men in India. However, despite such breakthrough Act and amendment, equal property rights for women in India are far from being accessible even today. The paper highlighted patriarchal social structuring which restrained women from owning ancestral property and its impact on the socio-economic conditions of women. The social conditioning and structure trace back to the ancient India history with deep roots marking its impact even today as women continue to be discriminated in receiving rightful share in family property. Successful implementation of the Hindu Succession (Amendment) Act, 2005 is still a challenge in a society like India, where people believe and follow biased and unfair traditions and rituals. The relationship between the women inheritance right and socio-economic status of women is directly proportionate hence equitable property rights for women is a crucial channel for achieving women empowerment and improving their status in the society.



## Bibliography

1. Actionaid and European Union. (2013). From marginalization to empowerment: The potential of land rights to contribute to gender equality - observation from Guatemala, India and Sierra Leone. Bangalore: Books for Change.
2. Agarwal, B. (1995, March 25). Gender and Legal Rights in Agricultural Land in India. *Economic and Political Weekly*, 39-56.
3. Allen Rubin and Earl Babbie. (2001). The Logic of Sampling. In *Research Methods for Social Work* (4th Edition ed., pp. 249-291). United State of America: Wadsworth.
4. Anjum, M. (2010). Assertive Voices: The otherside of burqa . In B. B. Patel (Ed.), *Understanding Indian Society Past and Present* (pp. 33-57). New Delhi: Orient Blackswan Private Limited.
5. Benschop, M. (2004). Women's rights to land and property. *Women in Human Settlement Development - Challenges and Opportunities* . Land and Tenure Section: UN - HABITAT.
6. Berg, B. L. (2001). Designing Qualitative Research. In *Qualitative Research Methods for the Social Sciences* (4th Edition ed., pp. 15-37). United State of America: Pearson Education.
7. Chapter 10: Property Rights of Women in India and Maintenance. (n.d.). Retrieved June 18, 2014, from [www.ncw.nic.in](http://www.ncw.nic.in)
8. Chapter 4 Women Property Rights: A Comparative Study of Hindu, Christian and Muslim. (n.d.). Retrieved July 15, 2014, from [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in)
9. Chowdhry, P. (n.d.). Reduction of Violence Against Women: Property Ownership & Economic Independence in Rural Haryana. Retrieved June 17, 2014, from [www.unwomensouthasia.org](http://www.unwomensouthasia.org)
10. Corsini, E. (n.d.). Law alone cannot: Women's Empowerment in India. Retrieved June 12, 2014, from [www.luc.edu](http://www.luc.edu)
11. Creswell, J. W. (2007). Five Qualitative Approaches to Inquiry. In *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (2nd Edition ed., pp. 53-81). London: Sage Publications Ltd.
12. Creswell, J. W. (2012). The Process of Conducting Research Using Quantitative and Qualitative Approaches. In *Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (4th Edition ed., pp. 2-28). Boston: Pearson Education.
13. DAW. (2001). Empowerment of Women Throughout the Life Cycle as a Transformative Strategy for Poverty Eradication. Department of Economics and Social Affairs. New Delhi: United Nations Division for the Advancement of Women (UNDAW).
14. ESCR. (2014). Using CEDAW to secure women's land and property rights: A practical guide. 1-30. Switzerland: The Global Initiative for Economic, Social and Cultural Rights.
15. Harry, K. (2009). The Indian Act and Aboriginal Women's Empowerment: What Front Line Workers Need to Know. for Battered Women's Support Services , 1-28. Canada: BWSS.
16. Iyer, D. K. (2010). Prospects and challenges in the Indian context. (294) . Kenya Nairobi: The African Executive.
17. Johannes Jutting and Christian Morrisson. (2005). Changing Social Institutions to Improve the Status of Women in Developing Countries. OECD Development Centre Policy Brief No. 27 , 1-26. Paris.
18. Joseph, N. (2013). Land Ownership of Women: Legal Issues and implementation hurdles (with special reference to succession rights to matrimonial property). 1-25. New Delhi: Network of Asia Pacific Schools and Institutes of Public Administration and Governance.
19. Kelkar, G. (2011). Gender and productive assets: Implications for women's economic security and productivity. *Economic and Political Weekly*, 46 (23), 59-68.
20. Kimani Njogu and Elizabeth Orchardson Mazrui. (2014). Gender inequality and women's rights in the great lakes: Can culture contribute to women's empowerment? 1-22. Africa: UNESCO.
21. Klaus Deininger, Aparajita Goyal and Hari Nagarajun. (2010). Inheritance law reform and women's access to capital: Evidence from India's Hindu Succession Act . Policy Research Working Paper 5338 . Washington: The World Bank.
22. Kodoth, P. (2004). Gender, Property Rights and Responsibility for Farming in Kerala. *Economic and Political Weekly*, 39 (19), 1911-1920.
23. Lawyers Collective . (2010). Mapping women's gains in inheritance and property rights under the Hindu Succession Act, 1956. Expert Group meeting on Gender and Productive Resources: women's entitlement to land, livestock and energy . New Delhi: UN Women.
24. Madhu Kishwar and Ruth Vanita. (1990). Inheritance rights for women: A response to some commonly expressed fears. *Manushi*, 57, 3-9.
25. Mayra Gomez and D. Hien Tran. (2012). Women's land and property rights and the post-2015 development agenda. The Global Initiative for Economic, Social and Cultural Rights and Landesa Center for Women's Land Rights , 1-18.
26. Pandey, S. (n.d.). Property Rights of Indian Women. Retrieved May 22, 2014, from [www.muslimpersonallaw.co.za](http://www.muslimpersonallaw.co.za)
27. Rao, N. (2011). Women's access to land: An asian perspective. Enabling rural women's economic empowerment: institutions, opportunities and participation . Ghana: UN Women.
28. Rosenblum, D. (2013). Unintended Consequences of women's inheritance rights on female mortality in India. Dalhousie University, Department of Economics , 1-32. Canada.

29. Roy, S. (2008). Female Empowerment through inheritance rights: Evidence from India. Department of Economics, London School of Economics , 1-20.
30. (2014). The Hindu Succession Act, 1956. In Bare act with short notes (pp. 27-50). New Delhi: Universal Law Publishing CO. PVT. LTD.
31. Vishwanath, L. (2010). Towards a Conceptual Understanding of Female Infanticide in Modern India. In B. B. Patel (Ed.), Understanding Indian Society Past and Present (pp. 93-127). New Delhi: Orient Blackswan Private Limited.
32. Yadav, B. (2000). Haryana's Rising 'Critical Insider (s)'. Economic and Political Weekly, 35 (50), 4383-4385.