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From Stridhan to Coparcenary: The Evolution of Women's Property Rights in Hindu Law

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From Stridhan to Coparcenary: The Evolution of Women's Property Rights in Hindu Law

CHAPTER-1

INTRODUCTION AND RESEARCH FRAMEWORK

1.1 Introduction:-

From the earliest periods of recorded history, women in Hindu society were rarely treated as equals to men. Their lives and decisions were largely controlled by male figures, i.e., first by their fathers or brothers in the parental household, and later by their husbands after marriage. Despite the essential roles they fulfilled as daughters, sisters, wives, and mothers, women continued to occupy a disadvantaged and dependent position. The question of women's rights in property, especially inheritance, which was traditionally guarded as a male preserve only began to gain visibility in India when Western liberal thought entered the discourse. This exposure gradually encouraged reformist movements that questioned entrenched patriarchal practices. In cultural symbolism, women were exalted as Devis, embodiments of virtue, purity, and moral strength. Yet this reverence was often more idealistic than practical.

In everyday life, women were expected to remain subordinate and dependent on male authority. The *Manusmṛti* itself reflects this mindset, declaring that "A wife, a son, and a slave, these three are considered not to have independent property. The wealth which they acquire is deemed to belong to the person they are dependent upon¹." This paradox of women being revered in principle yet restrained in practice captures the long-standing tension in the history of women's rights in Hindu law. The earliest of

¹ *Manusmṛti* 8.416
[9075]

the sacred hindu texts. i.e., the Vedas quoted “ *Nirindriya hyadayadah strio nritam*²” which means devoid of prowess and incompetent to inherit, women are useless. This verse is disputed and interpreted differently by vedic texts; it has historically been used to justify exclusion of women from inheritance of property. The social position of women in India has historically been marked by vulnerability that transcends class and wealth. Financial independence alone has not insulated women from systemic inequality, as both affluent and underprivileged women have been subject to discrimination and marginalization. As noted by international reports, women, despite constituting nearly half of the world’s population, contribute disproportionately to global labour while reaping minimal economic rewards. For instance, a United Nations study reveals that women perform nearly two-thirds of the world’s working hours, yet earn barely one-tenth of global income and own less than one percent of the world’s property³. This stark imbalance underscores the depth of gendered disparities in access to resources and opportunities.

In the Vedic and post-Vedic periods, women were often depicted as respected figures within the family and society, as Devis and associated with ideals of purity and honour⁴. However, this symbolic reverence rarely translated into legal or economic autonomy. Property rights, in particular, were largely denied, leaving women dependent on the male members of their households. Ancient Dharmashastra texts such as the *Manusmṛti* and as analysed in Kane’s *History of Dharmasastra* reveal that while women could own strīdhan, their rights in joint family property and inheritance were systematically curtailed⁵. This paradox of reverence in culture but denial in law continued well into the pre-British period. While texts such as the *Mitākṣarā* and *Dayābhāga* recognized women’s right to strīdhan, they firmly excluded them from the coparcenary. This exclusion reflected patriarchal assumption that women were

² <https://www.lawteacher.net>

³ United Nations, *The World's Women 2015: Trends and Statistics* (New York: United Nations Department of Economic and Social Affairs, 2015) 25.

⁴ Altekar, A.S., *The Position of Women in Hindu Civilization* (Delhi: Motilal Banarsidass, 1959) 12-15.

⁵ Kane, P.V., *History of Dharmasastra, Vol. II* (Poona: Bhandarkar Oriental Research Institute, 1941) 520.

dependents whose needs would be met through maintenance rather than independent ownership.

With the advent of British colonial rule, women's property rights began to be shaped by legislation, often as piecemeal reforms responding to glaring inequities. The Hindu Law of Inheritance Act, 1929, was a significant milestone, as it granted limited rights of inheritance to certain female heirs, including the son's daughter, daughter's daughter, and sister⁶. Later, the Hindu Women's Right to Property Act, 1937, further expanded rights by allowing widows to inherit a share in joint family property, though only as limited owners with restricted powers of alienation⁷. These measures, while progressive for their time, still fell short of granting women full ownership or equality with men.

It was only in the post-independence era that a transformative shift occurred.

The Hindu Succession Act, 1956, for the first time consolidated women's rights in inheritance and recognized them as absolute owners of property rather than limited holders. Yet, the exclusion of daughters from the coparcenary remained a glaring gap until the path breaking Hindu Succession (Amendment) Act, 2005, finally placed daughters on par with sons as coparceners in ancestral property⁸. This legislative evolution from stridhan to full coparcenary rights captures the long struggle of Indian women to move from symbolic reverence to substantive equality in matters of property and inheritance.

1.2 Statement of Research Problem:-

The history of women's property rights in India reflects a painful irony. On one hand, our cultural traditions often placed women on a pedestal describing them as Devis, symbols of purity, and strength. On the other hand, when it comes to actual control over property, land, or inheritance, these same women were denied the very autonomy that would give them real dignity and independence. For centuries, the narrative

⁶ Hindu Law of Inheritance Act, 1929 (Act II of 1929).

⁷ Hindu Women's Right to Property Act, 1937 (Act XVIII of 1937).

⁸ Hindu Succession (Amendment) Act, 2005, No. 39 of 2005.

remained the same: women were revered in principle but restricted in practice.

Even when reforms were slowly introduced during the colonial period, they were hesitant and incomplete. The laws of inheritance that emerged in the early twentieth century gave women some recognition, but it was always half-hearted, i.e., widows were given only limited rights, and daughters were still kept out of the coparcenary. These piecemeal reforms, while important, never truly challenged the deep-rooted belief that property should remain under male control.

Post-independence, the Hindu Succession Act of 1956 appeared as a turning point. For the first time, women were legally recognized as full owners of property. Yet, this “progress” had its own blind spots; daughters were still excluded from ancestral property, which meant that the law stopped short of providing genuine equality. It took almost fifty years before the 2005 amendment corrected this glaring omission and finally placed daughters on the same footing as sons in matters of inheritance. However, even today, the story is far from complete. The law may now stand on the side of equality, but in real life, many women continue to face obstacles. Families often resist giving daughters their rightful share; social expectations still pressure women to “let go” of property in favor of brothers; and procedural barriers in courts or registration offices make the process even more difficult. Thus, the problem is not only historical but it is very much alive in the present.

This makes the issue more complex than just a legal one. It is about bridging the gap between the promise of equality on paper and the practice of inequality in everyday life. The real challenge is to understand why, despite landmark reforms, women’s rights in property remain fragile, contested, and unevenly realized. This research, therefore, seeks to explore that paradox: why women, who are celebrated in culture and religion, still struggle to claim what is rightfully theirs in the sphere of property and inheritance.

1.3 Objectives of the Study:-

The central aim of this research is to critically examine the long and complex journey of women’s property rights in Hindu law. Historically, women were placed on a

pedestal in symbolic terms, revered as Devis and as custodians of family honour, but this reverence seldom translated into actual rights in property ownership or inheritance. The objectives of this study, therefore, are both historical and contemporary in scope:

- To trace the historical evolution of Hindu women's property rights from the limited recognition of strīdhan in the Dharmashastra tradition, through the colonial period when piecemeal reforms were introduced, to the transformative amendments in the post-independence era, culminating in the Hindu Succession (Amendment) Act, 2005.
- To critically analyse the limitations of earlier reforms such as the Hindu Law of Inheritance Act, 1929, and the Hindu Women's Right to Property Act, 1937 that only offered restricted rights and perpetuated the notion of women as dependents rather than independent owners.
- To assess the role of the 1956 act in changing the legal framework and its shortcomings in excluding daughters from coparcenary rights until 2005.
- To examine the contemporary challenges women face in realizing their property rights in practice, including family resistance, social pressure, and procedural hurdles.
- To suggest policy-level recommendations for strengthening women's economic autonomy by ensuring that the law is not only progressive on paper but also practically enforceable.

1.4 Research Questions:-

1. How did the concept of stridhan evolve in ancient Hindu law, and what were its implications for women's autonomy in property ownership?
2. In what ways did colonial interpretations and codification of Hindu law reshape women's rights to property, particularly in relation to inheritance and succession?
3. What socio-legal factors influenced the gradual transformation from stridhan

to recognition of women as coparceners under the Hindu Succession (Amendment) Act, 2005?

4. How do judicial pronouncements reflect the shift in understanding women's property rights from a position of dependency to equality within the coparcenary system?
5. To what extent has the recognition of daughters as coparceners under Hindu law contributed to gender justice and reduced patriarchal control over ancestral property?
6. What are the contemporary challenges in the practical enforcement of women's coparcenary rights, and how do these reflect the gap between legal reform and social reality?

1.5 Research Gap:-

Despite significant scholarship on women's rights in India, certain lacunae remain unaddressed.

First, much of the existing work has focused on the legal history of reforms, but there has been less emphasis on the continuity of patriarchal justifications that still inform contemporary resistance to women claiming property. Ancient exclusions justified by texts such as the Manusmṛti or Mitākṣarā interpretations were not completely erased by legislative change; rather, they survive in social practice even today.

Second, while there is ample commentary on the Hindu Succession Act, 1956, and its 2005 amendment, relatively fewer works have engaged with the implementation gap between law and lived experience. For example, daughters continue to "relinquish" their shares to brothers under social pressure, a phenomenon not adequately studied in legal research.

Third, research has largely remained siloed within legal studies. Very few works attempt an interdisciplinary approach that brings together law, sociology, and gender studies, which is crucial for understanding why women's statutory rights are not properly utilised in practice.

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Fourth, there is inadequate exploration of institutional barriers such as court delays, lack of awareness among women, and administrative hurdles in mutation and registration of property. The persistence of these barriers highlights a gap between formal equality guaranteed by statutes and substantive equality in practice. This study addresses these gaps by weaving together a historical, legal, and socio-cultural analysis of women's property rights under Hindu law.

1.6 Literature Review:-

1.6.1 Classical Textual Foundations

- P. V. Kane's *History of Dharmasastra* is one of the most authoritative accounts of ancient Hindu law. Kane explains how strīdhan (woman's property) was recognized in texts like Manusmṛti, but always in limited forms (gifts at marriage, ornaments, small movable property). He highlights that these rights were symbolic acknowledgments rather than substantive entitlements, since they could not challenge the patriarchal lineage system⁹
- R. C. Majumdar's historical writings further contextualize this by showing how ancient Hindu society celebrated women as "givers" within kinship and ritual structures, but limited their control over economic resources.¹⁰

1.6.2 Colonial Interventions and Codification

- Marc Galanter's *Law and Society in Modern India* demonstrates how colonial law often entrenched caste and gender hierarchies, presenting them as part of "authentic" Hindu law.¹¹
- M. P. Jain, in *Outlines of Indian Legal History*, says that codification by the British was less about preserving tradition and more about creating predictable rules, but this predictability often came at the cost of women's rights.¹²

1.6.3 Pre-Independence Legislative Reforms

- The Hindu Law of Inheritance Act, 1929, gave daughters limited inheritance

⁹ P. V. Kane, *History of Dharmasastra, Vol. II* (Bhandarkar Oriental Research Institute, 1941).

¹⁰ R. C. Majumdar, *Ancient India* (Motilal Banarsidass, 1977).

¹¹ Marc Galanter, *Law and Society in Modern India* (Oxford University Press, 1989).

¹² M. P. Jain, *Outlines of Indian Legal History* (LexisNexis, 2012).

rights but excluded them from joint family property.

- The Hindu Women's Right to Property Act, 1937, granted widows a right to property but not full ownership, reflecting a compromise with patriarchal norms.
- Lotika Sarkar sharply criticizes these reforms as half-measures, observing that they were more symbolic than transformative.¹³

1.6.4 Post-Independence Reform: The Hindu Succession Act, 1956

- The Hindu Succession Act, 1956, consolidated succession law but denied daughters coparcenary rights.
- Flavia Agnes, in *Law and Gender Inequality*, argues that the Act represented a “progressive–conservative compromise”: it gave women inheritance rights but maintained the patriarchal joint family system.¹⁴
- M. P. Tandon and S. C. Tripathi's commentaries stress that widows and mothers benefited more than daughters, showing how reform remained uneven.¹⁵

1.6.5 Feminist and Empirical Critiques

- Bina Agarwal's *A Field of One's Own* is pivotal in showing how land ownership shapes women's bargaining power. Her empirical studies reveal that daughters often relinquish their rights under family pressure, and administrative hurdles further alienate them from property.¹⁶
- Ratna Kapur's writings expand this critique globally, showing how law often reflects patriarchal structures under the guise of universal rights.¹⁷

1.6.6 Institutional and Practical Barriers

¹³ Lotika Sarkar, *Women and Law: Contemporary Problems* (Vikas, 1984).

¹⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

¹⁵ M. P. Tandon, *Hindu Succession Act* (Allahabad Law Agency, 2009); S. C. Tripathi, *Hindu Law* (Central Law Publications, 2010).

¹⁶ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press, 1994).

¹⁷ Ratna Kapur, *Gender, Alterity and Human Rights* (Edward Elgar, 2018).

- Upendra Baxi, in *The Crisis of the Indian Legal System*, emphasizes that access to justice is a major barrier. Inheritance disputes take years, discouraging women from pursuing their rightful claims.¹⁸
- Werner Menski's *Hindu Law: Beyond Tradition and Modernity* shows how modern statutory law coexists with traditional values, leading to uneven application and resistance to reform.¹⁹

1.7 Scope of the Study:-

The present research is designed to critically examine the evolution of women's property rights in Hindu law and their practical implications in contemporary society.

The study traces this journey from the earliest recognition of strīdhan in Dharmashastra traditions to the landmark reform of the Hindu Succession (Amendment) Act, 2005, which finally placed daughters on par with sons as coparceners.²⁰ The scope is therefore both historical and contemporary: it investigates how cultural beliefs, religious texts, colonial interventions, and post-independence reforms together shaped the current legal position of Hindu women.

At the same time, the study goes beyond legal doctrine. By examining issues such as family resistance, lack of awareness, procedural hurdles in property registration, and societal pressures to relinquish inheritance, the study highlights the gap between statutory equality and lived reality.²¹ The scope is thus not limited to analyzing laws in isolation but extends to exploring their effectiveness and enforcement in practice.

To maintain clarity and focus, this study is subject to certain delimitations. Other personal laws such as Muslim, Christian, or Parsi inheritance laws and even international debates and laws on gender and property rights are not within the scope of this research. This research aspires to illuminate the tension between law and practice, reverence, reality and reform. Its scope lies not only in recounting the

¹⁸ Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas, 1982).

¹⁹ Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (Oxford University Press, 2003).

²⁰ Derrett, J.D.M., *Religion, Law and State in India* (Oxford University Press, 1968), pp. 236–240

²¹ Agarwal Bina, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press, 1994), pp. 25–30.

legislative journey of women's property rights but also in uncovering the barriers that continue to prevent women from enjoying substantive equality in matters of property and inheritance.²²

1.8 Hypotheses:-

Based on the above review, this study proposes the following hypotheses:

- 1) **H1:** Legal reforms in Hindu law, while significant, have not been sufficient to dismantle the patriarchal structures that govern property ownership and inheritance.
- 2) **H2:** The Hindu Succession (Amendment) Act, 2005 has increased the scope of women's property rights in principle, but its impact remains limited in practice due to social and institutional barriers.
- 3) **H3:** The gap between statutory equality and practical reality is primarily sustained by cultural expectations, family resistance, and procedural obstacles.
- 4) **H4:** Women's real empowerment in property ownership requires not only legislative reform but also systemic measures such as awareness-building, administrative reforms, and gender-sensitive implementation.

CHAPTER- 2

POSITION BEFORE PASSING OF THE HINDU WOMEN'S RIGHT TO PROPERTY ACT, 1937

²² Sarkar Lotika, "Reform of Hindu Marriage and Succession Laws: Retrospect and Prospect".

2.1 Background:-

The status of women has always been regarded as a sensitive indicator of the cultural and moral strength of any society. A community that respects its women is considered progressive, while one that sidelines them reveals its deep-seated inequalities. In India, the position of women in relation to property and inheritance has long been a contested subject. Their rights were not shaped merely by legal considerations but were deeply influenced by religious beliefs, patriarchal norms, and social practices. As Dr. Kulwant Gill notes, the position of women provides a true measure of the culture of any age, because it directly reflects the space given to them in both family and society.²³ Similarly, G.B. Reddy emphasizes that although the law of succession was eventually codified under colonial and post-colonial administrations, the rights of women remained uneven and inconsistent, particularly across different religious communities.²⁴

For Hindu women, the struggle for property rights was long and uneven. In most instances, their rights to inherit were minimal, conditional, and dependent upon interpretations of ancient texts and customs. Before the Hindu Women's Right to Property Act, 1937, their position was determined primarily by traditional Hindu law as interpreted under the two great schools, Mitakshara and Dayabhaga, which often prioritized male heirs.

2.2 Contradictory Attitudes Towards Women:-

Hindu scriptures and traditions reveal strikingly contradictory attitudes about women. On the one hand, women were celebrated as Lakshmi, the bringers of wealth and prosperity, whose virtue was said to soften even the hardest heart. On the other hand, they were portrayed as dangerous and unreliable. Sage Agastya, for instance, described women as embodying "the fickleness of lightning, the sharpness of

²³ Dr. Kulwant Gill, *Hindu Women's Right to Property in India* (1986), p.528.

²⁴ G.B. Reddy, *Women and Law, 2nd Ed.* (1998), p.42.

weapons, and the swiftness of an eagle.”²⁵ Shakespeare, centuries later, echoed a similar sentiment in the line “Frailty, thy name is woman.”

A.S. Altekar has argued that in order to truly understand the position of women, one must examine their treatment both in extraordinary circumstances (such as war) and in normal, day-to-day family life. This dual lens helps to reveal both the vulnerability of women and the rigid social norms that constrained them.

2.3 Women in Abnormal Circumstances:-

One of the most telling ways to judge a society’s regard for women is to see how it treated them in times of crisis. Unfortunately, history shows that when women fell into the hands of enemies during war, they were subjected to harsh judgments and denied social acceptance upon their return. The famous episode of Lord Rama refusing to accept Sita after her captivity in Lanka remains a striking example of this mentality.

Some Smriti writers did advocate a more compassionate approach, but their views were brushed aside over time. Under Muslim rule, women captured or married into Muslim families were seldom allowed back into Hindu households. This exclusion was not only a matter of religion but also deeply restricted women’s agency.

2.4 Women in Normal Circumstances:-

Even in times of peace, women’s position was less than satisfactory. The killing of a woman was equated with the killing of a Shudra not to highlight equality, but to emphasize their common position at the lower rungs of the social hierarchy. Property rights were similarly restricted. Women’s access was mediated through their identity as daughters, wives, or widows, and rarely on their own independent footing. While the notion of Stridhan (woman’s property) existed, its scope remained narrow, and inheritance generally flowed to male heirs.

2.5 Primitive legal notions:-

The earliest sources of Hindu law, the Vedas and Smritis, played a significant role in

²⁵ Dr. A.S. Altekar, *The Position of Women in Hindu Civilization* (1987).
[9086]

shaping women's inheritance rights. Influential commentaries such as Dayabhaga and Viramitrodaya relied on Baudhayana, who stated that women were "devoid of prowess and incompetent to inherit."²⁶ Jimutavahana also reinforced this by interpreting Manu to mean that inheritance belonged to the nearest male Sapindas, with women excluded unless specifically named.²⁷

However, not all authorities agreed with this exclusionary stance. Vijnanesvara, the author of the Mitakshara, rejected the idea that women were universally incompetent to inherit. He argued that paternal grandmothers and even the wives of lineal ancestors could succeed as gotraja sapindas. His more inclusive interpretation proved influential, and later courts frequently relied on it, showing that Hindu law was not entirely closed to women.

2.6 Lack of Codification and Dependence on Custom:-

In early India, property was usually held by joint families, and individual ownership was rare. Because of this, detailed inheritance rules were unnecessary at first. Primogeniture (the right of the eldest son) was initially the rule, later giving way to equal division among sons. Within this framework, women's rights remained limited. Smritis like Gautama, Baudhayana, and Apastamba did occasionally mention widows or daughters as heirs, but these provisions were fragmentary and inconsistent.²⁸

2.7 Rights of statutory heirs:-

2.7.1 Widows

The right of widows to succeed to their husband's estate was recognized as early as the writings of Vridha Manu, Yajnavalkya, Vishnu, and Brihaspati.²⁹ Although Narada was reluctant to extend this right, later texts firmly acknowledged it. Judicial recognition also reinforced this position. In *Sheo Singh v. Dakho*, the court affirmed

²⁶ *Baudhayana Dharmasutra*, as cited in Dayabhaga and Viramitrodaya.

²⁷ *Jimutavahana, Dayabhaga* (interpretation of Manu on Sapinda inheritance).

²⁸ *Guru Gobind v. Anand Lal* (1870) 5 Beng. L.R. 15 (FB); *Nanki v. Gauri Shankar* (1905) 28 All. 187; *Vikram Singh v. Parbati* (1961 All. 97).

²⁹ Vridha Manu; Yajnavalkya Smriti; Vishnu Smriti; Brihaspati Smriti.

that a widow could inherit her husband's estate, provided she remained chaste.³⁰

Similarly, in *Rewan Persad v. Radha*, the Privy Council recognized the widow's right to her husband's separate property.³¹

2.7.2 Daughters

Daughters too were recognized in certain texts. Manu declared that "a son is one's self, and the daughter is equal to a son."³² Brihaspati supported this by stating that a daughter, like a son, springs from the father. By the time of Kautilya, daughters were clearly recognized as heirs. Mitakshara placed daughters immediately after wives in the line of succession, and this was acknowledged judicially in *Tikari v. Tikari*.³³

2.7.3 Mothers and Grandmothers

Manu recognized the mother's right to inherit if her son died without issue, and in her absence, the paternal grandmother was entitled to the estate.³⁴ Vishnu included the mother in the list of heirs,³⁵ and Yajnavalkya placed both parents after the daughters in order of succession.³⁶

2.7.4 Great-Grandmothers and Sisters

Mitakshara extended succession further, allowing even great-grandmothers to inherit. In *Jagdamba Koer v. Secretary of State*, the principle was judicially recognized, extending rights to lineal ancestresses. Sisters were also acknowledged in Smritis like Brihaspati and Manu IX, though their inheritance rights were often contested in interpretation and rarely given priority.³⁷

2.8 Women's Property Before 1956:-

Before codification, women's property was classified into two categories: Stridhan and Woman's Estate.

³⁰ *Sheo Singh Rai v. Dakho and Moorari Lall* (1878) 5 I.A. 148 (PC); also reported in (1878) 6 NWP 382.

³¹ *Rewan Persad v. Mussumat Radha Beeby* (1846) 4 MIA 137 (PC).

³² *Manusmriti*, IX.130.

³³ *Tikari v. Tikari* (1878) 5 I.A. 160 (PC); also noted in 4 Cal. 190.

³⁴ *Manusmriti*, IX.217

³⁵ *Vishnu Smriti*, Ch. 17.

³⁶ *Yajnavalkya Smriti*, II.135.

³⁷ *Jagdamba Koer v. Secretary of State* (1886) 13 I.A. 84 (PC); Brihaspati Smriti; Manusmriti IX.118. [9088]

- Stridhan was her absolute property. Manu defined it as property gifted before the nuptial fire, during the bridal procession, in token of love, or by her parents and brothers.³⁸ In *Bhagwan v. Warubai (1908)*, the Bombay High Court confirmed this absolute character.³⁹ Property obtained in lieu of maintenance or purchased with Stridhan was also considered Stridhan.
- Woman's Estate was more restrictive. Property inherited by a woman from her husband or father was only a limited estate, meant for her enjoyment during her lifetime. She could not freely alienate it, and upon her death, it reverted to the heirs of the last male owner. This distinction was clarified in *Mst. Devala v. Rup Singh (AIR 1960 MP)*, which held that property inherited from male relatives did not become her Stridhan.⁴⁰

CHAPTER 3

THE HINDU WOMEN'S RIGHT TO PROPERTY

ACT, 1937 & ITS EFFECTS

3.1 Introduction:-

From ancient times, gender equality was viewed with indifference, and men were considered the sole owners of both property and women. Women had no proprietary rights, largely due to the misconception that they were incapable of making sound decisions in matters related to property. Manu famously stated that “three persons, a wife, a son, and a slave are declared by law to have in general no wealth exclusively

³⁸ *Manusmriti*, IX.194–200; commentary by Kulluka Bhatta.

³⁹ *Bhagwan v. Warubai (1908)* 32 Bom. 300.

⁴⁰ *Mst. Dewala v. Rupsir* AIR 1960 MP 35.

their own; the wealth which they may earn is regularly acquired for the man to whom they belong”⁴¹, this verse unmistakably places all three under the control of a man, treating even their earnings or possessions as belonging to him. In matters of intestate succession (where a person dies without leaving a will), women were particularly disadvantaged. Although they were granted a share in their husband’s property upon his death, they were denied recognition as coparceners.

The Hindu Women’s Property Rights Act, 1937, sought to alter this inequitable position and provided widows with a comparatively better standing in matters of succession.

3.2 Scope of 1937 Act:-

The Hindu Women’s Right to Property Act, 1937, does not operate retrospectively, which means it applies only to situations arising after its commencement and not to past events.⁴² Similarly, its application is limited in scope it does not extend to properties located outside India,⁴³ nor to assets that were not the deceased’s own but held by him in the capacity of a trustee.⁴⁴ Importantly, the Act does not cover property owned by a Hindu woman herself.⁴⁵ It applies only in cases where a Hindu man dies intestate, whether fully or partially, leaving behind property without a will.

Under this enactment, a widow was recognized as having a legitimate claim to the share her husband would have been entitled to, whether in his individually acquired property or within the joint family estate where he was a coparcener. She could seek partition of her husband’s portion from the remaining coparceners. However, her rights were not absolute; she could not freely sell or alienate her share unless justified by recognized and acceptable reasons under Hindu law at that time.⁴⁶The main

⁴¹ Code of Manu describes how a woman should behave if she is a daughter, sister, wife or widow and urges chastity and self-sacrifice.

⁴² *Manohar Lai v. Bhuri Bai*, 1972 S.C. 1369, also see N.R. Raghyachariar, *Hindu Law: Principles and precedents*, 8th Ed.

⁴³ *Umayal v. Lakshmi*, (1944) 1 M.L.J. 70

⁴⁴ *Hazarilal v. Mahesh*, 1961 M.P.L.J. 519

⁴⁵ *Sham Lai v. Amar Nath*, (1970) 1 S.C.J. 503

⁴⁶ *Narasimhachari v. Andalammal*, (1978) 2 M.L.J. 524

provisions relating to succession under the Act can be summarized as follows:

- 1) When a Hindu male dies leaving behind his widow, the widows of predeceased sons, his sons, grandsons, and great-grandsons, they all inherit together. A peculiarity arises under the Dayabhaga School: here, if a son survives, his own son does not inherit alongside him.
- 2) The widow of the deceased is entitled to a share equal to that of a son. In case there are multiple widows, they jointly take one son's share. If there are no sons or other heirs listed under the Act, the widow(s) inherit the whole property. Likewise, a son's widow receives the same share as a son, though if there are multiple widows of a predeceased son, they collectively receive only one such share. If the predeceased son has a son surviving, the widows of that son will collectively take a share equal to that of a grandson.
- 3) The same principle applies to the widow (or widows) of a predeceased grandson.
- 4) All such widows are empowered to demand partition and to have their shares delivered to them.
- 5) A widow of a Mitakshara coparcener effectively steps into the legal position of her deceased husband. She can claim separation of his share against sons as well as other coparceners, whether ancestors, descendants, or collaterals. While her presence interrupts the normal rule of survivorship regarding her husband's share, the principle of survivorship continues to apply among the remaining coparceners, with her interest also fluctuating due to births and deaths within the family, subject only to her statutory rights.⁴⁷

3.3 Purpose of the Act:-

This act was to initiate a meaningful reform in the traditional framework of Hindu joint family law, particularly under the Mitakshara system. Section 1 of the Act vested in the widow the same interest in the coparcenary property as her husband had at the time of his death. This represented a radical departure from earlier law, under which

⁴⁷ *Bondhu v. Ramdayal*, AIR 1960 M.P. 51 (F.B.)
[9091]

she was entitled only to maintenance and not to any ownership stake.

This statutory recognition of the widow's share meant that her rights no longer stemmed solely from inheritance or the principle of survivorship. Instead, they were directly conferred by the legislature in a concept described as "statutory substitution." Through this mechanism, the widow was allowed entry into the coparcenary, a domain traditionally reserved for men alone.

Consequently, the widow and the surviving coparceners of her husband shared a community of interest and unity of possession in the property. Yet, despite this significant reform, the widow was not elevated to the position of a full coparcener in the technical sense. She was entitled to the same share her husband would have received but did not enjoy the wider powers her husband could exercise over the shares of other coparceners.⁴⁸

3.4 Transformations introduced by the act:-

The Act of 1937 comes out as one of the earliest works by the legislature to give Hindu widows a separate legal identity besides being mere dependents of the male members. Prior to its enactment, women had a very minute control over property, relying mainly on stridhan or maintenance rights, while property inheritance remained a subject of male dominance.⁴⁹ With this Act, a widow was for the very first time placed equally with her son in succession matters, receiving a share in her husband's separate as well as joint family property.⁵⁰ But her right was confined to a limited estate, which would lapse upon her death. Its benefits were only for the widows; daughters, mothers, and sisters were kept outside the act's ambit.⁵¹ Apart from such loopholes, the Act was without any doubt a progressive step that carved out the way for later reforms, most important of which is the Hindu Succession Act, 1956, that immensely widened women's rights in property.⁵² Some of the key changes effected

⁴⁸ *Satrughan Isser v. Subujpari*, AIR 1967 SC 272.

⁴⁹ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 2009) 216.

⁵⁰ Mulla, *Principles of Hindu Law* (22nd Ed, LexisNexis 2016) 142.

⁵¹ Derrett, *Introduction to Modern Hindu Law* (OUP 1963) 284.

⁵² Kusum, *Family Law Lectures* (LexisNexis 2011) 356.

by this act were:-

- **Recognition of Widow's Rights** – For the first time, a widow was placed equally with a son in inheriting her husband's property (separate/coparcenary).
- **Right to Partition** – Widows were given right to demand partition of property, but her interest was only a limited estate and after her death, reverting to surviving coparceners under the doctrine of survivorship.
- **Unique Position of Widow** – A widow was neither made a coparcener nor a Karta, but she could still possess, enjoy, and draw income from the property in her own right until partition.⁵³
- **Exclusion of Other Female Heirs** – The Act applied only to widows of deceased coparceners, leaving daughters, sisters, and mothers.
- **Objective of Maintenance** – The underlying purpose was to ensure that widows were not left dependent on others, but instead had a right in property that secured their livelihood. However, for impartible estates and agricultural land, only maintenance rights applied.⁵⁴

3.5 The Road to Section 14 of the Hindu Succession Act, 1956:-

Under classical Hindu law, a woman's property was divided into Stridhan and the so-called "woman's estate." The woman's estate restricted her to only a life interest, leaving her with little authority to alienate or dispose of property. The act of 1937 sought to change this position by giving widows a share in both separate and coparcenary property of their husband. This Act failed in making women absolute owners, instead conferring only a limited interest that finished upon their death. Recognizing this inadequacy, the Hindu Succession Act, 1956, through Section 14, converted the widow's limited estate into full ownership. It declared that all property possessed by a Hindu woman whether acquired by inheritance, partition, maintenance, gift, purchase, or her own effort would be held by her as an absolute owner. This reform not only extinguished the doctrine of survivorship elevated

⁵³ Mayne, *Treatise on Hindu Law and Usage* (16th Ed, Bharat Law House 2008) 983.

⁵⁴ Kusum, *Family Law Lectures* (LexisNexis 2011) 356.

women's property rights to a position of equality with men. Section 14 laid down the foundation for modern Hindu women's economic independence and strengthened their rightful place within the joint family.

3.6 Gaps in the 1937 Act:-

- 1) The Act was only prospective, meaning it applied to cases after its commencement and gave no remedy for earlier injustices.⁵⁵
- 2) Widows were granted only a limited life interest in their husband's share, without the freedom to sell, gift, or will the property.⁵⁶
- 3) On the death or remarriage of the widow, her rights ceased and the property reverted back to the surviving coparceners.⁵⁷
- 4) The scope was restricted only to widows, leaving out mothers, sisters, and daughters, who still had only a right to maintenance and not inheritance.
- 5) A strong social bias persisted, as "unchaste" widows were excluded from inheritance, reflecting the patriarchal mindset of that period.

CHAPTER-4

STRIDHAN AND

HINDU SUCCESSION ACT, 1956

4.1 Meaning of Stridhan:-

The word stridhan is comprised of two words- 'Stri' (woman) and 'dhana' (property) and thus, it etymologically means a woman's property. The woman's right to hold and dispose of property has been recognized in the entire history of hindu law, i.e., a maiden, wife or widow has never been denied the use of her property as an absolute owner apart from husband dominant position in respect of certain stridhan.⁵⁸

Gooroodass Banerjee very aptly said: The difficulties besetting an enquiry into the

⁵⁵ The Hindu Women's Right to Property Act, 1937, Section 2.

⁵⁶ *Umayaal Achi v. Lakshmi Achi*, AIR 1945 PC 25.

⁵⁷ *Nagendra Prasad v. Kempnanjamma*, AIR 1960 SC 1176.

⁵⁸ Mitakshara. II, ix, 2.

question what constitutes stridhan, arise from the fact that majority of sages and commentators give neither an exact definition of stridhan, nor an exhaustive enumeration, and if the Mitakshara gives a simple and intelligible definition, that definition has been qualified and restricted in its application by our courts, in consequence of its disagreement with the view of other authorities.⁵⁹

According to the Smritikars, the stridhan constituted those properties which she received by way of gift from relations which included mostly movable property (though sometimes a house or a piece of land was also given in gift)⁶⁰ such as ornaments, jewellery and dresses.

4.2 Traditional and Modern Scope of Woman's Property:-

1. Gifts and Bequests from Relations

- Gifts from parents, relatives, husband, or his relatives during maidenhood, marriage, or widowhood are stridhan.
- Recognized from early times.
- Dayabhaga school: husband's gift of immovable property not stridhan.

2. Gifts and Bequests from Strangers

- Gifts or wills from strangers during maidenhood or widowhood are stridhan.
- During marriage: stridhan in Bombay, Benares, and Madras schools, but not in Mithila and Dayabhaga.
- Before 1956: gifts from strangers during coverture were stridhan but under husband's control.

3. Property Acquired by Self-Exertion and Arts

- Property earned by employment, labour, singing, dancing, or arts is stridhan during maidenhood or widowhood under all schools.
- During coverture: stridhan in most schools, but not in Mithila and Bengal.
- While husband is alive, subject to his control.

4. Property Purchased with Stridhan

⁵⁹ *Hindu Law of Marriage and Stridhan*, (3rd Ed.), 280

⁶⁰ See Chapter XII, Part II, Gifts of Love and Affection.
[9095]

- Anything purchased, saved, or accumulated from stridhan remains stridhan.

5. Property Acquired by Compromise

- Depends on compromise deed.
- If property is received in exchange for stridhan, it remains stridhan.
- In family arrangements, nature of property depends on terms.

6. Property Obtained by Adverse Possession

- Property acquired through adverse possession is stridhan in all schools.

7. Property Obtained in Lieu of Maintenance

- Lump sum, periodic payments, arrears of maintenance, or absolute gifts in lieu of maintenance are stridhan.

8. Property Obtained by Inheritance

- Mitakshara: all inherited property stridhan.
- Privy Council: treated inherited property (from males or females) as woman's estate (limited ownership).⁶¹

9. Share Obtained on Partition

- On partition, mother and grandmother (except in Dayabhaga) take a share.
- Traditionally treated as woman's estate in both Mitakshara and Dayabhaga.
- After Hindu Succession Act, 1956: such shares became absolute property (stridhan).

4.3 Kinds of Stridhan:-

Dayabhaga School:

- Yautaka – Gifts received by the bride at the time of marriage, especially when she is seated with her husband during the ceremony.
- Ayautaka – All other gifts or bequests, such as those given before marriage by the father or after marriage by other relatives.

⁶¹ *Bhagwandeem v. Maya Bace*, (1867) 11 M.A.I. 487
[9096]

Mitakshara School:

- Saudayika Stridhan – Property received by a woman from her husband or parents, over which she had full rights of use, sale, or transfer without any interference.
- Non-Saudayika Stridhan – All other property where her control was limited, and during her husband's lifetime she could not dispose of it without his consent.

4.4 Stridhan According to Judicial Decisions:-

The legal recognition of stridhan has been shaped not only by classical Hindu law but also through a long line of judicial decisions. Courts, especially the Privy Council, High Courts, and later the Supreme Court of India, have elaborated on whether property inherited or received by a Hindu female qualifies as stridhan or only a woman's estate.

4.4.1 Position under the Privy Council

The Privy Council initially took a restrictive view of women's rights over inherited property. It held that any property inherited by a Hindu woman, whether from a male or female relative, did not constitute stridhan. Instead, it was regarded as a limited woman's estate, with rights of enjoyment but no absolute ownership.

- In *Bhagwan Das v. Maina Bai*⁶² the Privy Council ruled that property inherited by a Hindu female from her husband cannot be treated as stridhan. It would pass not to her heirs, but to the collaterals of her husband after her death.
- Similarly, in *Shivshanker v. Devi*,⁶³ it was held that property inherited by a daughter from her mother was not her stridhan, even if it was originally the mother's stridhan. Upon the daughter's death, it reverted back to the heirs of her mother and not to her own heirs.

⁶² AIR 1919 PC 75.

⁶³ (1920) 47 IA 229 (PC).

- Again, in *Devimangal v. Mahadeo*,⁶⁴ the Privy Council clarified that property obtained by a woman as her share in a partition would also not be considered stridhan. Even under the Mitakshara school, a widow's share in partition reverted back to her husband's heirs upon her death, unless there was a clear agreement stating otherwise.

4.4.2 Shift in Judicial Interpretation

This restrictive approach was significantly challenged and revised by Indian courts after independence. The judiciary began to recognize women's independent ownership over gifts and property, particularly dowry articles and ornaments given at the time of marriage.

- In *Pratibha Rani v. Suraj Kumar*,⁶⁵ the Supreme Court categorically held that gifts, dowry articles, and ornaments given to a woman at or after her marriage are her stridhan. She retains absolute ownership and full control over them, regardless of whether she is living with her husband or using them jointly in the matrimonial home. The Court emphasized that marriage does not divest a woman of her exclusive rights over such property.
- The Court rejected the earlier Punjab and Haryana High Court view that dowry goods became joint property of husband and wife. It ruled that stridhan cannot be treated as joint property, and the husband merely holds it in trust for his wife.

4.4.3 Other Significant Decisions

Several other judgments have clarified and strengthened the position of women in relation to stridhan:

- In *Rashmi Kumar v. Mahesh Kumar Bhada*,⁶⁶ the Supreme Court held that refusal by the husband or his relatives to return a woman's stridhan constitutes criminal breach of trust under Section 406 of the Indian Penal Code. The Court recognized that stridhan remains the woman's property and does not

⁶⁴ AIR 1926 PC 42.

⁶⁵ (1985) 2 SCC 370.

⁶⁶ (1997) 2 SCC 397.

become joint marital property.

- In *V. Tulasamma v. V. Sesha Reddy*,⁶⁷ the Court gave a progressive interpretation, holding that property obtained by a Hindu female under a compromise, award, or in lieu of maintenance would be her absolute property under Section 14(1) of the Hindu Succession Act, 1956.
- In *Kuldip Singh v. State of Punjab*,⁶⁸ the Supreme Court reiterated that stridhan includes all gifts and ornaments received by a woman during her marriage, and wrongful retention by her in-laws amounts to criminal breach of trust.

4.5 Women's Authority in Managing Stridhan:-

A Hindu woman is the absolute owner of her stridhan, unlike the Karta of a joint family who is only a co-owner. She alone can manage it, enjoy its income, and even save it as her own.

- **Management** – She has complete control over possession, use, and income.
- **Alienation** – Traditionally, she could alienate property only for legal necessity, benefit of the estate, or essential religious duties.
- **Surrender** – She could surrender her estate to the nearest reversioner, provided the surrender was complete, bona fide, and in their favor.
- **Reversioners** – On her death or surrender, property would pass to the heirs of the last full owner. They also had a right to prevent wasteful use or improper alienation.

Thus, while her control was substantial, certain restrictions existed historically, though many of them were removed after the Hindu Succession Act, 1956.

4.6 Stridhan and the Hindu Succession Act, 1956

Following the historical understanding of stridhan, the law evolved significantly with statutory and judicial interventions to strengthen a woman's rights over her property.

⁶⁷ (1977) 3 SCC 99.

⁶⁸ AIR 1989 SC 406.

Traditionally, while a woman had substantial control over her stridhan, certain restrictions existed. She could manage, enjoy, or save her property, yet alienation or surrender was often allowed only for legal necessity, religious duties, or in favor of the nearest reversioner. However, these restrictions gradually diminished, especially after the enactment of the Hindu Succession Act, 1956, which marked a decisive shift in favor of women's absolute ownership.

1. Absolute Ownership under the Act

- Section 14(1), Hindu Succession Act, 1956: Any property possessed by a Hindu female, whether acquired before or after the commencement of the Act, shall be held by her as full owner and not as a limited owner.
- This provision effectively abolished the old doctrine of "woman's estate" and recognized her independent and absolute ownership over stridhan.

2. Judicial Clarification on Gifts and Dowry Articles

- Gifts, ornaments, and dowry articles received at or after marriage remain the woman's exclusive property.
- Case: *Pratibha Rani v. Suraj Kumar*⁶⁹ – The Supreme Court held that a husband only holds stridhan in trust; it does not become joint property.

3. Property Acquired Through Inheritance or Partition

- Pre-1956, property inherited by a woman from her parents or husband was generally treated as a woman's estate, not stridhan.
- Case: *Bhagwan Das v. Maina Bai*⁷⁰ – Property inherited from a husband did not pass to the woman's heirs but to her husband's collaterals.
- Post-1956, Section 14(1) ensures inherited property is treated as absolute property (stridhan).

4. Property Obtained under Compromise or Maintenance

- Lump sum, periodic payments, or property obtained in lieu of maintenance is treated as stridhan.

⁶⁹ AIR 1985 SC 628.

⁷⁰ (1883) 10 ILR 35

[9100]

- Case: *V. Tulasamma v. V. Sesha Reddy*⁷¹ – The Supreme Court confirmed absolute ownership in such cases under Section 14(1).

5. Criminal Protection of Stridhan

- Wrongful retention of stridhan by husband or in-laws constitutes criminal breach of trust.
- Case: *Rashmi Kumar v. Mahesh Kumar Bhada*⁷² – Courts recognized the woman's exclusive ownership and criminal liability for misappropriation.

6. Management and Alienation

- The woman has full control over her stridhan: she can manage, enjoy, alienate, or save the income from it.
- Historically, alienation was restricted to legal necessity or religious duties, but Section 14(1) removed such restrictions in modern law.

CHAPTER-5

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

5.1 The 2005 Amendment and Its Impact:-

The Hindu Succession (Amendment) Act, 2005 introduced a radical change. It abolished the doctrine of survivorship for devolution of coparcenary property in cases of male intestates.⁷³ Under Section 6(3) (as amended), the share of a deceased coparcener in Mitakshara coparcenary devolves entirely by testamentary or intestate succession, irrespective of the existence of male coparceners. The provision also expressly retains the concept of notional partition for calculating the share of the deceased before succession is applied.

Earlier, intestate and testamentary succession principles were triggered only when a

⁷¹ AIR 1975 SC 1331.

⁷² AIR 1992 SC 117.

⁷³ Hindu Succession (Amendment) Act, 2005, Section 6.

female Class I heir (such as daughter, widow, or mother) or a male heir claiming through a female (e.g., son of a pre-deceased daughter) existed. In their absence, survivorship governed the devolution. Now, the rule is uniform: every coparcener's share must devolve through succession, irrespective of surviving heirs.

5.2 Present Legal Position (Post-2005 Amendment):-

When distributing the share of a deceased coparcener in a Mitakshara joint family, the following principles must be kept in mind:

- (a) The deceased must have been a member of a Mitakshara coparcenary at the time of his death.⁷⁴
- (b) His death should have occurred on or after 9 September 2005 (the commencement of the amendment).⁷⁵
- (c) His share must first be calculated by a notional partition immediately before his death.⁷⁶
- (d) If he left behind a valid Will, succession would be governed by the testamentary directions.⁷⁷
- (e) If no Will exists, his share devolves according to intestate succession rules under the Act.⁷⁸
- (f) Importantly, daughters are now coparceners by birth, and therefore must receive a share equal to that of sons.⁷⁹

5.3 Daughters as Coparceners:-

Under classical Hindu law, sons (male descendants up to four generations) were recognised as coparceners, acquiring rights in joint family property by birth. A daughter, however, was excluded from such ownership rights. Her entitlement was

⁷⁴ Hindu Succession Act, 1956, Section 6(1).

⁷⁵ Hindu Succession (Amendment) Act, 2005 – effective from 9 September 2005.

⁷⁶ Hindu Succession Act, 1956, Section 6(3).

⁷⁷ Hindu Succession Act, 1956, Section 30.

⁷⁸ Hindu Succession Act, 1956, Section 8.

⁷⁹ Hindu Succession (Amendment) Act, 2005 – daughters made coparceners by birth.

confined to maintenance, marriage expenses, and residence in her father's joint family home until marriage.⁸⁰ A son's marital status never affected his coparcenary rights; he could bring his wife into the family fold and his children automatically acquired rights by birth in the coparcenary. In contrast, once married, a daughter lost her membership in her father's joint family and became part of her husband's joint family, where her children acquired property rights by birth.

A daughter could only regain residence in her father's family in exceptional circumstances such as widowhood or desertion by her husband, but even then, her children had no rights in their maternal grandfather's coparcenary. This complete exclusion of daughters from ownership in coparcenary property was an entrenched patriarchal practice, leaving her disadvantaged.⁸¹

The Hindu Succession Act, 1956 partially reformed this system. For the first time, a daughter was permitted to inherit her father's share in Mitakshara coparcenary property as a Class I heir, though the share remained comparatively small. Later, some states took the lead in granting greater rights like Andhra Pradesh (1985–86), Tamil Nadu (1989), Karnataka (1994), and Maharashtra (1994) where unmarried daughters were given coparcenary rights. However, this benefit was tied to marital status: only unmarried daughters on the date of commencement of the state amendments could become coparceners, though they retained that status after marriage.⁸² The landmark reform came with the Hindu Succession (Amendment) Act, 2005, which gave all daughters, irrespective of marital status, the same coparcenary rights as sons by birth.

5.4 Statutory Recognition under Section 6 (2005 Amendment):-

Section 6 of the Act now provides that:

- A daughter, by birth, becomes a coparcener in her own right, in the same manner as a son;
- She has equal rights in the coparcenary property as a son;

⁸⁰ Mayne, *Hindu Law & Usage*, 16th Ed.

⁸¹ Flavia Agnes, *Family Law and Constitutional Claims*.

⁸² Paras Diwan, *Modern Hindu Law*, 23rd Ed.

- She is also subject to the same liabilities in respect of the coparcenary property.⁸³

This means a daughter today can:

- demand partition,
- dispose of her share by testamentary disposition,
- throw her self-acquired property into the common pool, and
- even act as Karta of the joint family.

In *Danamma @ Suman Surpur v. Amar*,⁸⁴ the Supreme Court said that these reforms ensured gender equality in succession, allowing daughters to hold, alienate, and dispose of coparcenary property like sons. The Court said that this amendment introduced touchstone of equality, removing long-standing disabilities faced by women.

5.5 Judicial Developments and Controversies:-

Despite legislative clarity, questions arose regarding:

- i) From which date does a daughter become a coparcener?
- ii) What are the conditions for her inclusion?
- iii) What are her rights and limitations?
- iv) Must her date of birth be post 9 September 2005?⁸⁵

In *Vaishali S. Ganorkar v. Satish Keshaurao Ganorkar*,⁸⁶ the Bombay High Court (single bench) controversially held that only daughters born after 9 September 2005 could be treated as coparceners. Daughters born earlier were not entitled to coparcenary rights unless a devolution occurred after the amendment. This interpretation, being strictly prospective, denied benefits to daughters already alive on the date of amendment.

This view was later rejected in *Badrinarayan Shankar Bhandari v. Omprakash*

⁸³ Hindu Succession Act, 1956, Section 6 (post-2005 amendment).

⁸⁴ (2018) 3 SCC 343.

⁸⁵ Law Commission of India, 174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law, 2000.

⁸⁶ 2012 (6) Bom CR 870.

Shankar Bhandari,⁸⁷ where a Division Bench of the same Court clarified that Section 6 is retroactive: rights are available to daughters born before or after 2005, provided they were alive on 9 September 2005 and the property had not been partitioned before 20 December 2004.

5.6 Condition of Father Being Alive:-

Another issue was whether the father must be alive on the commencement date of the amendment. In *Prakash v. Phulwati*,⁸⁸ the Supreme Court held that the daughter would be entitled to coparcenary rights only if her father was alive on 9 September 2005. This ruling created a restrictive qualification not expressly provided in the statute.

This position was followed in *Anjalai v. K. Rathina*,⁸⁹ where the Court held that daughters cannot claim coparcenary rights if their father had died before the amendment.

However, in *Vineeta Sharma v. Rakesh Sharma*,⁹⁰ a three-judge bench finally settled the law, overruling *Prakash v. Phulwati*. It held:

- The right of a daughter as a coparcener is by birth, and it is not necessary that the father be alive on 9 September 2005.
- The notional partition under the earlier Section 6 was only a legal fiction and did not amount to an actual partition.
- Even in pending suits for partition, daughters must be given equal shares as sons.

The Court emphasised that excluding daughters on the ground that the father was not alive would amount to reading into the statute words not there, which is impermissible. It restored the principle of equality and gave full effect to the legislative intent of the 2005 amendment.

5.7 Judicial Review of the Hindu Succession (Amendment) Act,

⁸⁷ 2014 (5) Bom CR 182.

⁸⁸ (2016) 2 SCC 36.

⁸⁹ 2013 SCC OnLine Mad 4177.

⁹⁰ (2020) 9 SCC 1.

2005:-

In *G. Krishnamurthy v. Union of India*⁹¹, a Public Interest Litigation was filed questioning the constitutional validity of the Hindu Succession (Amendment) Act, 2005. The petitioner contended that the Act was ultra vires the Constitution as it diluted fundamental tenets of Hindu law. The amendments in question primarily dealt with Section 6, Section 23, and Section 24 of the Hindu Succession Act, 1956. The most significant change was in Section 6, which earlier gave preference to sons in Mitakshara coparcenary property. By the 2005 amendment, daughters were accorded equal rights as sons in such property, thereby erasing the discriminatory distinction. Similarly, Section 23, which restricted a female heir's right to demand partition in a joint dwelling house, was repealed, as it unfairly placed women at a disadvantage. Further, Section 24, which disqualified widows from inheritance upon remarriage, was also omitted, as it perpetuated statutory discrimination against women. The Court upheld these amendments, noting that they were not only consistent with constitutional guarantees of equality and non-discrimination under Articles 14 and 15, but also furthered the directive principles of gender justice embedded in the Constitution. The Court clarified that removing discrimination in succession law was not contrary to Hindu law but rather an evolutionary step to bring it in line with modern constitutional values.

However, the amendment gave rise to certain unintended consequences. Before the Central Amendment of 2005, some states such as Andhra Pradesh (1986), Tamil Nadu (1989), Maharashtra (1994), and Karnataka (1994) had already introduced reforms granting daughters coparcenary rights. Under these state laws, daughters could not only demand partition but also challenge alienations and reopen inequitable partitions. Courts consistently held that the term "partition" included even notional partition.⁹² Yet, the 2005 Central Amendment, through the proviso to Section 6(1)(c), restricted daughters from questioning any partition effected before 20 December 2004. This

⁹¹ AIR 2010 SC 2368.

⁹² *Ganduri Koteswaramma v. Chakiri Yanadi*, (2011) 9 SCC 788.

meant that a daughter who had lawfully acquired the right to reopen a partition under state amendments between 1985 and 2005 was suddenly deprived of it retrospectively. This led to situations of gender injustice, where sons continued to enjoy the right to challenge pre-2004 alienations, but daughters were expressly barred. The Karnataka High Court (2010) addressed this anomaly, striking down the proviso to Section 6(1)(c) as unconstitutional, holding that it was violative of Article 14 since it discriminated solely on the basis of sex. A key illustration of this controversy arose in *R. Kantha v. Union of India*,⁹³ where an unmarried daughter sought partition and questioned alienations made by her father without her consent. The trial court was urged to declare the proviso unconstitutional as it retrospectively extinguished rights granted to daughters under the Karnataka Amendment Act, 1994. The High Court framed two major issues:

1. Whether the proviso to Section 6(1)(c) of the 2005 Amendment is arbitrary and violative of Article 14 as it denies daughters, but not sons, the right to challenge pre-2004 alienations.

2. Whether an unmarried daughter could seek partition of undivided coparcenary property during the lifetime of her father, despite the 2005 amendment. The Court held that while Article 254(1) ensures Union law prevails over conflicting State law, the proviso to Section 6(1)(c) lacked any rational justification. The objects and reasons of the Act, as well as the 174th Law Commission Report, gave no basis for this cut-off date. The Court concluded that the restriction unfairly disadvantaged daughters and was contrary to the very purpose of the amendment that is gender equality. Consequently, the proviso was struck down as unconstitutional.

Another instance arose in *Daka Audemma v. Inaganti Venkateshwara Reddy*,⁹⁴ where the Andhra Pradesh High Court examined whether the amended Section 6 operated retrospectively. It held that succession law applicable on the date of opening of succession governs inheritance. Since Section 6 was explicitly worded to apply “on and from” the commencement of the 2005 Act, it was interpreted as prospective in

⁹³ AIR 2011 Kar 56.

⁹⁴ AIR 2012 AP 123.

effect. Thus, daughters married before 1986 (under the A.P. Amendment) could not retrospectively claim coparcenary rights.

CHAPTER-6

CONCLUSION AND SUGGESTIONS

6.1 The Broader Significance of Women's Property Rights:-

The struggle for women's property rights in Hinduism is not simply a matter of legal reform; it is central to the broader question of gender justice and social transformation in India. Property has always been more than an economic asset and it is a source of identity, security, and authority within the family. Denying women rights to property meant denying them independence and reducing them to dependents of fathers, husbands, or sons. By tracing the journey from Stridhan to coparcenary rights, we can see how Hindu law gradually shifted from a framework that tolerated women's exclusion to one that formally recognizes their equality. Yet, even today, the challenge lies in ensuring that statutory rights translate into lived realities.

6.2 Achievements of Reform:-

The Hindu Succession Act of 1956 was a landmark because it sought to unify and modernise Hindu inheritance law. Its most progressive feature was Section 14, which abolished the concept of limited estate and recognized women as absolute owners of property acquired by inheritance, gift, or any other lawful means. This provision was revolutionary because it dismantled the old classification of women's property into Stridhan and "women's estate," thereby eliminating a tool long used to limit women's

autonomy.

The Hindu Succession (Amendment) Act, 2005, marked an even more significant breakthrough. It abolished the doctrine of survivorship in coparcenary property and introduced daughters as coparceners by birth.⁹⁵ For the first time, daughters were placed on par with sons, with equal rights not only to inherit but also to demand partition and even to act as karta of the joint family. This symbolic recognition of daughters as equal stakeholders in the joint family challenged centuries of patriarchal practice.

6.3 Lingering Shortcomings in the Legal Framework:-

Despite its pathbreaking character, the 2005 Amendment has not fully resolved the issue of gender inequality. One of its biggest shortcomings is its prospective application. By conferring rights only on daughters born after its commencement, the law failed to address the grievances of women born earlier who were still denied their rightful share. In effect, the amendment rewarded future generations while leaving behind those who had long suffered under discriminatory laws.

Another anomaly concerns the position of mothers. Mothers are still not recognized as coparceners and are entitled only to a share from the father's separate property at the time of notional partition. This exclusion is difficult to justify in a legal framework that otherwise claims to uphold gender equality. Similarly, the rules governing the devolution of property of Hindu females dying intestate continue to prioritize the heirs of the husband over her natal family, which reinforces patriarchal assumptions about a woman's identity after marriage. There is also confusion in the hierarchy of heirs.

Certain descendants, such as the daughter's daughter's children, have been ambiguously placed between Class I and Class II heirs, causing interpretative problems in succession disputes.⁹⁶ In some cases, female descendants have been given preference over their male counterparts, resulting in a new form of imbalance. These inconsistencies weaken the clarity and credibility of the law.

⁹⁵ *Gurupad v. Heerabai*, AIR 1978 SC 1239.

⁹⁶ Poonam Saxena, *Family Law Lectures, Family Law-II*, 2nd Ed.

6.4 Social Implications and Unintended Consequences:-

On the positive side, the recognition of daughters as coparceners enhances their economic security and bargaining power within both marital and natal families. It challenges the long-standing assumption that a daughter “belongs” only to her husband’s family after marriage. Symbolically, it affirms her continuing membership in her natal family, giving her a fallback position in case of marital breakdown. This has the potential to improve women’s self-confidence and to reduce their vulnerability to spousal violence. On the negative side, critics fear that the amendment could intensify female foeticide in landholding communities. Families that wish to preserve their property within the male line may view daughters as a liability, knowing that they can now claim equal rights in land.⁹⁷ The reform has also been linked to fears of land fragmentation, particularly in agrarian states where small landholdings are already a problem. Brothers may resist giving shares to sisters, creating disputes and encouraging more frequent partitions.

6.5 The Way Forward: Legal and Policy Reforms:-

To make women’s property rights meaningful, reforms must go beyond partial amendments. One possible solution is to abolish the Mitakshara coparcenary system altogether, replacing it with a uniform and gender-neutral framework of succession. This would eliminate the inherent male bias in the concept of coparcenary while simplifying inheritance rules.

Second, the inclusion of mothers as coparceners would correct a glaring anomaly and bring consistency to the law. The mother’s role in nurturing and sustaining the family is no less vital than that of a father, and her exclusion reflects outdated assumptions that must be discarded.

Third, the rules for intestate succession of Hindu females must be reconsidered. At present, her property devolves primarily to her husband’s heirs, which disregards her ties to her natal family. Reform in this area is critical to achieving genuine equality.

Fourth, contradictions between central and state amendments should be harmonized.

⁹⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India, 1999*
[9110]

Prior to 2005, several states like Andhra Pradesh, Tamil Nadu, and Maharashtra had already enacted their own versions of reform. The coexistence of different rules has created confusion about which provisions apply in specific cases. A clear national framework is needed to avoid inconsistent outcomes.⁹⁸

6.6 Role of Awareness and Social Change:-

Law alone cannot dismantle centuries of discrimination. For reforms to succeed, society must be educated about the importance of gender equality in inheritance. Awareness campaigns, especially in rural areas, are essential to ensure that women know and assert their rights. Legal-aid camps, women's organizations, and NGOs can play a pivotal role in translating statutory entitlements into practical benefits. Media too has an important role to play in spreading awareness and building public opinion in favour of women's rights. At the same time, broader social reforms are needed to counter practices like dowry, domestic violence, and female foeticide that undermine women's autonomy. Without addressing these deep-rooted social evils, property reforms alone cannot deliver justice.

6.7 Final Reflections:-

The transition from Stridhan to coparcenary rights represents one of the most significant transformations in Hindu personal law. What began as a limited recognition of women's property has now evolved into a legal framework that, at least on paper, affirms equality. Yet, this journey remains incomplete. The 2005 Amendment has challenged patriarchal structures but has not fully dismantled them. Persistent anomalies in the law, coupled with social resistance, mean that women's rights often remain theoretical rather than practical. Real empowerment requires a combination of legal reform, social awareness, and cultural change. Only when women can exercise their property rights without fear of social backlash will the true promise of constitutional equality under Articles 14 and 15 be realized. Until then, the path from Stridhan to coparcenary remains not just a story of progress, but also a reminder of how much further we must go.

⁹⁸ U.P.D. Kesari, *Modern Hindu Law*, 3rd ed., 2001
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