



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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Preface

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WOMEN'S PROPERTY RIGHTS VS. SOCIAL PRACTICE FROM LAW TO LAND: WHY DAUGHTERS IN RURAL INDIA RELINQUISH INHERITANCE RIGHTS DESPITE THE 2005 HINDU SUCCESSION AMENDMENT.

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ABSTRACT

The Hindu Succession (Amendment) Act of 2005 was a revolutionary change in Indian jurisprudence, which tried to end hundreds of years of a gender-based gap in property distribution by endowing daughters with equal coparcenary rights by birth. This judicial requirement was further strengthened by the Supreme Court's landmark ruling in Vineeta Sharma v. Rakesh Sharma (2020), which explicated that the daughter's right is an "unobstructed heritage" that was not dependent on the father's date of death. This article however claims that despite these robust de jure advancements, the de facto ownership of women in agricultural land in rural India has stood at just about 13%.

Using a multi-disciplinary approach to the study of the judicial doctrines, NFHS-5 data, and the socio-economic literature, this article examines the unresolved tension between the intent of laws and firmly established patriarchal standards. This article has found that there exists a phenomenon of a "societal veto" where voluntary renunciation of inheritance rights is often due to social pressure and not necessarily as a choice. Women get driven to a kind of "forced altruism", where they forfeit their land claims in order to maintain the natal kinship, a network they can consider as their only security in an agrarian society dominated by the patriarchal norms. In addition, the article will discuss why compensatory transfers like dowry or education do not confer the equivalent long term bargaining power as physical land ownership. Finally, the article concludes that the 2005 Amendment remains a "paper tiger" because of administrative resistance and procedural illiteracy that requires immediate institutional measures to make sure that the birthright of a daughter will come alive outside the court.

INTRODUCTION

Historically, the structural framework of the Indian Society has had the usage of gender disparities especially in the context of not granting property rights to Hindu females. The legal and societal codes had been in place for centuries, attempting to keep the independence and authority of females over themselves down. Property ownership was not a right available to everyone, it was a male prerogative. The Sanskrit saying “**Na stri swatantramarhati- Swatantram Na Kachit Stiyah**”¹ meant that women were not fit for any social or independent existence and this was the rule followed in Ancient Hindu History. In the ancient text Manusmriti, Manu writes: “**A woman must not do anything after her own pleasure, even in her own house; in childhood she shall be dependent on her father, in youth on her husband, and when her lord is dead, on her sons.**” Women were considered just not at par with men, but also an object to be preserved by her male guardians.

The Hindu Succession (Amendment) act of 2005 that gave birth right to women born in Hindu families to the joint Hindu family property under Mithakshara Law, brought drastic reforms that need to be recognised. The most common school of thought that is applicable in most parts of India excluding the eastern states where it does not apply. In its simplest form, this system gives more importance to the concept of consanguinity (blood ties) and draws a clear line between the rights of male and female heirs. It particularly presents the restrictions imposed upon the interest of a coparcener in a joint family. In the law of Mitakshara, there are two main ways of transferring property:

Survivorship: This is the rule of the division of ancestral or joint family property. As one of the coparceners dies, the interest cannot pass by will or inheritance to his heirs, but is absorbed by the surviving coparcenarians.

Succession: The rule is relevant to the separate or self-acquired property belonging to an individual. During such cases, the property is transferred to the legal heirs of the immediate previous owner instead of being consumed by the joint family.

¹ A. M. Bhattacharjee, “Hindu Law and Constitution”, (2nd ed., E. L. House 1994)

The Hindu Succession Act of 1956 was influenced by and partially retained the Mitakshara Law in a way of how it treated the ancestral property which retained the concept of male coparcenery. The Hindu Succession Act (HSA) of 1956 was the legal development that put in place the legal framework of hereditary succession in the Hindus, Sikhs, Buddhists, and Jains. What was most critical about this legislation was the line that it drew between separate property (properties that one purchases on their own) and joint family property (ancestral property, including land owned by the extended kinship group).

Under this Act, in case of the death of a Hindu male who died without a will he was an intestate, under the law heirs were not treated equally, depending on the kind of property in question:

Separate property: Daughters had an equal share over the personal property of the father.

Joint Family Property: The daughters were shunned out of the ancestral estates in a systematic manner. By contrast, sons had an inalienable right to this group property since birth, and could be considered one of the members of the so-called Hindu coparcenary a legal status that could not be acquired by women in the original system of 1956.

This legal limitation was based on the old fashioned idea that after being married off, a daughter became a part of the family of her husband and lost the linkage to the property of her parents. This practice in fact perpetuated financial dependence of women and encouraged traditional and unequal gender roles without regard to constitutional provision of gender equality.

Another major amendment therefore changed in Section 6 of succession Act was the Hindu succession (Amendment) Act of 2005 that stated that the daughter of a coparcener should, as much as the son, become a coparcener by birth. The reasons why this was written are to make daughters equal to the sons and to eliminate gender discrimination in the rights of coparcenary. The daughters (both married and unmarried) could now inherit part of the ancestral property. The 2005 Amendment granted the same rights in the ancestral property to the daughters that the sons had and the daughters were also equally liable. The Supreme Court's Historic ruling in **Vineeta**

Sharma v. Rakesh Sharma² supported the idea of amendment's gender neutral goal. The Supreme Court in this case clarified that a daughter's right to be a coparcener is an **"unobstructed heritage."** This means the right is acquired at the moment of **birth**, exactly like a son. It is not a right that **"opens"** only upon the death of the father.

LITERATURE REVIEW

Although the legal obstacles in the 2005 Amendment were overcome in the case of Vineeta Sharma, the socio-economic drive to have such rights is best championed by some scholars such as **Bina Agarwal**. In her seminal analysis, **Gender and Command Over Property**³, Agarwal argues that gender gap in property ownership and control is the **"single most critical contributor"** in the gender gap present in the economic well-being, social status, and empowerment between the sexes.

The land in rural India is not just a material possession, but it is a resource of livelihood, and it is used as the measure and foundation of political and social prestige in the agrarian world. According to Agarwal, economic security of women lies with the land ownership. She gives some evidence that the bodily condition of a woman, as well as her children is largely correlated to her having the direct and independent access to the productive assets. This independent ownership serves as a fall-back position, a position that ensures that a woman is not left destitute in case of marital failure, desertion or widowhood-situations where even affluent women seem to be economically at a disadvantage.

But Agarwal points out also that there is an insistent critical gap between law and practice. She observes that even in cases where the ownership is legal, it does not necessarily imply effective control, including the ability to control the land, make decisions concerning its use and disposal of produce. One of the challenges that she sees as a critical problem is the structural incompatibility of contemporary inheritance legislations and the old marital customs. In most rural societies, daughters are usually coerced into giving up their inheritance to their brothers so as to stand a pretended social security. This is a trade-off between long term economical independence and the

² Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1: 2020 SCC OnLine SC 641

³ Bina Agarwal, *Gender and Control over Property* (1994).

hope of kin-based support, which shows that as long as there are strong social and ideological barriers so deep-rooted in society women cannot exercise their birthright despite the legal framework provided by cases like Vineeta Sharma.

But the legislation on equality tends to be overcome by the household level. Scholar **Sanchari Roy**⁴ is of the critical empirical opinion that though the **Hindu Succession Amendment Act (HSAA)** was meant to provide daughters with equal share in the ancestral property, it did not work much in enhancing the real chances of women inheriting land. Roy discovers that rather than going by the spirit of the law, most rural Indian parents are actively evading the reform through circumventing their part of the land to their sons and then practicing the “**gifting**” of their estate ahead of a partition to keep the property within the male line. However, even though this is a circumvention of land rights, Roy notes a distinct, but separate, system of compensation. She reasons that because of a possible inequality, parents are offering their daughters alternative transfers to compensate for the loss of their legal inheritance. Such transfers can be of two kinds:

Greater Investment in Education: Among daughters of primary school-going age during the period of the reform, much higher levels of education were achieved (an average of about 0.5 to 1 more years of schooling). According to Roy, this is a change towards "human capital" in place of "physical capital" (land).

Increased Dowry Payments: There was a concomitant increased dowry payments to women who were almost marriageable. This implies that dowry can be acting as a kind of a pre-mortem inheritance or even a compensatory gift paid during a marriage to compensate for the land that the daughter legally owns but which she is socially obliged to give up.

Finally, the work of Roy brings forth the fact that although the 2005 Amendment failed to alter the trends in terms of ownership of land as desired, it did cause a re-distribution of the household resources at a considerable scale. Her results indicate that property rights act as a springboard to other types of empowerment, e.g. education, despite the impossibility of owning the property. This

⁴ Sanchari Roy, Empowering Women? Inheritance Rights, Female Education and Dowry Payments in India, 114 J. Dev. Econ. 233 (2015).

brings in the complexity of the goal of gender-neutrality, where it has been demonstrated that the effect of the law is also at times filtered through the decision of a parent who wishes to provide land or another form of security.

RESEARCH GAP

Although the 2005 Amendment and the Vineeta Sharma (2020) judgment made the **de jure (legal)** position of women better, there is a significant gap in the research of the absence of progress in **de facto (actual)** ownership. Such radical steps in the law have not resulted in an impressive change in the amount of land owned by women in rural India, with the percentage ranging between 10 to 13 percent.⁵

The Paradox on Gifting vs. Inheritance.

According to the study, parents usually incorporate the gifting systems to evade the laws of inheritance. Although education is a kind of compensatory transfer as perceived by Sanchari Roy, the gap in knowledge is whether this kind of human capital can provide women with similar long-term bargaining power and financial security that is offered by the "physical capital" (land).

The Accommodation of "Voluntary" Relinquishment.

One of the most important aspects that are not studied fully is the psychological and social pressure that makes women voluntarily transfer their shares with their brothers. Although Bina Agarwal emphasizes the structural incompatibility of village exogamy that is marrying to distant villages, the fact that the fear of losing the natal support which is the only security system in the male-dominated society, becomes effective in voiding the 2005 Amendment, needs to be explored. The Rural population is dominated by the thought that if things don't work out with the husband of the daughter, the only support left with her for survival, is from her brother and father.

Administrative Resistance on the State Level.

In the Indian constitution, land is a State subject although in the Central law, it is gender-neutral. The gap in documenting how the local revenue officials (Patwaris) and the state specific

⁵ Archana Mishra, *Hindu Women's Inheritance Right in Agricultural Property: Myth or Reality*, SSRN Elec. J. (2019).

agricultural tenancy laws (at least in such states as Uttar Pradesh or Haryana) still favor male agnatic heirs, thus providing a legal loophole around the requirements of the Supreme Court.

The gap in the research also includes the case of the Moral Economy of Inheritance. The reason why the law is failing is that it considers inheritance as an **economic transaction** whereas in rural India, it is a **moral duty**.

Forced Altruism: The voluntary relinquishment is not studied in depth. Most of the women do not sign the deeds of relinquishment because they are not interested in the land but because the social rules require that a good sister does not have her share at the cost of her brother's living.

Legal Literacy Gap: There is a gap in procedural literacy on top of the knowledge of the existence of the law. Although most women are familiar with the fact that they have a right, not many of them are familiar with the administrative procedures to appeal against a mutation or a partition at the Tehsil level, thereby making the law practically unreachable.

The lack of law is not the issue, but rather the lack of social and administrative ecosystem to justify it. There is a need to explore the mechanism of negotiation, the way family pressure and the absence of institutional support (socio-political barriers) contribute to the systematic “paper only” existence of women’s property rights.

MATERIALS AND METHODS

A review of **Hindu Succession Act (HSA) 1956** by its doctrines, shows that there was a fundamental contradiction between Section 14 and Section 6. **Section 14** was aimed at giving women absolute ownership rights on the property they had but the existence of the Survivorship rule in **Section 6** put a structural obstacle. By this rule, the inheritance of property of an ancestor was not made by a will or by a natural line of descent; but survived to the other male coparceners. This implied that when a male member died, interests consisted of the other males, in a disciplined way, and daughters who were not born as coparceners were locked out. The daughters were **not “born as coparceners”** under the Hindu Succession Act (HSA) 1956 rules and because of this, they were excluded from inheriting the property. This rule made sure that the property stayed in a disciplined circle of males comprising of the sons, grandsons and the great-grandsons.

This contradiction was finally sorted out by the 2005 Amendment that eliminated the old survivorship rule of daughters. The new amended section 6 now expressly declares that a daughter born in the world is a coparcener in the same manner as a son is. End of Survivorship as Section 6(3) has now been amended by requiring that upon the death of a person his interest in joint family property shall devolve by testamentary or intestate succession (to all heirs including daughters) rather than by succession.⁶

The Hindu Succession (Amendment) Act, 2005, was a corrective measure, which was meant to overcome this male monopoly. Nonetheless, the era of 2005-2020 was distinguished by the so-called judicial pendulum that left the legal world with a lot of uncertainty:

Prakash v. Phulavati (2016): The Supreme Court first adopted a narrow position with the view that the 2005 Amendment was prospective. It declared that to claim a share, both the daughter and her father (the coparcener) had to be alive on the date the amendment came into force (September 9, 2005). Such a requirement of a living daughter of a living coparcener practically disqualified millions of women whose fathers died before 2005 for claiming their birthright.⁷

Danamma v. Amar (2018): Only two years later another bench produced a clash by indicating that the daughter's right over property is her inherent birthright. In this instance, the daughters were permitted to claim a share even though their father had passed away in 2001 (four years prior to the amendment). This caused a division in the Indian law in that various courts employed varying precedents and there was a stalemate on litigation of rural land.⁸

This doctrine analysis leads to the study of **Vineeta Sharma v. Rakesh Sharma (2020)**, in which a three-judge panel ultimately confirmed that the daughter's right is an "unobstructed heritage" acquired at birth. According to the Court, the father did not have to be alive in 2005 because the right is attached to the daughter's birth, not the father's death.

⁶ *Hindu Succession Act, No. 30 of 1956* (1956).

⁷ *Prakash v. Phulavati*, (2016) 2 SCC 36.

⁸ *Danamma v. Amar*, (2018) 3 SCC 343.

“The “13% Stagnation”

To compare these legal doctrines with the ground reality, in this article quantitative data obtained through the National Family Health Survey (NFHS-5, 2019-21) is used. The survey offers a dismal Implementation Deficit, which indicates that although the 2005 Amendment was in place, women land ownership in India is still localized with a figure of about 12.9%.

The paper examines the NFHS-5 data to demonstrate that although the “ownership of houses” by women appears to be greater on paper which is usually so because of government housing programs, the ownership of agricultural land remains a male domain. The information shows that the **Title-Deed Gap** is the largest in agrarian states such as Haryana and Punjab.⁹

“Owner” vs. “Operational Control”

Data in the National Sample Survey Office (NSSO) 70th round and 77th round is utilized to determine the difference between Nominal Ownership and Operational Control. Based on the NSSO records, where the name of a woman appears on a land title, the Command over Property, in terms of deciding what to plant, when to sell, how to spend the proceeds, etc. still resides with the male members of the household. This Paper Ownership phenomenon confirms the fact that legal gender neutrality is not a guarantee of economic empowerment.¹⁰

CONCLUSION

This article had the central aim of assessing the effectiveness of the Hindu Succession (Amendment) Act, 2005, in fulfilling its gender-neutral objectives in rural India. Although the law was enacted, and over time it was clarified by the courts, the final ruling was made in the landmark case of Vineeta Sharma v. Rakesh Sharma (2020) ruling, perfected de jure status of women as coparceners, the de facto state is one that is rooted in patriarchal antiquity. This article concludes that even though the right of a daughter has shifted to become an unhindered heritage at birth, the Indian social and administrative system remains socially focused on the male lineage.

The Law as a “Paper Tiger”: The implications of this research on a bigger scale are that unless

⁹ Int'l Inst. for Population Sciences (IIPS) & ICF, *National Family Health Survey (NFHS-5), 2019–21: India* (2021).

¹⁰ Vaishnavi Singh et al., *Analyzing Gender Disparities in Land Ownership and Wage Rates in Indian Agriculture: An Empirical Study*, 41 Asian J. Agric. Extension, Econ. & Soc. Dev. 652 (2023).

the Moral Economy of Inheritance is fundamentally changed we will continue to have a law that is a paper tiger. The stagnation of women in land ownership is not the result of the judiciary failure, but the victory of social conventions over the constitutional requirements. So long as the archetype of the Good Daughter is exploited to seek Relinquishment Deeds, and so long as the dowry is offered as an alternative to land, the 2005 Amendment will not grant women the economic fall-back position advocated by such scholars as Bina Agarwal. The real equality will be the ability to transcend Legal Literacy which is the mere possession of a right to Procedural Empowerment which is the ability to exercise what is right without the risk of social boycott.

To minimize the differences between village reality and vision of the Supreme Court, the following institutional interventions can be followed:

- **Mandatory Joint Presence and Verification:** Government needs to change the state revenue codes whereby physical presence of all legal heirs including brothers and sisters should be mandatory during any land registration or partition. To avoid forced altruism, a Relinquishment Deed must be performed with a mandatory cooling-off (to make sure the waiver is not forced) and with the private advice of a legal aid officer to make sure that the waiver is indeed voluntary and not coerced.
- Local authorities must be answerable in case mutations are repeatedly evaded on the female heirs without any legal explanations.
- **Incorporation of Legal Literacy in Rural Governance:** Should work through self-help groups (SHGs) and Gram Sabhas as centers of legal and procedural Literacy. Such initiatives need to inform women of the technical process by which mutation occurs, and why the argument supporting dowry as an inheritance is invalid.

Finally, legal access to the ancestral homes by the Hindu women has been keyed by the case of Vineeta Sharma although the socio-political gate locked by the family pressure and the administrative bias remains the same. The road to a genuinely gender-neutral inheritance law is based on breaking the so-called Societal Veto, and making the birthright of a daughter a gift with no strings.

REFERENCES

Articles

Roy, Sanchari. "Empowering Women? Inheritance Rights, Female Education and Dowry Payments in India." *Journal of Development Economics* 114 (2015): 233–251.

Mishra, Archana. "Hindu Women's Inheritance Right in Agricultural Property: Myth or Reality." *SSRN Electronic Journal* (2019).

Agarwal, Bina. "Gender and Command over Property". *World Development*, (1994).

Singh, Vaishnavi, et al. "Analyzing Gender Disparities in Land Ownership and Wage Rates in Indian Agriculture: An Empirical Study." *Asian Journal of Agricultural Extension, Economics & Sociology* 41 (2023): 652–662.

Reports and Data Sources

International Institute for Population Sciences (IIPS) and ICF.

National Family Health Survey (NFHS-5), 2019–21: India. Mumbai: IIPS, 2021.

Legal Cases

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

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

Danamma v. Amar, (2018) 3 SCC 343.

Statutory Instruments

Government of India. Hindu Succession Act, No. 30 of 1956. Government of India. Hindu Succession (Amendment) Act, 2005.