



Property rights of women in different religions in India

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Abstract

Goddesses are revered in India, but the country also has a high rate of harassment, discrimination, and other crimes against women. The issue of women's rights has been around for a while. Despite having the same rights as men, women are thought to lag far behind men in terms of awareness, enforcement, and rights. Writing down women's rights is pointless if they aren't actually respected. Given the diversity of Indian religions and the lack of a Uniform Civil Code, women's property rights differ depending on their faith. While a Muslim woman's share is half that of a Muslim man's, a Hindu woman has the same claim to her deceased parent's property as a male. In a similar vein, Christian and Parsi women have distinct property rights. Whether an Indian woman is married or not and her religion determine her property rights. 14 percent of the population lives in households headed by women, and women make up 17 percent of all households.

In this paper, the researcher aims to examine women's property rights across different religions. Examining how religion and culture affect the country's realisation of women's property rights is the aim of this study. The fact that national databases on women's land ownership in India differ greatly depending on which agency provided the estimate hinders efforts to create and implement gender-balanced policies; the researchers in this paper will also address this issue.

Keywords: Property rights, rights of women, property rights of women, laws for women, religion

Introduction

The Bengal Regulation of 1772, which stipulated that the courts should apply Shastric law to Hindus and Quranic law to Muslims in family disputes like inheritance, marriage, divorce, adoption, etc., was one of the British laws that planted the seeds for personal law. There was no special law for Christians, in their opinion. The English values of equality, justice, and moral rectitude were thus used to resolve conflicts. Although the Indian government ratified the CEDAW convention, it maintained the British policy of not interfering with the individual laws of different communities, which had deep roots in the communities. As a result, Article 44's constitutional mandate for a uniform civil code was forgotten.

Hindu, Muslim, Christian, and other religious women's property rights under their respective personal laws are examined in this study. A comparison between women's inheritance rights and their personal laws has also been attempted. The chapter also discusses the significant changes to Hindu women's property rights brought about by the Hindu Succession (Amendment) Act of 2005, which grants Hindu women the right to bear children in Mitakshara joint Hindu family property. In order to highlight the disparity in the property rights of women in the community, the property rights of Muslim women are also examined.

Hindu Women's Right to Property

Hindu women's Right to Property in the Pre-Constitutional Period

A Hindu woman is never denied the opportunity to secure her property, regardless of her age—young, married, or widowed. Indeed, it is evident that the right to retain property was upheld even in Manusmriti. Yajnavalkya, Katyayan, and Narada are among the jurists who introduced the idea of women's property rights. During their time, women's property rights improved and were clarified. Smiritiras established Stridhan, a special kind of wealth for

women. Stridhan was regarded as a distinct property of women from the beginning of time. According to Jimutavahana, a woman retains total authority over her property even after marriage. It includes the decorations she receives from her father and other family members at the wedding. She will also receive gifts from her husband and family.

Gautama Dharmashastra was the first to refer to women's wealth as Stridhana Shari. Means added that the bride price that was initially due to the parents seems to have changed to the wife's dowry. A married woman may receive gifts from strangers in addition to this stridhana, and she can also help by performing other skilled work. Due to limitations on his ability to dispose of the property, he was still unable to fully control it.

To keep him under control, this was done. Without control, she would become self-sufficient. Thus, it is evident that women did not have the right to own property in the past. However, the woman was permitted to retain her stridhan as her own property.

Following Gautama's tradition, Manu also recognised seven types of the state, including gifts from family members^[1], gifts given in front of the eunuch Agni (adhyagni), and^[2] gifts given during the bride's procession to her husband's home (adhyavahanika)^[3]. Presents from the mother-in-law and father-in-law (pritidatta), as well as presents given at the elders' feet during greetings (pada vandhanika)^[4] Father's gifts (v) Presents from her mother, brother, and father^[5] presents from her father's and husband's families following their marriage (anvadehaya)^[6] Adhivedamika (gift on supersession). A gift given to a wife on the occasion of her husband's second marriage^[7]. Bandhus' (bandhudatta's) blessing, bestowed upon her by her mother's or father's family.

Saudika Stridhana is the property she inherited from her father and husband's family either before or after getting married. In the sense that no one, not even her mother,

father, brother, husband, or son, can take away a woman's property, she is granted complete control over it. She would be responsible for paying back the husband's loan, plus interest. Therefore, it serves as a warning to male members not to enter women's property. His self-made property was categorised as *Asadikaika Stridhanam*, which is under the husband's authority. It was now his own property, too. The only distinction was that before settling it, she needed the husband's approval. When it came to enjoying her property, she was completely independent.

Hindu Succession (Amendment) Act 2005

In order to challenge the male-centric society that has been upheld by the *Mitakshara coparcenary*, the Hindu Succession Act of 1956 is being amended. Since women are most definitely not coparceners, Section 6 of the Act forbade them from obtaining the hereditary property. In order to give effect to the uniformity rule cherished in Part III of the Indian Constitution, the Amendment Act of 2005 overthrew the exclusive citadel of male coparcenary. By giving female members of the Hindu joint family the same status as male coparceners, the sex separation in the *Mitakshara coparcenary* has been completely eradicated.

The Law Commission's recommendations in its 174th Report on Hindu women's property rights served as the foundation for the 2005 amendment. In actuality, the Commission had brought the matter up on its own initiative because of the obvious segregation in the *Mitakshara coparcenary*. The Commission observed that property laws had been permitted to help men since ancient times. Hindu women had been denied property rights in order to exercise power over them, oppress them, and subjugate them to men. Women in joint families were only entitled to maintenance. Contrary to popular belief, a son who is a coparcener inherits the genealogical property. The traditional male dominance in legacy matters was maintained by the coparcenary barring females. This imbalance was brought to light by the Commission, which declared that it is actually extortion under the Constitution. The commission suggested amending Section 6 of the Hindu Succession Act 1956 in light of these findings.

It is important to remember that the Hindu Succession Act 1956's goals and justifications were modified in order to pass the Act 2005. The law pertaining to intestate succession among Hindus is said to have been codified through an amendment to the Hindu Succession Act of 1956. It goes on to say that a woman must treat social justice and economic justice equally in order to uphold social justice. Restricting daughters' access to coparcenary property ownership based solely on their gender is unfair. The Commission has considered the modifications brought about by the *Mitakshara coparcenary* concept of state enactments. The Act changed Hindu succession law and granted them rights regarding women's property that had not previously existed.

Muslim Women's Rights of Property

Since the Constitution's implementation in 1950, there has been debate over Muslim women's rights. Islamic law, or *Sharia*, is viewed by many as oppressive of women and patriarchal. The Quran addressed women's issues fourteen hundred years ago by improving women's status through a few reforms, but these changes are not common in Muslim

society today. Even so, Islam prior to the Prophet Mohammed was not oppressive regarding the way women were interpreted by Islamic law, and day-to-day survival was patriarchal.

Actually, conservative interpretations of the *Shari'a*, which also incorporate gender-biased customs that are portrayed as unchangeable divine decrees, are the root cause of Muslim women's oppression. Muslim feminists attribute women's oppression to *Sharia* laws, which are a misinterpretation of theocratic laws. In addition, there are many patriarchal interpretations of Islamic law. Women's status had improved during the Prophet's lifetime, but it had only lasted temporarily. The Muslims view Islam as the entirety of their way of life and do not look outside of it. Muslim women are being persecuted by their husbands using the divorce law as an instrument. Muslim academics believe that Muslim women have suffered greatly as a result of the *Shariah Act's* Muslim Personal Law, and that if Allah were to personally visit them, he would be ashamed of their predicament.

Part III of the Constitution guarantees a number of fundamental rights to all Indian citizens, regardless of their gender, race, religion, or ethnicity. This allows India to be a multicultural and multireligious society. Muslim women's status has not improved despite constitutional guarantees because of the conservative perspective on religious orthodoxy. Since they are still subject to their own set of Islamic laws, Muslim women are unable to take advantage of various welfare laws. There are still many issues pertaining to marriage, divorce, and polygamy that can be resolved using the centuries-old Islamic principles.

An essential principle of justice, freedom, equality, and fraternity for all Indian citizens, the Constitution serves as the foundation for all national laws. Individuals' dignity, regardless of their gender, religion, or place of birth, is taken into consideration by this fundamental law of our nation. The men who draughted the constitution knew full well that the prevailing society was suppressing women's rights and engaging in a number of discriminatory practices. For the sake of women's protection and advancement, certain general and particular provisions were thus included. Since nothing in this article will prevent the State from making any special arrangements for women and children, Article 15(3) declares as much.

Several special provisions that support women's interests have also been upheld by the courts. It is necessary to test the first law on the touchstone of Muslim personal law in the case of Muslim women. Polygamy, child marriage, and unilateral divorce (*talaq*) are thus prevalent in the Muslim community. Only during the *Idtat* period do Muslim women receive maintenance; they are not covered by Section 125 of the CrPC. The state does not provide protection for Muslim women, and their higher patriarchal private law does not either.

After independence, Hindu women made such rapid progress that they were granted full gender equality in terms of property rights, while Muslim and Christian women are still subject to Islamic and canon laws. Unfair and unequal are the property rights of women who practise other religions. A code of conduct established by the British for British Christians in India governs Christians, while a *Samhita* governs Hindus, Sikhs, Buddhists, and Jains. There is no code of property rights for Muslims.

Shariat and the Property Rights of Muslim Women

The laws of inheritance were highly valued by Muslim jurists, who did not reiterate the prophet's teachings. Since inheritance laws are half of useful knowledge, the Prophet advised people to learn them and teach them to others. Modern writers have commended the system for both its formal excellence and practicality. It is difficult to strictly enforce the rules of any system, according to Macnaghten, and in these provisions we give adequate attention to the interests of all those whom nature has placed in the first category of our affection. Two separate components make up Muslim inheritance law: the customs of ancient Arabia and the guidelines established by the Quran's and Islam's founders. The ancient tribal law's Quranic reform was a superstructure. Because the Quran can be considered a revised act, many social and economic injustices that were previously prevalent were rectified.

As Islam and the teachings of the Prophet gained traction, women's status steadily improved. Women were viewed as inferior to men, according to popular belief. The Quran affirms women's dignity and holds that men and women are equal and complementary to one another. According to the Prophet's teachings, female children should be treated in the same way as male children. In the pre-Islamic era, daughters were regarded with fear and as a financial and social liability. Rather, there was a significant difference in the way sons and daughters were raised, and male family members were respected.

This is why it is important to recognise the role Islam has played in improving women's lives. All gambling on women was outlawed by Islam. Girls being buried alive was considered a crime. Additionally, the Quran discusses how parents react when a girl is born and condemns parents who experience internal grief. According to the Prophet's teachings, a girl shouldn't have to endure unfair treatment or inequality. Additionally, if he does not bury or degrade his daughter alive and does not prefer a son for her, Allah will allow her to enter heaven. Islam does not attribute Eve's error to women, in contrast to Christian doctrine. Thus, all newborns are born with an honest and innocent nature. This idea contradicts the inborn sin doctrine of Christianity. According to Islam, a child is not born with any sin. Despite their disobedience of Allah's commands, Adam and Eve were pardoned due to their repentance.

Christian Women's Rights of Property Disparity in the Status of Women in their Personal Laws Due to Separation Based on Religion

India, a multireligious, multicultural nation, has granted its people the freedom to fully express their gender, caste, religion, or race by guaranteeing a number of fundamental rights in Part III of the Constitution. In spite of this, national and international laws that were helpful, practical, and humanitarian were always overruled by religious precepts. Even after the Constitution was proclaimed 66 years ago, the prohibition against discrimination against anyone on the basis of religion, as stated in Article 15 (1), has not been fully enforced. Due to strong religious and church teachings, as well as the common law idea that women are subjugated by becoming non-unit after marriage, Christian women's property rights remain a pipe dream. The Church consistently emphasised a woman's husband's obedience to her.

Hindu women also endured this agonising situation and had their property rights denied to them. In the past, women were not allowed to own, acquire, or dispose of property. The Rigveda made it very evident that a son born from a body does not give a sister wealth. Only if they had no brothers could married daughters who lived with their husbands inherit from their father. In the Vedic era, the role of the wife was also extremely repugnant. Atrocities committed by men against women were unrestricted. The culture was very masculine and patriarchal. The husband was in charge of the entire family and had total authority over everyone else. In order to maintain control over marriage, women were viewed as property and passed from father to husband. She was unable to own or possess property during this time because neither wife nor daughter had any legal status.

The fact that Christian women in the Kottayam district come from families with ancestral property is important to mention here. Even then, they are denied birth rights; instead, they are frequently sent to married homes after paying a small sum, which ends the family's relationship with Srinatham. She will always be reliant on her husband. Stated differently, he must live as a slave, giving up all of his liberty, dignity, and self-worth. Only when she is widowed does she receive one-third of her husband's assets. Additionally, he must give the father-in-law or husband the stridhanum.

Despite being generally applicable to Christians, the Indian Succession Act is implemented in different parts of the nation. In contrast to Indian Christians, this law primarily applied to Europeans and other foreigners because the Act of 1925's Section 29(2) did not enforce the customary laws of a sizable portion of the Christian community.

Property owned by Jews, Christians, all Indians, and those who register their marriages under the Special Marriage Act of 1954 or marry under it is subject to the general scheme of succession.

Both English and Roman inheritance principles are included in the Act. Regardless of the intestate's sex, a comparable plan is offered. Relationships with affinity are excluded from the list of heirs, and title is the deciding factor in succession. No inheritance rights are granted by adoption. Rather than being a religious difference between successors, this difference in nature is a secular act.

The surviving spouse's family members are designated as the primary heirs since the priority of succession is established based on inflation relative to the deceased. Without exception and with certain limitations, the principle of representation among linear descendants also applies to the deceased's siblings and their offspring. With the exception of the remoter, the general rule of proximity in degree is applicable in all other situations. Generally speaking, the Act does not give preference to women over men or cognates.

Conclusion

When the inheritance rights of Christian, Hindu, and Muslim women are examined, it becomes clear that only Christian women are denied the opportunity to inherit a portion of the family's wealth. This is just the Legislature's blatant indifference. The inheritance rights of women are a constant focus of international conventions on women. However, because the Church and the community are opposed to women inheriting property, they would never

take any action to close the gaps in the Indian Succession Act of 1925. The Hindu Succession Law reforms have also received enthusiastic support from the Law Commission. Christian Personal Law reform is not being approached with the same zeal. Although it is not successfully implemented, the government has attempted to enact reformatory laws in Hindu succession in accordance with the Law Commission's recommendations. To make matters worse, the Church continues to use its canon laws to control Christian women, guaranteeing their subordination and subordination.

India's inheritance laws can be difficult to understand, particularly when they differ among various religious communities. A Delhi family lawyer can provide you with professional advice and help you navigate these complex legal environments, regardless of whether you are dealing with Hindu, Muslim, or Christian laws.

Women's inheritance rights have undoubtedly changed, but in many cases especially those that are controversial legal action is necessary to guarantee that these rights are upheld. A skilled Delhi family lawyer can be extremely helpful in making sure that women inherit their fair share of property in compliance with the law.

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