

# PROPERTY RIGHT OF WOMEN IN INDIA

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## ABSTRACT

The Indian Constitution provides equality to all the citizens before the law. Several social legislations have been passed to safe guard the rights of women. Women's right to property has been recognized as an important development issue. Property rights for women can have an impact on decision making, income pooling, acquisition, and women's overall role and position in the community. While observing the property rights of women in society, the question of class differentiation among women also needs to be raised. The inheritance system in Indian society has been to preserve property, especially land property, intact for male heirs. Women's right, to access and control over property, is determined through women's overall living conditions, economic security, and physical safety. Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified as the Hindu Succession Act, 1956 for Hindus, while, Christians are governed by Indian Succession Act, 1925 and the Muslims have not codified their property rights, neither the Shias nor the Sunnis. Tribal women of various religions and states continue to be governed by the customs and norms of their tribes. There are a few restrictions on their mobility but women have considerably freedom of choice in the selection of marriage partners. Religion plays a major role in the succession of property in India. The personal laws of religious communities are mostly dominated by the scriptures of the religions. The continuous struggle by feminists groups has turned the spotlight on women's rights. Yet there are so many areas which the society is yet to turn its attention on.

## KEY WORDS

Property rights - Political rights – Constitution – legislations – inheritance – inequalities – community – Globalization – Industrialization – discrimination – perpetuation – Convention – polygamy – harassment – succession – traditional – Amendment.

**Introduction:**

Civil and political rights are crucial for achieving gender equality in any society. The Indian Constitution gives equality to all the citizens under the law. In intelligence with the objectives of the study the different Constitutional provisions for the security of women and the social enactments passed for women as to property inheritance are presented in this article. Religion shrewd laws related to property inheritance for women are also presented. Several social legislations have been passed to safe guard the rights of women. From time to time amendments have been made to address the issues of people as indicated by the evolving times. Women's right to property has been perceived as a significant development issue. Property rights for women can have an impact on decision making, income pooling, acquisition, and women's overall role and position in the community.<sup>1</sup>

In addition, land is a basic asset for a woman when the family unit separates; for instance, in the event of desertion by husband, abandonment, divorce, polygamous relationships, illness or death. There is a basic relationship in the role that women play and the food accommodated families, communities, and nations. Universally, an expected 41% of women headed family units live beneath the characterized destitution line, with 33% of the women on the world are either destitute or living in inadequate housing facilities.<sup>2</sup> The additional exclusion of women from access to land pushes them towards urban communities, where they frequently join the positions of expanding number of women headed family units in slum areas. Through the cycles of Globalization and Industrialization, there has been a prominent expansion in the quantities of women entering in the waged labour sectors. While noticing the property rights of women in society, the subject of class discrimination among women likewise should be raised. As dominant part of women don't have a place with the common laborers, and there are sharp contrasts across women from various backgrounds. This especially is obvious in the current day setting when education and changing qualities are engaging women of a specific class. The inheritance system in Indian society has been to save property, particularly land property, flawless for male beneficiaries. In real practice, intra-family distributions are truly situated in a society of male centric society established in patrilineal, patrilocal rehearses, which characterize the function of women in economic and non-economic circles.<sup>3</sup> Rights for women are intervened through family connections and profoundly taught recognitions that women have about themselves, their inclinations and what comprises their prosperity within their families.

Women's right, to access and control over property, is determined through women's overall living conditions, economic security, and physical safety. Gender discrimination is identified with lower per capita income, future, and proficiency. The issue of gender inequity disparity is because of the profound social inclination against women. Women during the Vedic period were held in incredible respect and appreciated different rights and obligations. Women imparted equivalent rights and obligations to her husband. However, the main discrimination they were exposed to was in issues of inheritance, yet they were never barred totally from acquiring. Succession is a part of property law with certain connections to land law, trusts, and individual property, just as to family law.<sup>4</sup> At present, the presence of less privilege of women than men in Indian Personal laws is commonly ascribed to the sanctity of religious law. A few changes affected throughout the decades show the particular utilization of sanctity contention. The perpetuation of female property and inheritance rights assists with moderating negative economic outcomes experienced by women and their family units, while additionally assisting with advancing women's financial security and strengthening, along these lines diminishing their weakness to aggressive behavior at home, hazardous gender and other health hazard factors. Women for long have been enslaved in property inheritance. This has become a major concern in making a correct equilibrium in gender equity. The Government of India has given explicit organizations like the National Commission for Women, Department of Women and Child Development and so on. The Convention features in Article 16 that: "State parties will take all suitable measures to kill victimization women in all issues identifying with marriage and family relations and specifically will guarantee, on a premise of equity of people".<sup>5</sup>

### **Property Rights:**

The Indian Constitution, both the Central and the State governments are skillful to authorize laws on issues of Succession. Some of the states have authorized their own variations of property laws within each personal law. Thus, there are no single uniform laws to administer the property rights of Indian women. Every religious community is represented by its particular individual laws. Among every religious group, there are subgroups and local customs and norms with their individual property rights. Property rights are regularly seen in the tight feeling of proprietorship the option to totally and solely control an asset.<sup>6</sup>

Hindus, Sikhs, Buddhists and Jains are represented by one code of property rights systematized as the Hindu Succession Act, 1956 for Hindus, while, Christians are administered by Indian Succession Act, 1925 and the Muslims have not classified their property rights, neither the Shiyas nor the Sunnis.<sup>7</sup> Tribal women

of different religions and states keep on being represented by the traditions and standards of their clans. There are a couple of limitations on their versatility yet women have extensively opportunity of decision in the choice of marriage accomplices. Ancestral societies have liberal standards identified with discrimination and remarriage by women. Among most Tribes, property, especially land, goes through the male ancestry and under standard laws. Women don't have inheritance rights to land. As women's right to property inheritance are restricted and often times disregarded, during the 1950's the Hindu Personal laws were updated, prohibiting polygamy and giving them right to inheritance, selection and discrimination. Under Hindu law, children have an autonomous offer in the tribal property. However, daughter's shares depend on the offer got by their fathers. Subsequently, a father can adequately exclude a girl by revoking a lot of the hereditary property. In any case, the child will keep on having an offer in his own right. Furthermore, married daughters, even those confronting conjugal badgering, have no private rights in the familial home. The issue started where inheritance rights were worried since this had to do with unflinching property, particularly land. Women couldn't acquire such property predominantly in light of the fact that the male centric culture needed to keep properties flawless within their own families.<sup>8</sup> Widows ordinarily reserved the option to upkeep by the beneficiaries of the spouses and for all intents and purposes no offer in the family property, besides in situations where the husband had just isolated from the joint family. The Muslim Personal laws contrast extensively from that of the Hindus, and grant polygamy. However different laws ensuring women's rights, traditional patriarchal attitudes still prevail.

### **Property Rights in Tamil Nadu:**

The property rights of women in Tamil Nadu get decided relying upon which religion and religious school she follows, in the event that she is hitched or unmarried, which part of the nation she comes from, on the off chance that she is an ancestral or non-ancestral, etc. The issues brought up in this investigation identifies with standard rights that is the property rights permitted to women in various districts of Tamil Nadu under their standard practices, when contrasted with the rights permitted under the traditional general sets of laws.<sup>9</sup> The chronicled proof from South India, particularly Tamil Nadu area, proposes that women had significantly more grounded rights to property than demonstrated in the lawful writings, and the legal scholars themselves knew about the change between the endorsed rights and standard rights.

## **Role of Religion in the Succession of Property Right:**

Religion assumes a significant part in the succession of property in India. The individual laws of religious communities are generally overwhelmed by the sacred writings of the religions. During the prior period, the law of succession was generally un-arranged and followed by the traditions of the communities. As the society moved towards progress, the Governments began to arrange the laws of Succession.<sup>10</sup> The codification generally relied upon the current traditional practices. Consequently, there is no consistency in the succession laws. In any case, Religion assumes a significant part in the arrangement of succession laws. The succession laws which are systematized independently to various religions dismissed women and gave an inconsistent status to them. During the British rule, certain institutions were made, for example, the Married Women's Property Act, 1874, The Hindu Disposition of Property Act, 1916, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Transfer of Property Act, 1882, The Indian Succession Act 1925, The Cochin Christian Succession Act, 1902, The Hindu Women's Rights to Property Act, 1937, The Muslim Personal Law (Shariat) Application Act 1937, the Mussalman Waktf Validating Act, 1913 Act and so on to inspire the situation of women. Even after independence, the Indian Government has retained most of the laws. Thus, the citizens of India are governed by the religious laws they practice.<sup>11</sup>

## **Property Rights of Hindu Women:**

Property Rights of Hindu women in India differs relying on the conjugal status, regardless of whether the woman is a daughter, married or unmarried, abandoned spouse or widow or mother. It likewise relies upon the sort of property, regardless of whether the property is innate tribal or self-procured, land or abiding house or marital property. Before the Act of 1956, Shastric and Customary laws, shifted from region to region represented Hindus and some of the time it differed in a similar area on a standing premise. As the nation is tremendous and interchanges and social associations in the past were troublesome, it prompted variety in the law.<sup>12</sup> The variety of succession laws in India, various in their tendency, inferable from their differed inception made the property laws much more intricate. In any case, the social change development during the pre-independence period raised the issue of gender discrimination and various advances were started. The chief change was that in succession, there should be evenhanded conveyance among male and female beneficiaries and the Hindu women's restricted domain ought to be broadened into full possession. However, that never occurred. The main property over which she had a flat out proprietorship was the *Stridhan* meaning women's property. The Hindu Law of Inheritance Act, 1929 was the most punctual bit of

enactment, carrying woman into the plan of inheritance. This Act conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister.<sup>13</sup>

### **Hindu Women's Right to Property Act of 1937:**

This was the milestone enactment which gave proprietorship rights on women. This Act achieved progressive changes in the Hindu Law, everything being equal, and brought changes in the law of joint inheritance as well as in the law of segment, estrangement of property, inheritance and reception. The Act of 1937 empowered the widow to prevail alongside the child and to take an offer equivalent to that of the child. Be that as it may, the widow didn't turn into a coparcener despite the fact that she had a correct like to a joint inheritance interest in the property and was an individual from the joint family.<sup>14</sup> The widow was qualified distinctly for a restricted domain in the property of the expired with an option to guarantee parcel. A little girl had practically no inheritance rights. Regardless of these establishments having gotten significant changes the law of succession by presenting new rights of succession on specific females, these were as yet discovered to be garbled and blemished in numerous regards and offered ascend to various abnormalities and left immaculate the essential highlights of oppression women.<sup>15</sup>

### **Hindu Succession Act of 1956:**

The Hindu Succession Act ordered in 1956 was the principal law to give a complete and uniform arrangement of inheritance among Hindus and to address sexual orientation imbalances in the zone of inheritance. It was accordingly a cycle of codification just as a change simultaneously. The Hindu Succession Act was the first post-independence enactment of property rights among Hindus. The Hindu Succession Act, 1956 was made to arrange the law identifying with intestate succession among Hindus.<sup>16</sup> It reaches out to the entire of India aside from the province of Jammu and Kashmir. This Act is material to all the Hindus, Buddhists, Jains and Sikhs by religion. The maintenance of the joint inheritance without remembering females for it implied that females couldn't acquire ancestral property as males do. On the off chance that a joint family gets isolated, every male coparcener takes his offer and females get nothing. Just when one of the coparceners bites the dust, a female gets a portion of his offer as a beneficiary to the perished. Along these lines the law by barring the daughters from partaking in joint inheritance possession simply by reason of their gender added to an imbalance against females as well as has prompted abuse and invalidation of their right to equity and gives off an impression of being a joke of the crucial rights ensured

by the Constitution. Henceforth, this very truth required a further change with respect to the property rights of women, and which was finished by the Hindu Succession (Amendment) Bill, 2004.<sup>17</sup>

### **The Hindu Succession Amendment Act, 2005:**

The Hindu Succession (Amendment) Act, 2005 tries to make two significant changes in the Hindu Succession Act, 1956. To start with, it is proposed to eliminate the sexual orientation segregation in area 6 of the first Act. Second, it proposes to omit section 23 of the first Act, which disentitles a female beneficiary to request segment in regard of a residence house, completely involved by a joint family, until the male beneficiaries decide to separate their particular offers in that. Section 6 of the Hindu Succession Act, 1956 has been rehashed for convenience- Devolution of interest in joint inheritance property. At the point when a male Hindu died on after the beginning of this Act, having at the hour of his demise an interest in a joint inheritance property, his advantage in the property will degenerate by survivorship upon the enduring people from the joint inheritance and not as per the Act.<sup>18</sup> The Act gives that if the perished had left him enduring a female relative determined in class I of the Schedule or a male relative indicated in that class who claims through such female family member, the interest of the expired in the joint inheritance property will regress by testamentary or intestate Succession, all things considered and not by survivorship. The Hindu Succession (Amendment) Act, 2005 is a milestone. Following 50 years, the Government at long last tended to some enduring sexual orientation imbalances in the 1956 Hindu Succession Act, which itself was way breaking. The 2005 Act covers disparities on a few fronts: agrarian land; joint family property; parental dwelling house; and certain widow's. The correction has come into activity from 2005.<sup>19</sup>

### **Property Rights of Muslim Women:**

The property rights of Muslim women vary from different religions as it depends on the Islamic Law of Succession on the fundamentals of Holy Quran. Muslims comprehensively have a place with two schools of thought: the Sunnite and the Shiite. Under the Sunnite school, there are four sub classifications; Hanafis, Shafis, Malikis and Hanbalis. The usual practice in this sub-continent is to utilize the terms 'Sunni' Law or 'Shia' Law. After the Shariat Act of 1937, Muslims in India came to be administered in their own issues, including property rights, by Muslims Personal Law as it "restored" Personal Law in preference to custom. Extensively, the Islamic scheme of inheritance uncovers three highlights, which are particularly not the same

as the Hindu Law of Inheritance: (I) the Koran gives explicit offers to specific people (ii) the buildup goes to the agnatic beneficiaries and bombing them to uterine beneficiaries and (iii) endowments are restricted to 33% of the domain, i.e., most extreme 33% offer in the property can be willed away by the proprietor. The Muslim Law of Succession is un-classified, there is no parcel of acquired property. Succession opens just on the passing of the predecessor, and afterward alone the property vests in the beneficiaries.<sup>20</sup> The Islamic Law of succession depends on the principles of the Holy Quran. No woman was avoided from inheritance just based on sex. Women have equivalent option to share the property of the perished. Islamic Principles of Succession according to Prophet the principles are the couple being equivalent are qualified for acquire to one another, some close to females and cognates are likewise perceived and counted as beneficiaries, guardians and certain different ascendants are made beneficiaries in any event, when there are relatives and the recently made beneficiaries are given indicated shares alongside standard beneficiaries, who are reliquaries.

#### **Property Rights of Christian Women:**

The laws of succession for Christians are set down in the Indian Succession Act, 1925 (ISA). Sections 31 to 49 deal with Christian succession. The Indian Christian widow's privilege isn't a selective right. It gets diminished as different beneficiaries step in. Just if the intestate has left none who are of fellow to him, the entire of his property would have a place with his widow. Where the intestate has left a widow and any lineal relatives, 33% of his property declines to his widow and the excess 66% go to his lineal relatives. On the off chance that he has left no lineal descendents except for has left people who are fellow to him, one portion of his property declines to his widow and the excess half goes to the people who are of fellow to him. Another irregularity is an impossible to miss include that the widow of a pre-expired child gets no offer, however the youngsters whether conceived or in the belly at the hour of the passing would be qualified for equivalent offers. Where there are no lineal relatives, in the wake of having deducted the widow's offer, the leftover property reverts to the father of the intestate in the principal example. Just on the off chance that the father of the intestate is dead yet mother and brothers and sisters are alive, they all would share similarly. If the intestate's father has died, but his mother is living and there are no surviving brothers, sisters, nieces, or nephews, then, the entire property would belong to the mother. The Indian Succession Act, 1925 gives that succession to ardent property in India of an individual perished who is certifiably not a Hindu, Mohammedan, Buddhist, Sikh or Jain, will be controlled by the law of India.<sup>21</sup>



## Property Rights of Tribal Women:

To the extent property rights of the Tribal women are concerned, they keep on being administered by considerably more archaic arrangement of standard law under which they absolutely need rights of succession or segment. Indeed, the Tribal women don't have any rights in agrarian grounds. It is amusing that property rights of gender have been opposed for the sake of protection of Tribal culture.<sup>22</sup> The property right of a Tribal woman likewise relies on the sort of family and marriage. In monogamous family, the property rights appreciated by a woman are not quite the same as polygamous and polyandrous sort of family. Once more, the property right of a widow is not the same as the property right delighted in by a woman whose spouse is alive, the property rights of a fruitless woman who is honored by youngsters. The Supreme Court of India has set out some significant standards to maintain the rights of inheritance of the ancestral women, in view of the expansive way of thinking of the Indian Constitution and stated, "The Constitutional way of thinking imagined under Articles 38, 39, 46 and 15 (1) and (3) and 14 is to accord social and financial vote based system to women as guaranteed in the preamble of the Constitution. They constitute core foundation for economic empowerment and social equity to women for stability of political democracy. As such, they disapprove of gender discrimination and focus on disposal of obstructions to appreciate social, financial, political and social rights on equivalent balance."<sup>23</sup>

## Conclusion:

The values of family and society thus are maintained by women. There is additionally proof of women rulers, scholars, scientists and so on in history. The wretched condition of women lately is an away from of debasement in the status of women in our general public. Women are needy and are viewed as subordinate to men. Women's rights are given least significance. The nonstop battle by women's activists bunches has turned the focus on women's rights. However there are endless zones which the society is yet to turn its consideration on. One such zone is women's privilege in inheritance of property. Inheritance is ruled by various religious and social norms. There are different factors that impact women's privilege in property inheritance. The factors have transformed into obstructions against women's property rights which outgrow an unpredictable interchange of individual, social, mutual and cultural elements. Despite the fact that laws giving equivalent rights in inheritance of property for women are now in presence women are not really mindful of it. The very motivation behind such laws is invalidated because of cultural elements. Women feel more certain and free when they hold property in their name. However, they do without their rights for

defending the help of their maternal family. Fundamental factor which each married woman faces in guaranteeing her inheritance right is the marriage use. Because of this, the male people deny property inheritance to women. Women as well, readily lose their privilege in acquiring property.

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