



Short Article

## Full Ownership in Property for Hindu Females and their Coparcenary Right

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**Published on:** March 8, 2022

**Page No.:** 78 – 86

**Manuscript No.:** 2022/LWLR/08078

**Editors:** Anushka Chaturvedi, Lipsa Das

**Cite as:** Archit Rohit, Full Ownership in Property for Hindu Females and their Coparcenary Right (2022) 1(3) LKO. L. REV. 78

**Find here:** <https://www.lucknowlawreview.org/archit-rohit>

**Abstract:** *The rights of a female to property and the rights of others in her property vary greatly. They are impacted by various variables such as culture, religion, the woman's social standing, and the level of development of the society to which she belongs. In India, the majority of women are unaware of their property rights. Though the rights specified in Hindu law books in different systems such as Mitakshara and Dayabhaga are more terrible for women, current legislation such as The Hindu Women's Right to Property Act, 1937, has seen significant advances. The Hindu Succession (Amendment) Act, 2005, was amended to grant absolute interest as a coparcener instead. The daughter has also been made a coparcener under Section 6(1) of this Act. Women's estates have been eliminated by Section 14 of the Hindu Succession Act, 1956, and the previous rule of succession has been repealed by Sections 15 and 16. So in this paper, it is discussed how the position of Hindu females has changed the property and how full ownership is achieved, and it also deals with the Coparcenary Right of the Hindu female.*

**Keywords:** *Hindu Female, Right to Property, Full Ownership, Coparcenary Right.*

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## 1. Introduction

When we look into the ancient time of our Indian society, we can find that it is patriarchal in which more preference is given to men than women, and ownership of property is also one of the criteria by which men are preferred over women. There is also a lack of rights to women's property in society. But with time, the legislature has taken so many steps so that Hindu women can claim these rights and get full ownership of the property. Like the Hindu Succession Act, 1956, which gave power to Hindu women to claim the property and provide full ownership, this act was also amended later in 2005. There is also a Hindu Women's Rights to Property Act, 1937, giving Hindu women the right to claim property ownership. This paper will discuss these two acts, their present scenario, and how they helped Hindu Women claim full ownership of the property.

Hindu women's rights in property and the concept of full ownership of the property can be described in so many phases, like the status of Hindu females before the Hindu Succession Act, 1956, then after the passage of this Act, and after the amendment to this Act in 2005. Also, after the changes brought by the Hindu Women Rights to Property Act, 1937. So, analyzing all these phases, we will understand how the Hindu female's rights evolved and how they received full ownership of the property. And what is the current scenario of this concept?

## 2. Before the Hindu Succession Act, 1956

When we analyze the time before the Hindu Succession Act, 1956, we can find that there are so many customary laws followed in the country's different regions by the Hindu peoples. And this is a time where the concept of succession mainly evolved in the society, which has so many other schools like *Mayukha* followed in Gujarat, Bombay, and the western part of our country. *Dayabhaga* followed in Eastern India, especially in Bengal, *Nambudri* in the South, and *Mitakshara* in the remaining parts of our country.<sup>1</sup> But in all these schools, *Mitakshara* and *Dayabhaga* are the most popular ones.

### 2.1. Distribution of Property under Mitakshara School

This school of law shows a difference between self-acquired and ancestral property. It also explains the term 'coparcenary'. Coparcenary means a legal foundation, which consists of three generations of male members in the family who are the property's heirs. According to this, any male member who is within the criteria of

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<sup>1</sup> Shruti Pandey, Property Rights of Indian Women' <[https://www.womenslinkworldwide.org/files/gjo\\_article\\_India\\_caseC.%20Masilamani\\_en.pdf](https://www.womenslinkworldwide.org/files/gjo_article_India_caseC.%20Masilamani_en.pdf)> accessed 29 August 2020

this concept can become part of the coparcenary and claim the partition of the joint family's property, and every coparcener has an equal share in the ancestral property. But in *Mitakshara* school, females are not considered a part of Coparcenary. Due to this, female does not have any right to the property of a joint family.

## 2.2. Distribution of Property under Dayabhaga School

Under the *Dayabhaga* school, we can find that person who follows this school can only inherit the property when the person who has custody of the property dies. The method of partitioning property in *Dayabhaga* school is more straightforward than other schools. Because in this school, a person's property gets equally divided into his sons after his death.

When we observe old laws related to Hindu, we can find that Hindu female rights on the property can be found in the form of *Stridhana*.<sup>2</sup> Here, the word *Stridhana* means any property given to a Hindu female as a gift when his marriage occurs. This property can be provided by both families or their friends and relatives.<sup>3</sup> So, women had an absolute right over the *Stridhana* (means any property given under this), and she could claim it even if she separated from his husband. But when we analyze, we find they classified *Stridhana* into six types.<sup>4</sup> But some time question arises of what property comes under the *Stridhana*. So, Bombay High Court, in one of their judgments, stated that any property which is given to a female as a gift at any occasion or at marriage time would come under it<sup>5</sup>, or if any property is offered as in a ceremony of bride price or Sulka, or any property acquired by women own will come under *Stridhana*.<sup>6</sup>

## 3. Changes due to the Hindu Women's Right to Property Act, 1937

In ancient times, we can find that there was no law codified before the 1937 Act, which deals with the 'rights of Hindu women in the property'. Therefore, any dispute regarding Hindu women's right to property was not heard before the 1937 Act. So, to resolve this issue, the Hindu Women Right to Property Act was passed in 1937, which deals with Hindu women's rights, which they were deprived of in ancient India. At that time, this Act was considered fresh air for women's empowerment. Because this Act was applied to both *Dayabhaga* and

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<sup>2</sup> Seema Dalal, 'Ownership of property by a Hindu Female: An Overview' (2017) 2 INT. J. ADV. EDU. RES 5

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Gandhi Maganlal v Bai Jadab* (1990) ILR 24 Bom 192 FB

<sup>6</sup> *Damodar v Parmanand Das* (1883) ILR 7 Bom 155

*Mitakshara* schools, this Act disqualified all the laws that would contradict the primary purpose of this Act based on Section 2 mentioned in this Act.<sup>7</sup>

This Act was a step to achieve gender equality, but it was not enough to achieve such a big goal. This Act states that the widow will be entitled to the husband's property but having a limited interest, which was also termed as an estate of the Hindu Widow.<sup>8</sup> But the effect of this Act was diluted with the 1938 amendment in which widows' interest was excluded related to agricultural land.<sup>9</sup> But in the *Bhagwan Kunwar v. Nanbiduliya* case MP High Court clearly stated that agricultural land would come under the Hindu Women Right to Property Act, 1937.<sup>10</sup>

When we analyze this Act, we can find that a widow of a Hindu man and widows' daughter will be entitled to receive the man's estate<sup>11</sup>, and widow has a right to receive her husbands' estate even if there are male heirs.<sup>12</sup> Hindu widow has a complete enjoyment of estate, and she is not answerable to anyone unless she is guilty of wasting it willfully.<sup>13</sup> And the property which the widow takes was in the form of inheritance.<sup>14</sup> But one issue with this estate was that if the widow dies, that estate will not pass to her heirs but will be transferred to the male owner or female owner as a *Stridhana*.<sup>15</sup>

When we analyze the objective of passing this Act, we can conclude that this Act mainly supports the women whose husbands are dead so that women do not depend on others for their survival. Because in classical law, we can find that widow has only maintenance right from the property, and she did not have inheritance right in the property of a joint family. But in this Act, the widow has maintenance as well as inheritance right. But this journey of granting an absolute right to the woman in the property was not fully achieved by this Act. Therefore, the Hindu Succession Act, 1956, was passed, which genuinely provides Hindu women's absolute 'right to property'.

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<sup>7</sup> Hindu Women Right to Property Act 1937 sec. 2

<sup>8</sup> Ayushi Singhal, 'The Right to Property of Hindu Women' (*Academike*, 19 March 2015) <<https://www.lawctopus.com/academike/right-property-hindu-women/>> accessed 29 August 2020

<sup>9</sup> *Ibid*

<sup>10</sup> *Bhagwan Kunwar v Nanbiduliya* 1980 HLR 462 (MP)

<sup>11</sup> John D Mayne, *Mayne Treatise on Hindu Laws and Usage*, (Bharat Law House 1986) 840

<sup>12</sup> *Ibid*

<sup>13</sup> *Renka v Bhol Nath* (1915) 37 All 177

<sup>14</sup> *Natarajan v Perumal* (1942) 2 Mad LJ 668

<sup>15</sup> *Kery Kolitany v Moneeram* (1875) 13 BLR 5

## 4. Hindu Succession Act, 1956

As the author have analyzed above, the idea proposed by Hindu Women Right to Property Act, 1937, about the limited estate, could not provide an absolute right to the Hindu women in the property. So, seeing this Hindu Succession Act of 1956 was passed, which completely abolished the 1937 Act. This Act was considered a progressive act because it mentions the absolute right, which is given to Hindu women, and considers it a fundamental right for their living. This Act provided revolutionary changes which were recognized as long-lasting, like Hindu females' right to inheritance.<sup>16</sup> The objective of passing this Act was to have a progressive society. This Act mainly aims to remove the inequalities from society (between male and female) on the property's rights. This Act was passed to amend and codify the Hindu law in relation to succession.<sup>17</sup> Hindu Succession Act is also considered as the first Act after independence related to Hindu female rights in the property. This Act applies to the *Dayabhaga* and *Mitakshara* schools. This Act gives the broader definition of Property and completely abolishes the *Stridhana* and non-*Stridhana* property.<sup>18</sup> Here the word property includes both the movable property and immovable property.<sup>19</sup>

### 4.1. How this Act claim to give Full Ownership to Hindu Female in the Property

When deeply analyzing the Hindu Succession Act, one can find that it has given absolute ownership to the widow in the property. But when we analyze Section 14 of this Act<sup>20</sup>, we can see that it considers Hindu females as complete owners of the property and mentions the share that a widow should have after the death of her husband in the *Mitakshara* Coparcenary. Section 14 states that;

*“If there is any property which is possessed by the Hindu female, which she acquires after or before the commencement of this act, then she will be considered a full owner, not a limited owner.”*<sup>21</sup>

Here the word acquired means that any property which widows have acquired through the succession<sup>22</sup>, and she will possess the power of alienation and be considered an absolute owner.<sup>23</sup> This Section removed the disability imposed on Hindu females that she would be considered the limited owner and enabled her to

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<sup>16</sup> R.K. Aggarwal, *Hindu Law* (22nd ed, Central Law Agency 2007) 243

<sup>17</sup> *Id.*, at 244

<sup>18</sup> Seema Dalal (n 2)

<sup>19</sup> Hindu Succession Act 1956, sec. 14

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

<sup>22</sup> *Dayalal v Bhajyalal* AIR 2007 MP 72

<sup>23</sup> *Managal Singh v Kebar Singh* AIR 2007 (NOC) 212 (P&H)

acquire the property. Supreme Court also mentioned in one of their judgments that any estate by Hindu female under Section 14 would be an absolute owner, and no Hindu law or text can take this right from the female.<sup>24</sup>

It also says that if a widow has limited interest in the deceased husband's property, which is given to her in maintenance as a compromise before this act, the Court held that this property would become a full owner after this Act.<sup>25</sup> This Section only applies when the property that Hindu females possessed when this act was commenced but did not apply to property that was transferred before the act was passed.<sup>26</sup> But an exception to Section 14 is mentioned in Section 14(2), which states that when Section 14(1) will not apply. The Supreme Court also said the scope of Section 14 in one of the judgments and mentioned the distinction between Section 14(1) and Section 14(2).<sup>27</sup>

But when we see the issues with the Hindu Succession Act, 1956, we can find that there are cases where the constitutional validity of some of the sections of this Act is challenged. Like in the case of *Partap Singh v. Union of India*, in which there was an appeal in the Apex Court where the constitutional validity of Section 14(1) was discussed.<sup>28</sup> Because it was told to the Apex Court that this Section is discriminatory against the men and promotes gender inequality so, the Court states in this case that this Section is not discriminatory in nature because Article 15(3) gives power to the legislation to enact the laws in favor of the female and children; hence it's valid.<sup>29</sup> The Court also mentioned that Article 14 and Article 15(1) do not get violated through Section 14(1) and told that this Section also includes the agricultural properties in it.<sup>30</sup>

This Act survivorship concept has also lost its effect and provided the transfer of the coparcener property to daughter, widow, and mother, *i.e.*, female will also be eligible for the property as a son.<sup>31</sup> But it will only be applied if the coparcener dies and leaves behind the women who have an interest in the coparcener property.<sup>32</sup>

This Act was mainly criticized by the persons who follow gender equality based on Section 6 because this Act was passed primarily to provide gender equality. But under this Section, it made only the males a coparcener and followed the *Mitakshara* coparcenary, and does not provide the right to the Hindu female by which they

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<sup>24</sup> *Punithavalli v Ramalingam* AIR 1970 SC 1730

<sup>25</sup> *Bhala Ram v Madan Lai* AIR 2000 P&H 55

<sup>26</sup> *Tulsi Ahir v Mst Sonia* 1961 Pat LR 147

<sup>27</sup> *V Tulasamma & Ors. v Sesha Reddi* (1977) 3 SCC 99

<sup>28</sup> *Partap Singh v Union of India* AIR 1985 SC 1695

<sup>29</sup> *Ibid*

<sup>30</sup> *Pratap Singh v Union of India* AIR,1985 SC 1694

<sup>31</sup> Hindu Succession Act 1956, sec. 6

<sup>32</sup> *Ibid*

can inherit the ancestral property, and only the males were the ones who get the share in the joint family property. So, seeing this gender equality, there was a report released by the law commission of India

#### 4.1.1. 174<sup>th</sup> Report of the Law Commission

This report mainly discusses *Mitakshara* coparcenary's point under which females were discriminated against. This report primarily suggested that there should be no discrimination against women, and they should be treated equally in the social system. This report also mentions that Section 6 of the Hindu Succession Act<sup>33</sup> should be abolished because it is discriminatory in nature. Hindu females should also be considered a member of the coparcenary in the Hindu family.<sup>34</sup> So these recommendations which the law commission in this report gives was fulfilled in the Amendment to this Act in 2005

#### 4.2. 2005 Amendment to the Hindu Succession Act, 1956

The amendment passed this Act in 2005 to the Hindu Succession Act, which was mainly done based on the 174th report recommendation, which the law commission of India gives. This amendment especially made a few critical changes by which Hindu females can have an equal right to access the property. This amendment deleted Section 4 (2) from the Hindu Succession Act of 1956 so that women could inherit agricultural land equal to the male has. It also mentioned that Hindu females also have the absolute right to ancestors' property.<sup>35</sup>

This amendment to the Hindu Succession Act also focused on the daughter's right, which is related to *Mitakshara* coparcenary. It uplifted the daughter's position by amending Section 6 of the 1956 Act. The daughter will also have his right by birth as a coparcener in the same way as a son in the Hindu Joint Family.<sup>36</sup> Amendment also removes Section 23 of the 1956 Act<sup>37</sup> by which a daughter who is married or unmarried will be entitled to claim partition in the parent's property as a son has.<sup>38</sup>

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<sup>33</sup> Hindu Succession Act 1956, sec. 6

<sup>34</sup> Law Commission of India, 'Property Rights of Women: Proposed Reforms under the Hindu Law' (*Report No. 174*, May 2000) <<https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-174-property-rights-of-women-proposed-reforms-under-the-hindu-law2000/>> accessed 29 August 2020.

<sup>35</sup> Rahul Korba, 'Right Of Women Under Hindu Succession Act,1956' (*Kanoon Review*, 13 October 2015) <<http://www.kanoonreview.com/right-of-women-under-hindu-succession-act-1956.html>> accessed 29 August 2020

<sup>36</sup> Hindu Succession (Amendment) Act 2005, sec. 3

<sup>37</sup> Hindu Succession Act 1956, sec. 23

<sup>38</sup> *Ibid*

#### 4.2.1. 207<sup>th</sup> Report of the Law Commission

When this amendment to the Hindu Succession Act was passed, the law commission found some issues with some sections. So, they released the 207<sup>th</sup> report in 2008, which is chaired by Justice A.R Lakshman, in which they suggested that there should be an amendment in Section 15 of the Hindu Succession Act.<sup>39</sup> It was asked that if Hindu females die, leaving behind the property, which is self-acquired with no heirs. So, they mentioned that it should be given to parental heir and husband heir. But up till now, this recommendation is not put in the Act.

### 5. Recent Development of Hindu Female Rights and Ownership in the Property

When one discusses and analyze the current scenario of the Hindu female rights and ownership of the property, they can find an instance where people did not follow the 2005 amendment in Hindu Succession Act, and its ground implementation is not successful enough. Because when we see the report of the Centre for Land Governance, we can find that Hindu women were not given the coparcenary right.<sup>40</sup> The people find the loophole by depriving the Hindu female in the coparcenary right when the father dies by saying that he died before the amendment passed. But the position is changed with time as the Supreme Court has recognized in the case *Vineeta Sharma v. Rakesh Sharma* saying that Hindu female, *i.e.*, daughter, has the right in the coparcenary property in the undivided family and shall be treated equally to the son. She would be eligible to claim the coparcenary property even if his father died before the 2005 amendment.<sup>41</sup> Hence position is changing concerning time, and Hindu females can claim ownership and coparcenary rights. So, by the Hindu Succession Act, 1956, we can get full ownership of the Hindu female in the property. Now we can fill all the loopholes left so that Hindu females are not deprived of their right to property treated equally in society.

### 6. Conclusion

When we see Hindu females' position in India before the 1937 Act, we can find that they are kept at an inferior place in the social comparison to the male. Our society has given so many justifications for their position. But

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<sup>39</sup> Law Commission of India, 'Proposal to amend Section 15 of the Hindu Succession Act, 1956' (*Report No. 207*, June 2008), <<https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-207-proposal-amend-section-15-hindu-succession-act-1956-case-female-dies-intestate-leaving-acquired-property-no-heirs/#:~:text=Commission%20Report%20No.-,207%2D%20Proposal%20to%20Amend%20Section%2015%20of%20the%20Hindu%20Succession,Acquired%20Property%20With%20No%20Heirs>> accessed 29 August 2020

<sup>40</sup> Editorial, 'Women's Right to Property Ownership' (2020) 55(35) EPW

<sup>41</sup> *Vineeta Sharma v Rakesh Sharma*, 2019 6 Supreme Court Cases 164



their real intention was to maintain the patriarchal hegemony. Because people in our community think that son is the one who provides strength to the family. But when we take the example of modern society, we find that daughter play the same role as the son and claim rights in the property as a son. This was fulfilled by the Hindu Succession Act of 1956, primarily by Section 14, which is considered a revolutionary step by the government. This Act provides the absolute right and full ownership to the Hindu female in the property. But our society does not treat this right given to Hindu females as natural and healthy. Because when we analyze the data, we can find that there are only a few females who know about these rights they possess, and therefore those females who did not know about these rights were not able to claim ownership in the property and were deprived of their rights. So, our society must make them aware of all these rights and treat them equally because our government and courts have taken steps for gender equality, and we must fulfill it.

### **6.1. The Road Ahead**

As we have seen in the above discussion, how the Hindu Female's position changed with respect to ownership in the property by the passage of time, and we have also seen how they got full ownership of the property. But we can find that these rights provided to the Hindu female will be of no use if society does not accept them. So, the road ahead would be that there should be social acceptance of these rights given to Hindu females to be treated equally in society. We have done this in the past because earlier in our country, females were treated as property, not as human beings, but now we have started thinking about their rights, and we should all continue this in the future.