

The Codification of Justice: A Critical Analysis of Gender and Property Rights in the Manusmriti and the Yajnavalkya Smriti

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Abstract

The Hindu Succession (Amendment) Act, 2005 marks a transformative constitutional intervention by recognising daughters as coparceners by birth and extending equal inheritance rights within the Mitāksharā coparcenary system. However, this development must be situated within the broader historical evolution of Hindu women’s property rights and the gradual codification of gender justice in Hindu personal law. This article critically examines the treatment of women’s proprietary rights in classical Hindu legal texts, particularly the Manusmriti and the Yājñavalkya Smriti, with specific focus on the concepts of strīdhan, inheritance, and guardianship. Adopting a doctrinal and feminist methodology, the study analyses these texts alongside their interpretation under the Mitāksharā school and Dāyabhāga school traditions. It traces their eventual statutory reform under the Hindu Succession Act, 1956. The analysis reveals that while classical sources recognise certain proprietary interests of women, they simultaneously embed structural limitations that subordinate women within a patriarchal familial framework. Even with modern statutory reforms expanding women’s legal entitlements, residual “protective” doctrines—such as lifelong male guardianship and restricted inheritance structures—continue to reflect entrenched patriarchal assumptions. By situating the Hindu succession regime within constitutional principles of equality and non-discrimination, this article argues that the project of achieving substantive gender justice in Hindu women’s succession rights remains ongoing and incomplete. It concludes by emphasising the need for a more transformative legal approach that moves beyond formal equality towards

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dismantling the structural inequities embedded in both classical and codified law.

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Introduction

Hindu women’s rights to inherit property have historically evolved within a predominantly patriarchal social and legal framework. Although women were not wholly excluded from owning movable or immovable property, their proprietary entitlements—whether in natal or marital families—were consistently subordinate to those of men. The transmission of property was designed to preserve male lineage and agnatic succession, positioning women as dependents rather than autonomous legal subjects. The principal form of property recognized for women was strīdhan—literally “woman’s property”—typically comprising marriage gifts such as jewellery, clothing, and, in limited cases, land. Even this recognition functioned more as a controlled exception than as an affirmation of women’s independent ownership rights.

Classical Hindu legal texts entrenched this dependence. The Manusmriti famously asserts that a woman must be protected by her father in childhood, her husband in youth, and her sons in old age, declaring her unfit for independence (Manu 9.3). This principle, reflected in the maxim “Na strīsvatantramarhati”¹, became foundational to the construction of women’s legal identity. Notwithstanding the reverence accorded to goddesses such as Lakshmi, Saraswati, and Shakti in Hindu cosmology, mortal women were subjected to systemic subordination within the social

1 पितारक्षतिकौमारेभर्तारक्षतियौवने ।
रक्षन्तिस्थविरपुत्रानस्त्रीस्वातन्त्र्यमहेति ॥३॥
pitāraṁkṣatikāumārebhartāraṁkṣatīyauvane |
raṁkṣantīsthavīrapuṁtrānāstrīsvātāntryamarhati(Manusmriti, 9.3)available at
<https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc201361.html> last accessed on 21.12.25

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hierarchy, often occupying a status inferior even to that of the Śūdra, the lowest varṇa.

Within the Dharmashastra tradition, the Manusmṛiti and the Yājñavalkya Smṛiti occupy a central position in shaping norms relating to marriage, inheritance, and property. The Manusmṛiti (c. 2nd century BCE–2nd century CE) presents a rigidly hierarchical social order that merges legal rules with moral and religious injunctions. In contrast, the Yājñavalkya Smṛiti (c. 3rd–5th century CE) reflects a more systematic and legally refined approach, demonstrating greater procedural clarity and a comparatively nuanced treatment of women’s property, particularly strīdhan. Nevertheless, both texts situate women’s rights firmly within a patriarchal family structure dominated by male guardianship.

These doctrinal foundations shaped the evolution of classical schools such as the Mitāksharā school and Dāyabhāga school, later reinforced through the colonial codification of Hindu law. Subsequent legislative reforms in the nineteenth and twentieth centuries progressively addressed gender-based disparities, culminating in the Hindu Succession (Amendment) Act, 2005, which dismantled gender discrimination within the Mitāksharā coparcenary by recognising daughters as coparceners by birth.

This article examines the historical development of Hindu women’s succession rights through the lens of codification. It analyses how the codification of Hindu succession law sought to institutionalise justice by translating constitutional ideals of equality into enforceable legal rights, while also preserving structural inequalities embedded in earlier doctrinal traditions. By critically tracing this trajectory from classical Dharmashastra texts to contemporary statutory law, the article argues that codification has been both an instrument of reform and a mechanism through which patriarchal legal norms have been selectively retained.

Review of Literature

Academic engagement with Hindu women’s property rights spans legal history, feminist jurisprudence, and constitutional analysis. Early colonial scholars such as Maine (1861) and Mulla² (1912) approached

2 Mulla, D. F. (2018). Mulla: Principles of Hindu law (22nd ed.). LexisNexis

Hindu law as a static, text-bound system, reinforcing conservative and patriarchal interpretations of Dharmashastra norms. Later doctrinal scholars, including Derrett³(1968) and Kane⁴ (1974), offered detailed analyses of strīdhan and inheritance but largely avoided a gender-critical interrogation of these norms.

Feminist scholars have significantly reshaped this discourse. Agarwal⁵ (1994) demonstrates the centrality of property ownership to women’s economic security and substantive equality, while Agnes (2011⁶) critiques the disjunction between formal legal reform and women’s lived realities. Legal historians such as Mani⁷ (1998) and Roy⁸ (1999) reveal how colonial codification selectively provided privileged restrictive interpretations of Smritis, transforming flexible and plural traditions into rigid patriarchal rules.

Constitutional jurisprudence has transformed women’s property rights from a patriarchal concession into an enforceable dimension of gender justice, firmly anchored in equality, dignity, and constitutional morality. It framed gender-equal inheritance as a constitutional entitlement rather than a matter of legislative benevolence, explicitly grounding its reasoning in Articles 14 and 15⁹. Judicial developments following the Hindu Succession (Amendment) Act, 2005—particularly Prakash v. Phulavati¹⁰(2016) and Vineeta Sharma v. Rakesh Sharma¹¹ (2020)—have further constitutionalised women’s inheritance rights.

3 Derrett, J. D. M. (1968). Religion, law and the state in India. Oxford University Press.

4 Kane, P. V. (1974). History of Dharmashastra (Vols.I–V). Bhandarkar Oriental Research Institute

5 Agarwal, B. (1994). A field of one’s own: Gender and land rights in South Asia. Cambridge University Press.

6 Agnes, F. (2011). Family law and constitutional claims. Oxford University Press

7 Mani, L. (1998). Contentious traditions: The debate on sati in colonial India. University of California Press

8 Roy, K. (1999). Women in early Indian societies. Oxford University Press.

9 C.B. Muthamma v. Union of India, (1979) 4 SCC 260

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

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

RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal methodology to examine the evolution of Hindu women's succession rights. It draws on primary sources such as the Manusmriti and the Yājñavalkya Smṛiti, along with classical commentaries including the Mitāksharā school and Dāyabhāga school, and statutory provisions under the Hindu Succession Act, 1956 supported by relevant judicial decisions. The doctrinal analysis is complemented by a feminist legal approach to assess how women's proprietary rights have been historically framed and subsequently codified. This enables a critical evaluation of whether codification has advanced substantive gender justice or retained structural patriarchal limitations.

The study relies on both primary legal materials and secondary scholarly literature, which are analysed comparatively to trace key themes such as ownership, inheritance, guardianship, and exclusion from coparcenary rights from classical texts to modern law. The scope is limited to a doctrinal analysis of legal developments, with particular emphasis on codification and its alignment with constitutional principles of equality, without undertaking an empirical assessment.

Limitations of the Study

This study is primarily doctrinal, textual, and interpretive in nature. It focuses on the normative framework of Hindu personal law as articulated in the Manusmriti, Yājñavalkya Smṛiti, classical commentaries, colonial codifications, and contemporary statutory and judicial developments. Consequently, it does not incorporate empirical fieldwork or quantitative data on present-day community practices. The absence of interviews, surveys, or land-ownership statistics limits the study's capacity to assess how far formal legal reforms—particularly the Hindu Succession (Amendment) Act, 2005—have translated into lived realities for Hindu women across different social contexts.

Further, the analysis remains largely confined to Hindu personal law and does not undertake a sustained comparative examination of women's property rights under other personal law systems operating in India. While Islamic law and colonial legal interventions are referenced for historical and contextual clarity, a systematic comparative analysis could have

yielded deeper insights into the structural continuities and divergences in gendered property regimes across religious traditions.

Another limitation arises from the study's reliance on translated versions of ancient Sanskrit texts. Although authoritative translations and commentaries have been consulted, engagement with Dharmashastra literature is inevitably mediated through interpretive frameworks shaped by translators, colonial philology, and modern legal scholarship. This mediation may inadvertently reproduce certain emphases, omissions, or biases embedded within those translations, despite efforts at critical reading.

Finally, while the study adopts a feminist jurisprudential lens, it does not extensively engage with intersectional dimensions such as caste, class, disability, region, or rural–urban disparities. These factors significantly affect women's access to, control over, and enforcement of property rights, and their exclusion limits the scope of the analysis. Addressing these intersections would be essential for a more comprehensive understanding of gender justice in property relations.

Despite these limitations, the study contributes meaningfully to legal scholarship by critically interrogating the doctrinal foundations of women's property rights and situating them within a broader socio-constitutional and feminist framework.

Ancient Texts and Patriarchal Foundations: Manusmṛiti and the Yajñavalkya Smṛiti

According to Hindu cosmological tradition, the foundational religious texts of Hinduism originate in the four Vedas—the Ṛig, Sāma, Yajur, and Atharva Vedas—believed to have been revealed to sages by Brahmā. Over time, an extensive corpus of supplementary literature emerged in the form of Śruti (revealed texts) and Smṛti (remembered texts), many of which addressed questions of social order, family relations, inheritance, and property rights.¹² While the Vedas enjoyed supreme authority, the Smṛtis—particularly the Manusmṛiti and the

12 Kane, P. V. *History of Dharmashastra*, Vol. I (Bhandarkar Oriental Research Institute, 1930)

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Yājñavalkya Smṛiti—became central sources for regulating civil matters, including women’s proprietary entitlements.¹³

As interpretive commentaries on these texts developed, regional schools of Hindu law crystallised across the Indian subcontinent. The most influential among them were the *Mitāksharā* and *Dāyabhāga* schools, both rooted in differing interpretations of the Yājñavalkya Smṛiti. The *Mitāksharā* school emerged from Vijnāneśvara’s commentary and came to dominate most of India, whereas the *Dāyabhāga* school, based on Jimūtavāhana’s digest, prevailed primarily in Bengal and Assam. These schools continue to inform the doctrinal foundations of Hindu succession law.

The *Mitāksharā* system is characterised by three defining principles: primacy of blood relationship in inheritance, restriction on individual ownership within the joint family, and a categorical distinction between male and female heirs.¹⁴ Under this system, coparcenary rights arose by birth and were confined to male members within four generations of the family. A coparcener’s share in joint family property was neither fixed nor absolute; it fluctuated with births and deaths within the coparcenary and could not ordinarily be alienated. Women were excluded entirely from coparcenary membership, and widows lacked the legal capacity to demand partition of their deceased husband’s share.¹⁵ As a result, women’s access to property was limited to maintenance and narrowly defined inheritance rights.

By contrast, the *Dāyabhāga* School departed significantly from the doctrine of birthright. It treated the father as the absolute owner of family property during his lifetime, with succession opening only upon death. Shares under *Dāyabhāga* were definite rather than fluctuating, enabling heirs—including widows—to enforce partition and, in certain circumstances, alienate their inherited shares.¹⁶ Widows were recognised as heirs even in joint family property where no male descendants existed, marking a comparatively more inclusive—though still constrained—

13 Kane, P. V. *History of Dharmashastra*, Vol. I (Bhandarkar Oriental Research Institute, 1930)

14 Janaki Nair, *Women and Law in Colonial India (Kali for Women)*, 1996)

15 Mulla, D. F. *Principles of Hindu Law* (22nd ed., LexisNexis, 2018)

16 Kane, P. V., *supra* note 7, Vol. III.

approach to women's inheritance. Nonetheless, women under Dāyabhāga generally inherited as limited owners, and their rights of alienation were restricted to cases of legal necessity.

Both schools acknowledged strīdhan as a category of women's property, though its scope and legal incidents varied considerably. Under Mitāksharā, women were denied inheritance from their husband's family and could possess only strīdhan, which Vijñāneśvara expanded to include nine categories, ranging from marriage gifts to property acquired by self-exertion or partition.¹⁷ However, significant doctrinal controversy surrounded property obtained by inheritance or partition, with courts and commentators diverging on whether such property retained the character of strīdhan. Colonial adjudication, particularly by the Privy Council, ultimately narrowed the concept by classifying inherited property as "women's estate" rather than strīdhan, thereby limiting women's powers of alienation.¹⁸

The distinction between strīdhan and women's estate proved pivotal. While strīdhan conferred relatively greater control—especially over gifts received from relatives—women's estate was marked by severe restrictions. The female holder could not ordinarily alienate the corpus, and upon her death, the property reverted to the heirs of the last male owner rather than devolving through her own line.¹⁹ Although certain Dharmashāstra authorities permitted widows to manage or alienate family property in circumstances of distress or necessity, such authority was strictly functional and never recognised as an expression of autonomous ownership.²⁰

The cumulative effect of these doctrines was the systematic denial of women's status as full property owners. Even in cases where a woman was the sole child, ancient lawgivers favoured adoption of a male heir over recognising her proprietary rights. This exclusionary logic contributed to

17 Paras Diwan, *Modern Hindu Law* (10th ed., Allahabad Law Agency, 1995), pp. 346–47

18 *Bhagwandeem v. Maya Bae*, (1867) 11 MIA 487; *Sheo Shankar v. Devi Saha*, (1903) ILR 25 All 468

19 *Janki v. Narayansami*, (1916) 43 IA 207.

20 Altekar, A. S. *The Position of Women in Hindu Civilization* (MotilalBanarsidass, 1956).

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a range of socio-religious practices—such as enforced remarriage, bigamy, abandonment, and female infanticide—that were legitimised in the name of preserving lineage and property continuity.²¹

Modern scholarship cautions that Dharmashāstra texts were prescriptive rather than descriptive of social practice. Nevertheless, their authority was amplified through colonial codification, which selectively privileged conservative interpretations and fossilised gender inequality into binding legal rules.²² The Mitāksharā and Dāyabhāga doctrines thus became decisive reference points in colonial adjudication and, by extension, in the development of modern Hindu personal law.

THE MEDIEVAL PERIOD: Succession Rights of Hindu Women: An Era of Intensified Patriarchy

The medieval period did not fundamentally alter the patriarchal foundations of Hindu women's succession rights; rather, it witnessed the continued application and regional elaboration of classical Dharmashastric principles that restricted women's proprietary interests. During this period, Hindu personal law remained governed by traditional legal schools, particularly the Mitāksharā and Dāyabhāga systems, under which women's rights in joint family property remained either excluded or severely limited.

Under the Mitāksharā system, coparcenary rights arose by birth and were confined to male members of the joint family. Women were excluded from coparcenary membership and had no right to demand partition. Their proprietary rights were generally limited to strīdhan and, in some circumstances, to a restricted estate in the property of deceased male relatives. Even where women inherited property, they did not enjoy full powers of ownership, and their rights of alienation were narrowly constrained.

The Dāyabhāga school recognised comparatively broader rights for widows by permitting inheritance in the absence of male descendants, yet these rights were also limited in character. A widow's interest in inherited property was generally treated as a restricted estate, with limited powers

21 Bhattachajee, A. M. *Hindu Law and the Constitution* (2nd ed., E.L. House, 1994)

22 Mani, L. *Contentious Traditions* (University of California Press, 1998).

of management and alienation. Thus, although the Dāyabhāga system represented a comparatively less restrictive framework, it did not recognise women as absolute owners.

During this period, the practical significance of strīdhan also underwent change. While classical legal texts conceived strīdhan as a woman's separate property, in practice it increasingly became associated with marriage transactions and familial transfers rather than autonomous ownership. It manifested in the form of varadakshina—a precursor to the modern dowry system. Women's legal claims over such property remained vulnerable to control by male relatives, limiting its effectiveness as a source of economic security.

The medieval legal framework therefore represented continuity rather than transformation. Women's rights in property remained subordinate to the interests of male lineage, and legal doctrines continued to conceptualise women primarily as custodians rather than autonomous proprietors. These structural limitations were later absorbed into colonial interpretations of Hindu law and shaped the codified framework of succession that emerged in the twentieth century.

Simultaneously, the concept of women's estate gained prominence. When a woman acquired landed property—either by inheritance from male relatives such as her husband or father-in-law, or through partition—she was recognised as an owner only in a limited sense. Her ownership was subject to two fundamental restrictions: first, she lacked unrestricted powers of alienation; second, upon her death, the property reverted to the heirs of the last full male owner. This doctrine was authoritatively affirmed by the Privy Council in *Bijoy Gopal Mukherji v. Krishna Mahishi Debi*.²³

Customary law recognised limited exceptions permitting alienation of women's estate, namely:

- (i) legal necessity;
- (ii) benefit of the estate; and
- (iii) discharge of indispensable religious or spiritual duties of the deceased male owner.²⁴

23 (1907) 34 IA 87

24 Paras Diwan, *Modern Hindu Law* (10th ed., Allahabad Law Agency, 1995

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Thus, women were reduced to mere custodians of property, entrusted with its preservation for male successors rather than empowered as autonomous proprietors.

This restrictive framework intensified during the medieval period as a strategic response to political insecurity. Widows, particularly young widows, were deliberately vested with limited estates to prevent ancestral property from escheating or being appropriated by external rulers. In many instances, widows were subjected to extreme coercion—ranging from enforced asceticism to the barbaric practice of sati—to accelerate the transfer of property to male reversioners.²⁵ Older widows, deemed economically unproductive, were often abandoned to religious institutions or compelled to beg.

By the late seventeenth century, dowry emerged as an entrenched socio-religious practice, further diluting the concept of stridhan. Colonial intervention marginally improved women's legal position, but failed to dismantle the deeply rooted patriarchal structures that governed inheritance and family property.

THE MODERN PERIOD: Colonial Intervention and the Reconfiguration of Women's Property Rights

The colonial period marked a significant phase in the reorganisation of Hindu personal laws, including the legal status of women's property rights. British administrators initially followed a policy of non-interference in matters of personal law, applying traditional Hindu legal principles in questions of marriage, inheritance, and succession. However, social reform legislation enacted during the nineteenth century began to address certain customs that adversely affected women, including sati, child marriage, and restrictions on widow remarriage.

One of the earliest legislative interventions was the Bengal Sati Regulation, 1829, enacted under the influence of reform movements led by Raja Ram Mohan Roy. While this legislation did not directly alter inheritance rights, it reflected an emerging colonial willingness to intervene in personal laws affecting women's status. Subsequent reforms, including the Hindu Widows' Remarriage Act, 1856, had a more direct

25 Mahajan, V. D. (2004). *History of Medieval India* (3rd ed.). S. Chand & Company.

bearing on women's legal position, though they often preserved patriarchal assumptions regarding family structure and property.

Colonial legal reforms therefore introduced limited changes in the legal recognition of women's status but did not fundamentally transform the patriarchal basis of Hindu succession law. Women's proprietary rights remained restricted, and meaningful reform in inheritance law emerged only gradually through later statutory developments in the twentieth century.

Hindu Women's Right to Property Act, 1937

The Hindu Women's Right to Property Act, 1937 marked the first statutory intervention granting Hindu widows rights in their husband's property. Section 3 of the act recognised three categories of widows and entitled them to a share in the undivided interest of a Mitakshara coparcener.²⁶ However, the Act merely reinforced the doctrine of limited estate, failing to confer absolute ownership and excluding agricultural land from its ambit. Testamentary dispositions also remained untouched.

Despite its limitations, the Act represented a symbolic shift toward recognising women as legal stakeholders in property relations.

TRANSFORMATION THROUGH CODIFICATION: THE HINDU SUCCESSION ACT AND THE PURSUIT OF GENDER JUSTICE

The Hindu Succession Act, 1956

The codification of Hindu personal law in the post-independence period marked a decisive shift from religiously derived and judicially interpreted succession norms to a statutory framework grounded in constitutional values. The enactment of the Hindu Succession Act, 1956 was one of the most significant steps in this transition. It sought to rationalise the diverse and often inconsistent rules of inheritance derived from the Mitāksharā and Dāyabhāga schools, while simultaneously addressing the gender inequalities embedded in traditional Hindu law.

The Hindu Succession Act, 1956 (HSA) represents a seminal intervention in codifying and modernizing property rights for Hindu women in India. The Act sought to reconcile the historical inequities

26 Supra note at 25

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embedded within the Dharmashastra, medieval customs, and colonial legal interpretations, which had long limited women's property entitlements. Sections 5, 6, and 14 of the Act play a pivotal role in shaping the legal landscape of women's property rights, providing both clarity and empowerment within a historically patriarchal framework.

Section 5 of the Hindu Succession Act governs the devolution of interest in coparcenary property upon the death of a male coparcener. Traditionally, under the Mitāksharā system, only male members were recognized as coparceners, while daughters were excluded from birthright inheritance. Section 5 codified this practice, stating that the interest of a deceased male coparcener devolves by survivorship to the remaining coparceners. The provision, while initially reinforcing male-centric inheritance, laid the foundation for the revolutionary amendments introduced by the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights from birth. Judicial interpretation has consistently emphasized that the 2005 amendment confers full entitlement to daughters as coparceners, allowing them to claim partition and manage ancestral property independently.²⁷

Section 6 of the Act addresses the property of a female Hindu, defining the manner of its devolution upon her death. It includes property acquired before marriage, after marriage, or received as strīdhan, inheritance, or gift. The section ensures that a female Hindu's property is distinct from her marital family's property and devolves according to her will or the rules of intestate succession if she dies without a will. The Andhra Pradesh High Court, in *Agasti Karuna v. Cherukuri Krishnaiah*²⁸, affirmed that women have absolute rights over their deceased husband's property under Section 6, highlighting the recognition of women's independent status in matters of property.

One of the most progressive provisions of the 1956 Act was Section 14, which declared that any property possessed by a female Hindu would be held by her as full owner and not as a limited owner. This encompasses movable and immovable property acquired by inheritance, gift, partition, skill, or purchase, including strīdhan possessed prior to the

27 *Danamma Suman Surpur v. Amar*, (2018) 10 SCC 1

28 (2000) 6 SCC 62

Act's commencement. By abolishing the concept of the limited women's estate—under which women's rights over inherited property were subject to restrictions on alienation and succession—Section 14 of the Hindu Succession Act, 1956 conferred full ownership rights upon women, enabling them to manage, transfer, and dispose of property independently. This provision marked a significant departure from traditional inheritance rules, under which women's proprietary interests were recognised in a restricted form and remained subject to the broader patriarchal structure of succession law. The Supreme Court of India in *Punithavalli Ammal v. Ramalingam and Anr* (1970)²⁹ The Supreme Court held that Section 14(1) gives women an absolute right over property, irrespective of the date of possession, thereby nullifying previous limitations imposed by customary or pre-existing laws. Similarly, in *Radha Rani Bhargava v. Hanuman Prasad Bhargava* (1966)³⁰ The Court reiterated that such absolute ownership cannot be challenged, except where it is proved that a widow transferred or alienated property before the enactment of Section 14 without legal necessity or reasonable cause.

The robustness of Section 14 was further upheld in *Pratap Singh v. Union of India*³¹, where allegations that the provision violated Article 14 (Right to Equality) and Article 15(1) (prohibition of gender discrimination) were dismissed. The Supreme Court emphasized that strengthening women's property rights is both constitutional and necessary to redress historical inequities in inheritance laws. The significance of Section 14 was enhanced by subsequent amendments, including the 2005 amendment, which granted daughters coparcenary rights in ancestral property, further consolidating gender equality in succession. These judicial interpretations demonstrate a progressive shift in Indian jurisprudence, acknowledging women as full proprietors rather than mere custodians, while retaining exceptions only in cases of pre-enactment transfers. Furthermore, *Vineeta Sharma v. Rakesh Sharma*³² reaffirmed that daughters are full coparceners in ancestral property post

29 1970 AIR 1730

30 1966 AIR 216

31 1999(5)ALD387

32 (2020) 6 SCC 1

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the 2005 amendment, emphasizing that the rights of women are retrospective and prospective.

Although the Hindu Succession Act, 1956 substantially improved the proprietary position of Hindu women, the scheme of intestate succession under Sections 15 and 16 continues to reflect structural gender asymmetry. Unlike Section 8, which governs succession to the property of a male Hindu and accords priority to his natal family members, Section 15 provides that where a Hindu woman dies intestate without children, her property devolves first upon the heirs of the husband and only thereafter upon her own parents. This differential treatment reveals the persistence of the patriarchal assumption that, upon marriage, a woman's proprietary identity becomes aligned with her husband's lineage rather than remaining equally connected to her natal family. Such a classification creates an unequal succession regime based on sex and marital status and raises serious constitutional concerns under Articles 14 and 15 of the Constitution.

These concerns have gained contemporary significance in *Kamal Anant Khopkar v. Union of India*³³, where the constitutional validity of Section 15 has been challenged before the Supreme Court on the ground that it discriminates against women by privileging the husband's heirs over the woman's own blood relations. The challenge draws attention to the inconsistency between the constitutional commitment to substantive equality and the continued operation of statutory provisions founded on gendered presumptions about family identity. The constitutional vulnerability of such provisions becomes more apparent when viewed in light of the Supreme Court's equality jurisprudence. In *Anuj Garg v. Hotel Association of India*³⁴ The Court rejected legal distinctions founded on stereotypical assumptions regarding gender roles, holding that legislation based on patriarchal assumptions cannot withstand constitutional scrutiny merely because it is historically rooted. The decision in *Vineeta Sharma*

33 W.P.(C) No. 001517 / 2018, On January 31st 2022, the Supreme Court directed that a petition challenging Section 15 of the Hindu Succession Act, 1956 be listed before a three-Judge Bench and is yet to be finally heard

34 AIR 2008 SUPREME COURT 663

v. Rakesh Sharma³⁵ reaffirmed that inheritance rights must be interpreted in a manner consistent with the constitutional guarantee of equality.

Viewed against this constitutional framework, Sections 15 and 16 of the Hindu Succession Act, 1956 demonstrate that the codification of Hindu succession law, while progressive in several respects, did not completely dismantle patriarchal structures embedded in traditional inheritance rules. Instead, the statutory framework preserved certain assumptions about marital identity and lineage, thereby limiting the transformative potential of reform. The persistence of these provisions illustrates that the codification of justice in Hindu women's succession rights remains incomplete: while formal legal recognition has expanded, substantive equality continues to be constrained by doctrinal remnants of patriarchal succession norms.

Another discriminatory feature of the original Act was Section 23, which restricted the right of female heirs to seek partition of a dwelling house wholly occupied by a joint family until the male heirs chose to divide their respective shares. Female heirs were granted only a limited right of residence, and even that right was conditional upon marital status in the case of daughters. This provision effectively subordinated the proprietary rights of women to the convenience and decision of male heirs, thereby denying women equal enjoyment of the inheritance rights that the Act ostensibly conferred. Although Section 23 was later repealed by the Hindu Succession (Amendment) Act, 2005, its original inclusion demonstrates that the legislative framework continued to treat women's rights as secondary within the family property structure.

The enactment and judicial interpretation of these provisions reflect an important, though incomplete, shift in the legal recognition of women's proprietary rights within Hindu succession law. Sections 5, 6, and 14 introduced significant reforms by codifying inheritance rules, extending coparcenary rights, and recognising women as absolute owners of property. These provisions marked a departure from traditional legal doctrines that had restricted women's ownership rights and subordinated their interests within the patriarchal family structure. However, the

35 (2020) 6 SCC 1

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transformative potential of these reforms was limited by the simultaneous retention of discriminatory provisions such as Sections 15 and 23, which continued to reflect assumptions based on marital lineage and male control over family property. The statutory framework therefore represented a partial movement toward gender justice: while it expanded women's formal legal entitlements, it did not fully dismantle the structural inequalities embedded in traditional succession norms. The codification of women's property rights under the Hindu Succession Act, 1956 thus marked an important stage in the reform of Hindu succession law, but one that fell short of achieving substantive equality.

REFORM THROUGH THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

The 2005 Amendment constituted a watershed moment by conferring coparcenary rights on daughters by birth under Section 6. Daughters were placed on par with sons in matters of inheritance, partition, and liability. Women became eligible to act as Karta of joint family property, dismantling a foundational pillar of patriarchal control.³⁶

This reform aligned statutory law with constitutional mandates of equality and dignity, finally recognising women as full legal persons in property relations. Women's property rights are also central to Millennium Development Goals 1 and 3, addressing poverty and gender equality. UN Women highlights these rights to enhance women's economic security and reduce feminized poverty.

Strīdhan, Dowry, and Contemporary Challenges

Despite legislative progress, cultural practices like dowry continue to affect women's control over property. Dowry, often conflated with strīdhan, has led to exploitation and harassment (Dowry Prohibition Act Section 2, 1961). Courts, through cases like *Pratibha Rani v. Suraj Kumar* (1985)³⁷, have clarified that strīdhan is the absolute property of the woman, but social enforcement remains weak. Widows and daughters often face pressure from male relatives, highlighting a persistent gap between legal rights and social realities.

36 The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005)

37 (1985) 2 SCC 370 : AIR 1985 SC 628

Feminist Analysis and Dharmashastra Interpretation and Policy Understanding

A feminist examination of the Manusmriti and the Yājñavalkya Smṛiti reveals that these texts embodied both restrictive patriarchal norms and limited protective provisions concerning women. While they denied women equal rights in lineage property and placed them within a framework of male guardianship, they also recognised certain rights relating to *strīdhan* and prescribed sanctions for acts of violence or misconduct against women. Colonial interpretations often emphasised the restrictive dimensions of these texts, sometimes overlooking the limited legal protections they afforded. Although these provisions did not establish gender equality, they indicate that women were not entirely excluded from legal recognition within the Dharmashastric framework. A feminist reading of these texts therefore reveals a complex legal structure in which women's rights were acknowledged in limited forms while remaining subject to broader patriarchal control. This duality provides important interpretive space for reassessing traditional legal texts in light of contemporary principles of gender justice.

Legal reforms have enhanced formal equality, but substantive equality requires social change. Feminist scholars emphasise that property rights underpin autonomy, dignity, and empowerment (Agnes, 2011)³⁸. Women must be supported by awareness campaigns, judicial vigilance, and policy measures that prevent coercion and exploitation. Enforcement mechanisms are essential to translate statutory rights into real-world control over property, particularly in rural and patriarchal settings.

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38 Agnes, F. (2011). *Family law and constitutional claims: Law, culture and gender equality*. Oxford University Press

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Although statutory reforms have significantly improved women's formal rights in succession, substantive equality remains dependent upon the effective enforcement of these rights within prevailing social structures. Feminist legal scholarship recognises that proprietary rights are central to women's autonomy and economic security, but also emphasises that legal reform alone cannot eliminate structural inequalities rooted in patriarchal social relations. The continued gap between formal legal entitlement and actual control over property highlights the need for sustained institutional enforcement, legal awareness, and interpretive approaches that prioritise substantive equality.

CONCLUSION

The historical evolution of Hindu women's succession rights demonstrates that the codification of justice has been gradual, uneven, and incomplete. Ancient Hindu legal texts recognised women's proprietary rights only in limited forms and within a broader framework of male authority. Subsequent legal developments, including the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005, marked significant progress by abolishing the limited women's estate and recognising daughters as coparceners by birth. These reforms represented an important constitutional commitment to gender equality in the law of succession.

At the same time, the persistence of provisions reflecting marital lineage preference and the continuing social barriers to women's effective control over property reveal that formal equality has not yet translated into

substantive justice. The codification of Hindu succession law thus reflects a dual reality: it has expanded women's legal rights while preserving structural inequalities inherited from patriarchal legal traditions. A feminist and constitutional reading of this legal history demonstrates that the pursuit of gender justice in succession law requires not only legislative reform but also a continued critical reassessment of the social and doctrinal assumptions that shape women's access to property. The codification of justice in Hindu women's succession rights, therefore, remains an ongoing constitutional project rather than a completed legal achievement.