

Equal Inheritance, Unequal Reality: Challenges to Women's Property Rights in India

Prof. Dr. N. Rajeswari¹, Dr. Petikam Sailaja², Dr kandula Veera Brahmam³

¹Faculty of Law, Dr MGR Educational and Research Institute
(Deemed to be University), Chennai-95

²Associate Professor, KLEF College of Law, KLEF Deemed To Be University, Guntur,
AP

³Associte Professor, DNR college of Law Bhimavaram west Godavari District ,
A.P PIN-534203

Abstract

Property rights of women are an integral part of gender justice, economic empowerment and constitutional equality in India. While a number of laws have been enacted to guarantee women equal inheritance rights, they still encounter several socio-economic, cultural and institutional challenges in the exercise of their property rights. An improved legal landscape on women's rights to inheritance has been reinforced by the provisions of the Hindu Succession (Amendment) Act, 2005 and the progressive interpretation of laws by courts. But, the practice of these rights are not uniform, constrained by patriarchal tradition, ignorance of the law, economic dependence, social pressure, and discriminatory practices within the family. In traditional and rural societies, women are often forced to give up their rights to ancestral property to their male cousins, especially. The personal laws applicable to the different religions also show different levels of gender inequality. In addition, a lack of adequate enforcement procedures and high litigation and procedural costs remain a threat to women's access to justice. The article critically analyzes the constitutional principles, legal safeguards, judicial evolution and socio-legal issues related to women's right to property in India. It also assesses the contribution of court, legal and policy measures to the situation of gender differences in inheritance and ownership. The study underscores the need for good law enforcement, social change, legal education, and accountability of institutions to ensure effective realization of equality by breaking the deep-rooted patriarchy.

Keywords: Women's Property Rights, Gender Equality, Inheritance Laws, Hindu Succession Act, Patriarchy and Property

1. Introduction

The Constitution of India has provided the basis for gender equality and provides equal protection of the laws to all citizens without regard to sex. The constitutional basis of women's rights to property is mainly in articles 14, 15 and 21 of the Constitution. Article 14 provides that everyone is equal before the law, and that everyone shall be treated equally under the law, and prevents discrimination against women in matters of inheritance and ownership of property. Article 15(1) explicitly bans discrimination based on sex and Article 15(3) grants the State the power to take special measures for women and children in order to achieve substantive equality. These constitutional assurances provide the legal and moral justification for change to end gender

discrimination in property relations. In the context of Article 21 protecting right to life and personal liberty, judicial interpretation of this article also covers the right to dignity, livelihood, shelter and economic security. These rights are closely linked to ownership of property, since when women have economic independence, they have better dignity, autonomy and their participation in social life.

The Directive Principles of State Policy also have a certain relevance to the promotion of the economic rights of women. The State is obliged under Article 39(a) to ensure that both men and women have the right to an adequate means of livelihood. Article 39(d) states that equal pay for equal work shall be provided and Article 39(f) protects the children and the women from exploitation. These principles do not have a legal basis, but inform legislation and policy on women's welfare and economic empowerment. Further, Article 300A affords constitutional protection of the right to property by stating that no person shall be deprived of her property except by law. The right to property, although not a fundamental right, is an important constitutional and legal protection which is enjoyed equally by women.

Constitutionally, women in India enjoyed equal rights but were actually severely discriminated against in matters of inheritance and ownership of property. Women were not considered as equal property holders, but as a dependent within the traditional patriarchal system. In ancient Hindu law women possessed less proprietary rights and were excluded from coparcenary rights to joint family properties. In like manner, many communities had customs that stopped daughters from inheriting ancestral land. These discriminatory practices were attacked by the constitutional vision of equality and legal reforms were encouraged which sought to recognize women as equal partners in the family.

The judiciary has been instrumental in elucidating constitutional provisions with regards to women's property rights. It is important to note that gender justice is integral to the constitutional framework, as courts have repeatedly stated. The Supreme Court in several landmark judgments asserted that denying the women equal inheritance rights is a violation of the constitutional values of equality and dignity. As a result, judicial activism has played a very important role in enhancing the proprietary rights of women. The constitutional philosophy of these decisions is based on the principle that economic empowerment is a necessary precondition for social justice for women.

Women have several important social and economic implications related to owning their own property. Bargaining power in the family grows with ownership of land or property, which helps to lower economic dependence and to stop domestic violence or exploitation. Research has shown that women with property are more likely to be involved in household decision making and have a greater sense of financial security. Therefore, the equality in terms of the constitution cannot be just formal, it must take effect in terms of access to property and resources.

But, promises in the constitution do not necessarily change social reality. Social pressure, illiteracy, economic dependence and patriarchal attitude are still hindering women's access to inherited property. In many families, daughters give up their inheritance to keep peace in the family and their right to receive it. This is a violation of the principle of equality and justice enshrined in

the Constitution. For this reason, despite the Constitution laying an excellent normative basis for women's rights to property rights, the social change, legal awareness, and institutional support mechanisms are essential for the implementation to take place.

The constitution also promotes affirmative action and legal reform. All progressive changes in the laws of succession, welfare measures to encourage women to become the proprietors of land, and judicial affirmation of women's rights have their source of legitimacy in the constitutional values. The Constitution, therefore, continues to serve as an important step towards improving the status of women in relation to their rights to property and eliminating gender discrimination over inheritance systems in India.

2. Development of Inheritance Laws and Hindu Succession (Amendment) Act, 2005

The changes in inheritance laws in India are a reflection of the gradual shift that has taken place in the legal status of women from dependence to equality. Inheritance systems used to be highly patriarchy-based in India and tended to male favouritism in relation to the ownership of family property. In the traditional Hindu law the ownership of property was largely the male property of the joint family. Women's rights to proprietary rights were limited, and they were not generally granted the right to equal inheritance of ancestral property. Under the Mitakshara Law of the Hindus only male coparceners were considered to be a part of the joint family and had birthrights. Daughters were not included in coparcenary so as to strengthen economic inequality and gender discrimination.

Before the codification period, women's rights to property were different in various regions and depending on religious beliefs. Under classical Hindu law the "limited estate" granted to women restricted their rights to the property of male relatives. Women had right to possession during their lifetime but they had no right to property and power of alienation. It was a law that was a result of the male assumed idea that property should be passed on from male to male. The rights of widows were provisional and dependent, leaving them with economic insecurity.

The Hindu Succession Act, 1956 was a significant step towards the improvement of women's rights to inheritance. The Act aimed to codify and update the Hindu personal law in line with the concepts of equality and social justice embedded in the Constitution. It had removed the limited estate doctrine, giving women to the full ownership of property inherited or acquired by them. The daughters were also recognized as class I heirs and they could also receive their father's separate property along with the sons. Gender inequality, however, continued in the case of coparcenary property under Mitakshara. Sons enjoyed birthrights in ancestral property and daughters did not have any birthright.

This discrimination was criticized by women's rights activists, scholars and legal reformers. The exclusion of daughters from coparcenary rights led to continued gender disparity and the denial of equal access to the family wealth. Multiple states adopted state reforms even prior to the national reform, including Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra, which enacted state

laws to give daughters coparcenary rights. These state reforms reflected increasing awareness of gender inequalities in the law of inheritance.

The most important reform was effected by the Hindu Succession (Amendment) Act of 2005. An amendment that changed the definition of women's rights to property by giving equal coparcenary rights by birth to daughters as sons. Girls had the right to be given the same rights and obligations as their fathers in respect to ancestral land and they could claim a share in ancestral lands and demand partition. This reform was to remove gender bias and make inheritance laws consistent with the constitutional principle of equality.

The Supreme Court has issued many important rulings on the scope of the amendment. Vineeta Sharma vs. Rakesh Sharma, the court ruled that daughters have coparcenary rights from birth, irrespective of the father's existence on the day of the amendment. This judgment clarified the different interpretations and bolstered women's rights to ancestral land. The amendment was aimed at ensuring substantive equality and eliminate discrimination against daughters, the Court said.

Although legal reform is progressive, there are problems of implementation. There are numerous women who don't know their rights in the amended law. Daughters are still not empowered to claim against brothers or other male relatives, and social norms remain against this. In rural regions, women are pressured and frightened to give up inherited land. Administrative obstacles, time-consuming legal proceedings and complex litigation also make rights enforcement difficult.

Inheritance laws illustrate a move from exclusion, based on patriarchy, to formal equality. But there's a big disconnect between what the law says and what it does. Effective women empowerment cannot be achieved without the acceptance of women as equal property holders in society. Awareness building, legal assistance and institutional arrangements are needed to promote successful implementation of women's inheritance rights in various socio-economic groups.

3. Gender inequalities in women's inheritance rights under personal laws.

India has a pluralistic legal system, where inheritance and succession is regulated by different Personal Laws depending on the religion. Personal laws are supposed to guarantee cultural and religious diversity; at the same time, they generate different levels of gender justice in terms of women's rights to property. Where two or more personal laws exist, this can lead to differential rights of inheritance for women among religious groups. When there are two or more personal laws, it can cause differential rights of inheritance for women among religious groups. As a result, women's rights to land are highly influenced by their religious affiliation, cultural practices, and family relations.

In Hindu law, daughter has same rights as sons as per the Hindu Succession Act, 1956 (HSA), which was amended in 2005. The amendment was a step in the right direction regarding gender equality as it gave daughters the same rights as their sons - coparcenary rights. But its implementation is still lagging behind because of patriarchal traditions and attitudes of society. Even in Hindu families, it is still possible to see daughters giving away their share voluntarily to

male relatives. Therefore, the concept of legal equality has not been realized in terms of substantive equality.

Inheritance, governed by the personal law of Muslims based on principles of the Quran and Islamic jurisprudence, is an issue that needs to be clarified. Inheritance rights are recognised in Muslim women as a progressive step from pre-Islamic times when women had no inheritance rights. But in the case of Muslims, the shares are not equal between the males and females. In many situations, as mentioned above, the heir at law who is a woman receives half as much as a man who is in the same relationship. A daughter can receive $\frac{1}{2}$ of what a son receives, for instance. Proponents say this is an Islamic tradition in which males are expected to be the breadwinners of the family. However, critics argue that such disparities are in contradiction to the principles of gender equality and economic justice in the modern society as enshrined in the constitution.

The Indian Succession Act, 1925 is to a large extent the primary law which regulates Christian succession in India. The inheritance rights of Christian women are relatively good when compared to some other personal laws. Under the law of intestate succession, daughters and sons receive an equal share from their parents. However, some traditional practices and geographical differences may still negatively affect women in relation to property. Likewise, Parsi Law gives rights to women in inheritance, but there are complexities and differing interests between the sexes that have been criticized from time to time.

Another concern is the area of tribal and customary laws. In some tribes, men pass land down through the generations, and women do not have the right to own ancestral property. Women might only have use rights but not ownership rights. In some cases, courts have been reluctant to step in to the matter of tribal customs for the purpose of maintaining indigenous traditions. But this conflict between cultural autonomy and constitutional equality is still a topic for legal discussion.

It leaves many constitutional issues of equality and non-discrimination. Critics say the gender unequal inheritance rules are in violation of Articles 14 and 15 of the Constitution. When it comes to discussions about gender justice in the framework of personal laws, the demand for a Uniform Civil Code as mentioned in Article 44 of the Constitution frequently crops up. Supporters say that a uniform law would remove discrimination and would set equal inheritance standards for all women, regardless of religion. However, there are concerns that uniformity would jeopardize cultural and religious diversity.

Judicial pronouncements have increasingly foregrounded the moral aspects of the constitution, rather than prejudicial traditions. In several cases, the courts have interpreted personal laws in a progressive manner to empower women in terms of their rights and dignity. However, the judiciary is constrained due to the religious identities and politics of personal laws.

Thus, women's inheritance right under personal law is a result of interaction between religion, culture, constitutionalism and patriarchy. In some communities, women's status has now improved as a result of legal changes; however, there are significant differences between religious systems.

The difficulty is how to reconcile respect for cultural diversity with the constitutional obligation for gender equality and social justice.

4. Representation, socio-cultural barriers and patriarchal challenges related to property ownership

Socio-cultural issues remain as important constraints on women's access to land, and legal changes can only partly ensure their equal rights to land. Ownership of property is tied up in family honour, lineage and male authority in India. Sons are seen as inheriting the family and daughters as temporary family members who will eventually get married and move to another family. Despite the constitution and legal reform, this patriarchal attitude is one of the most significant barriers to women's property rights.

A major obstacle is the social norm of giving up one's hereditary right to property for the benefit of brothers. Property claiming women are often described as selfish or as causing family disharmony. Women are put off from insisting on their rights by emotional pressure from parents and relatives. Despite the illegality of dowry, in many communities dowry is still perceived as a form of inheritance. One common reason that families give for excluding daughters from the same property as their brothers is that they paid a large sum when the girl was married.

Women's power to assert property rights is also diminished by economic dependency. Numerous women have no independent income or financial literacy, and are therefore relying on the males of the family for their survival. One of the most vulnerable groups are widows, divorced women and unmarried daughters. Women in rural areas of India lack education and legal awareness, which means they are unaware of inheritance laws and legal recourses they have.

Patriarchal practices are particularly apparent with respect to land ownership. Traditionally agricultural land is passed down by male line, and female exclusion from land records. Although women are inheriting land legally, the actual control over cultivation and management of the land lies with the male relatives. Women might be reluctant to take ownership due to potential of social isolation or violence. The lack of formality and bureaucratic complexities further hinder women's ability to access land titles.

Domestic violence and forced relationships also contribute a great deal to the denial of women's property rights. If a woman wants to partition or get her share of the inheritance, her family members may intimidate, emotionally abuse and/or threaten her. However, such practices are not likely to be exposed, as disputes over land use are often left in the hands of the family. Women are reluctant to go to courts due to social stigma attached to suing relatives.

An additional critically important challenge is intersectional discrimination. Marginalised caste, tribal, minority religious and economically weaker groups of women suffer from multiple layers of exclusion. They are further exposed to poverty, illiteracy and social discrimination. In fact, for many women, the right to access justice is largely an unfulfilled ideal due to structural inequalities.

Property relations are also shaped by cultural attitudes towards marriage. After marriage, married daughters are often looked down upon as outsiders to the natal family and widows are looked upon as burdens in the marital family. In the event of husband's death, widows often face extreme problems in retaining their property. Sometimes in-laws forcibly eject widows from their matrimonial house or refuse to hand over inheritance rights.

It will take more than just laws to overcome the socio-cultural barriers. Campaigns for social awareness, education, community involvement and women empowerment are important in changing patriarchy. Legal Literacy initiatives can be instrumental in providing women with knowledge and empowering them to exercise their rights. Inclusion of women in local governance and land administration can also facilitate gender-informed land laws implementation.

Finally, the perpetuation of the patriarchal norms shows that formal equality is not enough. To ensure the strengthening of women's property rights, social acceptance, economic empowerment, and institutional protection are needed. An equal inheritance will not be fulfilled without a change in cultural mindsets, attitudes, and consciousness regarding gender and ownership.

5. Judicial attitude towards protection of women's property rights

The Indian judiciary has been pivotal in enhancing women's property rights and interpreting the inheritance laws in a manner consistent with the constitutional values. Judges have consistently pointed to the fundamental position of equality as being a part of the constitutional structure and to the need to challenge discriminatory practices relating to property. Judicial rulings are therefore playing important role in achieving women's economic empowerment and social justice.

The most important judgment is in relation to the Hindu Succession (Amendment) Act, 2005 with regards to its interpretation. Before the decisive resolution there were conflicting judgments giving rise to uncertainty whether daughters could claim coparcenary rights in case of father's death prior to the amendment. In *Vineeta Sharma v. Rakesh Sharma*, Supreme Court clarified that daughters of a Hindu father do not lose coparcenary rights merely because their father was not alive on the date of amendment. The Court noted that the amendment was aimed at eliminating centuries of discrimination against daughters of the family and to ensure substantive equality in matters of inheritance.

In all its decisions, the judiciary has been consistently aware of the close nexus between the rights of the women with regard to their property rights and the dignity and economic independence as guaranteed under Article 21 of the constitution. There has been a consistent emphasis on the fact that the denial of equal inheritance opportunities further perpetuates subordination of women in the social and economic sphere. Judicial reasoning is more and more based on feminist constitutionalism and the idea of substantive equality than merely formal equality.

Courts have also been interpreting the rights of widows in a progressive fashion in cases involving widows' rights. Judicial decisions have safeguarded the rights of widows from unlawful dispossession and guaranteed them the right to maintenance, residence and inheritance. Widows' claims to their husbands' property have been defeated by relatives. After a husband's death, courts

have rejected claims from relatives to deprive a widow of her husband's property. These are especially relevant in rural and conservative societies where widows continue to be socially disadvantaged.

The judiciary has also considered women's right to stay in matrimonial dwellings. Courts have asserted women's right to access housing and protection from eviction under legislation, including the Protection of Women from Domestic Violence Act, 2005. These decisions are not directly about inheritance, but are associated with greater awareness of women's economic and proprietary rights.

The discourse on gender justice has also grown, with public interest litigation and constitutional interpretation. International human rights principles, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), are commonly used to interpret domestic law in a gender-sensitive manner in courts. International standards are relied upon by the judiciary, as a reflection of India's efforts to eradicate discrimination against women.

But notwithstanding progressive judgments, enforcement difficulties do remain. Many women do not have the money to go for a long lawsuit. Property ownership conflicts may take years to settle, leaving women's exit from court challenging. The process of court proceedings can be daunting, particularly for women from rural and marginalized communities. Access to justice is further undermined by corruption, delays, and procedural issues.

Another constraint is the judicial inconsistencies in the area of personal law and customary practices. But courts are sometimes reluctant to interfere in cultural or religious inheritance systems on grounds of cultural autonomy. Consequently, women in some communities are still not treated equally and this is despite the constitutional protection.

However, the role of judicial activism has played an important part in the progress of women's property rights in India. Recent cases have increasingly affirmed that economic equality is a key factor in achieving true gender justice. The judicial decisions have not only interpreted laws over time, but have also helped to influence public discussion of women's right to property and dignity.

However, the judiciary can not remove structural inequality. It is important to coordinate efforts between courts, legislatures, administrative bodies and civil society organizations to adequately protect the property rights of women. Legal awareness and timely dispute resolution procedures, coupled with a gender responsive governance system, are required to bring judicial norms to life.

6. Legal Reforms, Policy Measures and the Way Forward for Gender-Equal Property Rights

Strengthening women's rights to property in India is one of the steps towards gender justice. Through the decades, laws, judicial rulings and policies have tried to rectify the inequities in inheritance and ownership systems. Nevertheless, there is significant progress, but there are still significant differences in the enjoyment of women's rights to property and their de facto rights. It is therefore important to shift the attention of the future reforms beyond the legal recognition and towards implementation and social change.

The Hindu Succession (Amendment) Act, 2005 continues to be one of most important developments in the area of women's rights to inheritance. The amendment brought equality of coparcenary rights for daughters, which challenged the patriarchal assumptions lying behind traditional inheritance systems. Likewise, the laws on domestic violence, maintenance and matrimonial rights have had an indirect impact on enhancing women's economic security. Joint ownership in the names of women and subsidised housing for women are also contributing to higher female ownership.

A number of state governments have provided incentives to encourage women to be landowners. Lowering the stamp duty on property registration in the name of women helps the family to pass on the property to women. Self-help groups and women's cooperatives have also made an impact in the economic empowerment of rural women. These are evidence of increasing awareness that owning property would improve women's position and negotiating strength.

But there are ongoing issues with implementation of legal reforms. The biggest issue is the lack of knowledge about the legal rights among women. Most women don't know the rules of inheritance or how to claim property. Thus it is imperative to inform women with regards to succession law and remedy through legal literacy campaigns. Schools, community groups and local governance institutions can be a major vehicle for raising awareness.

There is a need to enhance access to justice too. In the litigation process, women typically encounter economic and legal barriers to litigating property disputes. Fast-track mechanisms for inheritance cases, legal assistance, and the streamlining of property registration procedures can help cut down on these obstacles. Training of judges, lawyers and revenue officials is also important for this purpose because it is a gender-sensitive approach to ensure equitable treatment of women claimants.

The digitisation of land registers and clear record-keeping can further bolster women's land rights. The absence of adequate records in many rural areas allows the manipulation and exclusion of women from ownership claims. Having women's names recorded on land and property can help them to enjoy more legal security and minimise disputes.

Social change is also essential for substantial change. Legislation can be one of the best tools at a lawmaker's disposal to loosen the grip of patriarchy. Gender equality and women's economic independence are essential goals for the public campaigns to promote women's role in society. Families need to start treating daughters as a stable dependent and not a dependent for a short period. Public attitudes can be changed through media, educational institutions and civil society organisations towards the right of women to property.

Another matter of concern is the uniformity of the inheritance laws themselves. A Uniform Civil Code is a proposed solution to the gender inequality in personal laws, but there is a balance between constitutional equality and respect for cultural diversity. Gender justice might be achieved by progressive reinterpretation of personal laws in a way that is acceptable in society through dialogue and consensus.

The right to property is a direct connection with wider Sustainable Development and social justice Objectives. Women's access to land and assets enhances access to credit, education, health and livelihood. It also lowers risk of poverty, violence and exploitation within the family. Thus, women's property rights are not just a legal question – it is a basic condition of inclusive development and democratic equality.

7. Conclusion

Women's right to property is a very important aspect of gender justice, constitutional equality and socio-economic empowerment in India. Despite significant strides in constitutional protection, legal reforms and enlightened judicial interpretations, the actual enforcement of equal inheritance is severely limited by patriarchal traditions and socio-cultural obstacles in India. The legal rights of women have been greatly enhanced in case of ancestral property through the landmark judgment in the case of Vineeta Sharma vs Rakesh Sharma and The Hindu Succession (Amendment) Act, 2005. In spite of this, however, there has not been a full realization of equality in terms of equal opportunity in the social realm.

Women still face emotional pressure, economic dependence, and societal attitudes of discrimination, as well as bureaucratic obstacles, in the enjoyment of property rights. There are also differences in the inheritance systems between different communities due to personal laws and customs. Exclusion and dispossession are especially affecting rural women, widows and marginalized groups.

Judiciary has been a key factor in advancing gender-inclusive understanding of inheritance rights and the constitutional values of equality and dignity. But change is only possible if it is coordinated, through a combination of legal reform, institution accountability, legal literacy and social awareness. It is important to acknowledge that ownership of property is not just an economic right, but a way to women's autonomy, security and social inclusion.

Women can only be treated as equal stakeholders in families and communities in order to achieve real gender equality. It is thus crucial to bridge the gap between the rights enshrined in the Constitution and social reality to achieve the constitutional vision of justice, equality and dignity for all women in India.

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