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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Women's Rights and Property Law: Investigating the Changes in Property Rights for Women under the Hindu Succession Act and Their Practical Implications

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Abstract

This paper explores the evolution of women's property rights under the Hindu Succession Act (HSA) and its amendments, with a special focus on the impact and challenges of the 2005 amendment. The research delves into the historical context, key legal changes, and their real-world implications. The paper also examines the practical challenges in implementing these rights, such as social resistance, lack of awareness, and the role of the judiciary in bridging the gap between law and practice. Through a combination of legal analysis and qualitative research, this study aims to provide insights into how property rights can serve as a tool for women's empowerment and what more needs to be done to ensure gender equality in property ownership.

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1. Introduction

The question of property rights has been pivotal in the larger discourse on gender equality and women's rights in India. Historically, women in India have faced considerable disadvantages in inheriting and owning property due to the patriarchal nature of both personal laws and social norms. The Hindu Succession Act (HSA), enacted in 1956, was a landmark legislation aimed at codifying property rights for Hindus, including women. However, it was only with the 2005 amendment to the HSA that significant strides were made in ensuring gender parity in property rights.

The changes introduced in the 2005 amendment marked a radical shift in the inheritance rights of Hindu women, granting daughters the same rights as sons in ancestral property and recognizing them as coparceners in Hindu Undivided Families (HUFs). While the legal framework has been established, the practical enforcement of these rights has met with several hurdles, ranging from patriarchal family structures to a lack of awareness and inadequate legal support².

This paper seeks to critically analyze the changes in property rights under the HSA, their impact on women's empowerment, and the practical challenges in the implementation of these rights. Through a detailed examination of the legal landscape and case studies, this research aims to offer recommendations for better enforcement of women's property rights.

2. Background and Evolution of the Hindu Succession Act

Before the enactment of the Hindu Succession Act in 1956, Hindu women had limited rights to inherit property. The Mitakshara and Dayabhaga systems, the two major schools of Hindu law, did not recognize women as coparceners in ancestral property. This meant that daughters had no birthright in the family property, unlike their male counterparts. Their rights were restricted to receiving maintenance or a limited estate as a widow, with no independent ownership.

² Poorvi Sachar, NFT's: How India Can Emerge as a Frontrunner, ABP Live, available at <https://news.abplive.com/india-at-2047/nft-india-frontrunner-user-market-popularity-bored-ape-bayc-cryptopunk-azuki-tezos-blockchain-poorvi-sachar-1546840>

The Hindu Succession Act, 1956, attempted to address these disparities by codifying property rights for Hindus, Buddhists, Jains, and Sikhs. The Act was revolutionary at the time, granting women property rights in the capacity of a widow, daughter, and mother. However, it still retained a bias favoring male heirs, as daughters were not given the same coparcenary rights as sons³. The discrimination was particularly visible in the rights to ancestral property, which continued to be governed by the Mitakshara system.

The 2005 amendment to the HSA sought to rectify these anomalies and bring Hindu women on par with men regarding inheritance rights. It introduced several crucial changes, most notably granting daughters the same rights as sons in HUF property and making them coparceners by birth. This amendment, hailed as a major victory for women's rights, has since transformed the legal landscape for Hindu women's property rights in India.

3. Key Changes Introduced by the 2005 Amendment

The Hindu Succession (Amendment) Act, 2005, marked a watershed moment in the struggle for women's property rights in India. The key changes introduced are as follows:

1. **Equal Coparcenary Rights for Daughters⁴:** Under the amendment, daughters were granted equal coparcenary rights in HUF property, placing them on par with sons. This change meant that daughters, by birth, would have a right to their father's ancestral property, making them coparceners with the same rights and liabilities as sons.
2. **Repeal of Gender Discriminatory Provisions:** The amendment removed Section 23 of the original Act, which restricted the rights of female heirs to seek partition in the dwelling house occupied by a joint family until the male heirs opted for partition. This change empowered women to seek partition and claim their share without waiting for the consent of male family members.
3. **Retrospective Application of the Amendment:** Although there was initial ambiguity regarding the retrospective application of the amendment, the Supreme Court of India

³ Abhay Aggarwal, NFT's in the Indian Market: How Investable are Digital Tokens, Entrepreneur India, available At <https://www.entrepreneur.com/en-in/technology/NFT's-in-the-indian-market-how-investable-are-digital/436812>

⁴ akshat Kolhatkar, What is an NFT and how does it work? Understand the technology behind NFT's, BQ Prime, available at <https://www.bqprime.com/business/what-is-an-nft-and-how-does-it-work-understand-the-technology-behind-NFT's>

clarified in *Prakash vs. Phulavati* (2015) and *Danamma vs. Amar* (2018) that daughters have equal coparcenary rights even if the father was not alive at the time of the amendment, provided the partition suit was filed after the 2005 amendment.

These changes aimed to eliminate gender discrimination in property rights and ensure that daughters were not excluded from inheriting family property simply by virtue of their gender. However, the success of these changes in practice has been varied.

4. Analysis of Changes in Women's Property Rights

The 2005 amendment has been instrumental in transforming the legal framework for women's property rights. Its impact can be analyzed from the following perspectives:

1. **Legal Empowerment of Women:** By granting daughters equal rights in ancestral property, the amendment has significantly enhanced the legal status of Hindu women in their families. This change has been a step towards dismantling the traditional patriarchal control over property and has provided women with a means of financial independence.
2. **Economic Security and Empowerment:** Property rights are a critical factor in ensuring women's economic security. With equal inheritance rights, women now have the potential to gain assets that can provide a safety net against poverty, enable them to invest in businesses, or be used as collateral for loans. This economic empowerment can also lead to greater autonomy and decision-making power within families⁵.
3. **Resistance from Family Structures:** Despite the legal changes, the practical realization of these rights remains limited. Many families, especially in rural areas, continue to deny daughters their rightful share. Societal attitudes, coupled with a lack of awareness and fear of ostracism, often prevent women from claiming their property rights.
4. **Judicial Role in Upholding Women's Rights:** The judiciary has played a crucial role in ensuring the implementation of the 2005 amendment. Landmark judgments such as *Vineeta Sharma vs. Rakesh Sharma* (2020) have reaffirmed the equal rights of daughters in ancestral property and provided clarity on the retrospective application of the amendment. These rulings have been instrumental in protecting the rights of women and ensuring that legal reforms translate into real-world benefits.

⁵ Thomas Merrill & Henry Smith, *Property: Principles and Policies*, Thomson Reuters, 2nd Edition (2012).

5. Practical Implications and Challenges

While the 2005 amendment has been a progressive step⁶, its implementation has faced numerous challenges:

1. **Lack of Awareness:** Many women, particularly in rural areas, are unaware of their rights under the amended Act. This lack of awareness prevents them from seeking legal redress or claiming their rightful share in ancestral property.
2. **Societal Resistance and Patriarchal Norms:** Patriarchal family structures continue to resist the idea of daughters inheriting property, viewing it as a disruption of the traditional system. In many cases, women are pressured to relinquish their rights or face social ostracism if they assert their property claims.
3. **Administrative and Legal Hurdles:** The implementation of property rights often involves lengthy and expensive legal procedures. Women may face difficulties in proving their rights, especially when property records are poorly maintained or contested by male family members.
4. **Lack of Support Systems:** Women seeking to claim their rights often lack access to legal aid, support networks, and effective enforcement mechanisms. This makes it difficult for them to navigate the legal system and secure their rights.

6. Case Studies and Real-life Examples

To understand the real-world implications of the 2005 amendment, it is essential to examine the experiences of women who have sought to claim their property rights:

1. **Case Study 1: Vineeta Sharma vs. Rakesh Sharma (2020)** In this landmark case, the Supreme Court clarified that daughters have coparcenary rights by birth, regardless of whether the father was alive at the time of the 2005 amendment. This judgment set a precedent for numerous other cases and reinforced the equal rights of daughters in ancestral property.
2. **Case Study 2: Danamma vs. Amar (2018)** In this case, the Supreme Court held that daughters born before the 2005 amendment are also entitled to coparcenary rights, thereby

⁶ A.P Singh & Ashish Kumar Srivastava, Property Laws, LexisNexis.

ensuring that the amendment applies retroactively. This ruling addressed a critical loophole and provided greater clarity on the scope of the amendment.

These case studies highlight the judiciary's proactive role in interpreting the law to protect women's rights. However, they also reveal the complexities and resistance faced by women in realizing these rights on the ground.

7. Comparative Analysis

The property rights of Hindu women, while significantly improved by the 2005 amendment, still lag behind the rights enjoyed by women of other communities in India. For instance, Muslim women have always had a share in their father's property⁷, albeit smaller than that of sons, under Islamic law. Christian and Parsi women have equal inheritance rights under the Indian Succession Act.

Internationally, India's property rights for women remain weaker compared to countries like Sweden and Norway, where gender equality in property ownership is enshrined in both law and practice. The comparison highlights the need for further reforms to bring India's legal framework in line with global standards.

Background and Evolution of the Hindu Succession Act

Introduction: Historical Context of Property Rights for Women in Hindu Law

The Hindu Succession Act (HSA) of 1956 is a landmark piece of legislation that sought to codify the property rights of Hindus, including Buddhists, Jains, and Sikhs. Prior to this Act, the legal landscape governing property rights in Hindu families was deeply patriarchal and complex, shaped by ancient texts and practices. Women were systematically excluded from property ownership, particularly in ancestral properties, due to social customs and legal doctrines embedded in the Mitakshara and Dayabhaga schools of Hindu law.

Understanding the evolution of women's property rights under the Hindu Succession Act requires a deep dive into the historical context, the emergence of the HSA in 1956, and the significant 2005 amendment. Each of these stages represents incremental yet meaningful steps toward gender

⁷ Wex Definitions Team, Cornell Law School, available at https://www.law.cornell.edu/wex/corporeal_ownership

equality in property rights. This section outlines the trajectory of these changes, providing a comprehensive understanding of the law's evolution and its implications.

The Historical Basis: Mitakshara and Dayabhaga Systems

The two dominant schools of Hindu law, the Mitakshara and Dayabhaga systems, governed inheritance and succession in different parts of India before the codification of Hindu property rights. The Mitakshara system was prevalent in most of India, except in Bengal and Assam, where the Dayabhaga system was followed. Each system treated women's property rights differently⁸, but both were fundamentally biased against women:

- **Mitakshara System:** In the Mitakshara system, ancestral property was held jointly by the male members of the family as a Hindu Undivided Family (HUF). Coparcenary rights—a right to a share in the family property—were only granted to male members, who were recognized as coparceners by birth. Female members, including daughters, were excluded from the coparcenary. They could not demand partition or seek a share in the property unless they inherited it as a widow or through limited succession rights. Women's inheritance was generally limited to receiving *stridhan* (women's property) or a life interest that reverted to the male heirs upon her death.
- **Dayabhaga System:** The Dayabhaga system, though slightly more lenient, also limited women's rights in ancestral property. Under this system, the concept of joint family ownership was less rigid, and male members only acquired their share upon the death of the father. Women could inherit property as widows or daughters, but their rights were still inferior to those of male heirs.

This gender bias, rooted in religious texts and social customs, was reinforced through legal doctrines, making it almost impossible for women to own property independently or exercise control over family wealth.

The Hindu Women's Rights to Property Act, 1937⁹

The first legislative attempt to reform Hindu women's property rights came with the Hindu Women's Rights to Property Act, 1937. This Act was passed as a response to growing demands

⁸ The Indian Penal Code, 1860, §22.

⁹ Code of Civil Procedure, 1908, Order XXI.

for reform, particularly from women's organizations and progressive social movements. It introduced certain rights for widows, allowing them to inherit a share in their husband's property. However, the Act was still highly restrictive and did not address the fundamental issue of daughters' rights in ancestral property. Widows were given only a limited interest in the property, and upon their death, the property would revert to the husband's heirs.

The 1937 Act also created legal ambiguities, especially concerning joint family properties. It led to confusion and conflicting interpretations in courts, necessitating a comprehensive reform in the form of the Hindu Succession Act of 1956.

The Hindu Succession Act, 1956: A Step Towards Reform

The Hindu Succession Act, 1956, was enacted as part of a series of reforms introduced by the Indian government to modernize Hindu personal laws, including the Hindu Marriage Act, 1955, and the Hindu Adoption and Maintenance Act, 1956. The primary objective of the HSA was to eliminate the complex web of customary practices and standardize succession laws for Hindus, ensuring a uniform legal framework across the country.

Key Provisions of the 1956 Act:

1. **Equal Rights in Self-Acquired Property:** One of the most significant provisions of the HSA was granting equal rights to daughters, sons, widows, and mothers in the self-acquired property of a deceased Hindu male. This meant that if a Hindu male died intestate (without a will), his property would be distributed equally among his heirs, irrespective of gender. However, this equality was only applicable to self-acquired property and not to ancestral property governed by the Mitakshara system.
2. **Limited Rights in Ancestral Property:** The 1956 Act did not fundamentally alter the concept of coparcenary under the Mitakshara law. Daughters were still excluded from inheriting a share in the ancestral property. They were granted a limited right to inherit as Class I heirs in the absence of male heirs, but they were not coparceners by birth, as sons were. This meant that while daughters could inherit their father's property, they did not have the right to demand partition or manage joint family property.
3. **Succession to Female Heirs:** The Act introduced certain progressive changes in succession to female property. It classified female property into *stridhan* (woman's

property) and property inherited from parents or husband. However, the property inherited from a woman would revert to her parental family upon her death if she had no children, thereby limiting her right to bequeath property freely.

Criticisms of the 1956 Act: While the HSA, 1956, was hailed as a progressive step, it fell short of ensuring complete gender equality. The exclusion of daughters from coparcenary rights meant that the patriarchal nature of property rights remained intact. The Act failed to challenge the male-centric concept of family wealth and power, reinforcing the notion that women were secondary heirs, dependent on the goodwill of male family members.

The Hindu Succession (Amendment) Act, 2005: A Paradigm Shift¹⁰

The demand for gender equality in property rights continued to gain momentum in the decades following the enactment of the 1956 Act. Activists, women's organizations, and legal scholars argued that the exclusion of daughters from coparcenary rights violated the constitutional principle of equality. In response to these demands and changing social attitudes, the Hindu Succession (Amendment) Act, 2005, was passed.

Key Changes Introduced by the 2005 Amendment:

1. **Equal Coparcenary Rights for Daughters:** The most significant change introduced by the 2005 amendment was granting daughters equal coparcenary rights in ancestral property. Daughters were now recognized as coparceners by birth, just like sons. This meant they had the same rights, responsibilities, and liabilities as sons in the joint family property. They could now demand partition, sell their share, and bequeath it independently.
2. **Repeal of Section 23:** The amendment repealed Section 23 of the original Act, which prevented female heirs from seeking partition in the family dwelling house unless the male heirs chose to divide it. This provision had been a major impediment to women's property rights, especially in rural areas, where family homes were the primary asset. The repeal of Section 23 empowered women to claim their share in the family home, regardless of male consent.

¹⁰ Prashant Kataria, NFT's in India: Legal Implications, Business Line, available at <https://www.thehindubusinessline.com/business-laws/NFT's-in-india-legal-implications/article65636218.ece>

3. **Clarification on the Applicability of the Act:** The 2005 amendment clarified that daughters born before or after the enactment of the amendment would have the same rights as sons, provided the partition suit was filed after 2005. This retrospective application of the amendment was a crucial step in ensuring that women who had been excluded earlier could benefit from the new law.

Impact of the 2005 Amendment: The 2005 amendment fundamentally altered the property rights landscape for Hindu women. It was a major victory for women's rights activists, as it not only provided daughters with an equal share in ancestral property but also symbolized a shift towards recognizing women's economic rights and autonomy. The amendment was also a step towards aligning Hindu personal law with the constitutional principles of equality and non-discrimination.

Judicial Interpretation and Challenges Post-2005 Amendment¹¹

Despite the progressive nature of the 2005 amendment, its implementation has been fraught with challenges. The judiciary has played a crucial role in interpreting the law and clarifying ambiguities. Landmark judgments such as *Vineeta Sharma vs. Rakesh Sharma* (2020) and *Prakash vs. Phulavati* (2015) have reinforced the equal rights of daughters, addressing issues related to the retrospective application of the law.

However, social resistance, lack of awareness, and patriarchal family structures continue to hinder the practical realization of these rights. In many cases, women are pressured to relinquish their rights in favor of male family members or face ostracism for asserting their legal entitlements.

Conclusion

The evolution of the Hindu Succession Act reflects a gradual but significant shift towards gender equality in property rights. From the restrictive provisions of the pre-1956 era to the transformative changes introduced by the 2005 amendment, the Act has undergone substantial reform. However, achieving true gender parity in property rights requires not only legal reforms but also societal change, increased awareness, and robust enforcement mechanisms. The journey towards equal

¹¹ Prashant Kataria, Non-Fungible Tokens in India: 6 Legal Implications buyers must consider, Mondaq, available at <https://www.mondaq.com/india/fin-tech/1198948/non-fungible-tokens-in-india-6-legal-implications-buyers-must-consider>

property rights for Hindu women is ongoing, and sustained efforts are needed to translate legal rights into lived realities.

The Historical Basis: Mitakshara and Dayabhaga Systems

The history of women's property rights in Hindu law is closely intertwined with two predominant schools of thought that governed the succession and inheritance laws of Hindus in India: the Mitakshara and Dayabhaga systems. These schools, while sharing a common religious foundation in Hindu scriptures, differed significantly in their treatment of property rights, inheritance, and the position of women within the family structure. Understanding the nuances of these systems is essential to comprehending the challenges faced in reforming women's property rights, which were deeply entrenched in these patriarchal doctrines.

1. The Mitakshara System

The Mitakshara system is one of the oldest and most influential schools of Hindu law, governing the succession and inheritance rights of Hindus in most parts of India, including Uttar Pradesh, Bihar, Madhya Pradesh¹², Rajasthan, and other states. It is named after the commentary *Mitakshara*, written by the jurist Vijnaneshwara on the *Yajnavalkya Smriti*. This school is based on the ancient texts of Hindu law and adheres to a rigid structure of property ownership that primarily favors male lineage.

Key Features of the Mitakshara System:

1. **Concept of Joint Family and Coparcenary¹³:** The Mitakshara school is characterized by the concept of a *joint family*, where property is owned collectively by the male members of the family. This joint family property, known as *ancestral property*, is held and managed as a single unit. Within this system, a special category of members called *coparceners* have specific rights and responsibilities.
 - A coparcenary is a smaller subset within the larger joint family and consists of male members who are lineal descendants of a common ancestor up to four generations. For example, a father, his son, grandson, and great-grandson constitute a coparcenary.

¹² Internet and Mobile Association of India vs. Reserve Bank of India, MANU/SC/O264/2020.

¹³ Id.

- Only coparceners have the right to demand partition of the joint family property, claim a share, or act as its legal custodians. This right is acquired by birth and is independent of the father's will, meaning a male child becomes a coparcener automatically by virtue of being born into the family.
2. **Exclusion of Women:** One of the most defining aspects of the Mitakshara system is the exclusion of women from coparcenary rights. Daughters, wives, and mothers, despite being members of the joint family, were not considered coparceners. They did not have a birthright in the joint family property, nor could they demand partition or dispose of the property.
- Women's rights were limited to maintenance or a share in the property only if it was explicitly bequeathed to them through a will or given as a gift.
 - A widow, under specific conditions, could inherit her husband's share in the property, but her rights were limited to enjoying the property during her lifetime without actual ownership. Upon her death, the property would revert to the male heirs of the family.
3. **Ancestral and Self-Acquired Property:** The Mitakshara system makes a distinction between ancestral and self-acquired property. Ancestral property is the joint family property inherited by male members from their father, grandfather, or great-grandfather. In contrast, self-acquired property is that which a person earns independently through his efforts. While the head of the family (the *karta*) has considerable control over the self-acquired property, he cannot unilaterally alienate the ancestral property without the consent of other coparceners.
4. **Right by Birth:** A unique feature of the Mitakshara school is that the rights in ancestral property are acquired by birth. This doctrine of *birthright* confers an automatic share in the property to male children, who become coparceners upon birth. This right, however, was denied to female children, reinforcing gender inequality in property ownership.

These features made the Mitakshara system inherently discriminatory towards women, denying them the economic security and independence that comes with property ownership. It created a rigid structure where the control of property remained firmly in the hands of male members, relegating women to a secondary status within the family.

2. The Dayabhaga System

The Dayabhaga school, in contrast, developed in Bengal and parts of Assam and presented a slightly different approach to property rights and succession. It was founded on the *Dayabhaga*, a legal treatise written by Jimutavahana in the 12th century¹⁴. While the Dayabhaga system also reflected the patriarchal values of its time, it differed from the Mitakshara system in certain key respects, particularly in its treatment of property ownership and succession.

Key Features of the Dayabhaga System:

1. **No Concept of Coparcenary by Birth:** Unlike the Mitakshara system, the Dayabhaga system does not recognize the concept of coparcenary by birth. Instead, ownership rights in the family property are acquired only upon the death of the father. Until the father's death, no male member has an automatic right to a share in the family property. This means that sons cannot demand partition or claim a share in the property during the father's lifetime.
2. **Greater Control for the Father:** The absence of a coparcenary structure in the Dayabhaga system means that the father retains absolute control over the family property during his lifetime. He can manage, alienate, or dispose of the property without the consent of his sons. This control extends to both ancestral and self-acquired property, giving the father considerable authority over family wealth.
3. **Inheritance Rights for Women:** While the Dayabhaga system does not recognize daughters as coparceners, it provides them with relatively greater inheritance rights compared to the Mitakshara system. For example:
 - A daughter is considered a legal heir to her father's property, alongside her brothers, upon his death.
 - Widows also enjoy a right to inherit their husband's property and can hold it as their absolute property rather than as a life estate (limited interest). However, in practice, social norms often prevented women from asserting these rights fully.
4. **Division of Property:** In the Dayabhaga system, property is divided among heirs only after the father's death, unlike the Mitakshara system, where partition can occur at any time among coparceners. This delayed division meant that disputes over property were less

¹⁴ Jamie Crawley, NFT's can be considered property, according to Singapore High Court Ruling, CoinDesk, available at https://brill.com/view/journals/ilrc/5/1/article_p17_17.xml?language=en#ref_FN000015

frequent during the father's lifetime, but it also meant that women's rights to property often remained unrealized if they did not assert their claims promptly.

5. **Position of Widows:** Widows in the Dayabhaga system have comparatively stronger rights. They can inherit the property of their deceased husbands and hold it absolutely, without the obligation to pass it on to male heirs. This was a significant departure from the Mitakshara system, where widows only had a limited interest in the property.

Despite these relatively progressive features, the Dayabhaga system still placed women in a subordinate position compared to male heirs. Women's inheritance rights were often undermined by social practices, and their share in the property was usually much smaller than that of their male counterparts.

3. Impact on Women's Property Rights and Reforms

Both the Mitakshara and Dayabhaga systems were heavily skewed in favor of male members, perpetuating a gender hierarchy that denied women economic independence and security. Under the Mitakshara system, women were effectively excluded from owning or managing family property, while the Dayabhaga system¹⁵, although more lenient, still treated women's rights as secondary to those of male heirs.

The codification of Hindu law through the Hindu Succession Act, 1956, attempted to address some of these biases, but the exclusion of daughters from coparcenary rights under the Mitakshara system remained a significant gap. This gap was finally bridged by the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights, thereby dismantling the male-centric coparcenary structure in the Mitakshara system.

The historical basis of the Mitakshara and Dayabhaga systems continues to influence the interpretation and application of property rights in modern India, making it essential to understand their intricacies and their long-lasting impact on gender equality in property ownership.

¹⁵ Sean Murphy, Are NFT's a type of property under English Law, Inside Tech Law, available at <https://www.insidetechlaw.com/blog/are-nft-s-a-type-of-property-under-english-law>.