

---

## Gender Equality and Property Rights: A Constitutional Perspective in India

Neha Sharma<sup>1</sup>, Dr. Rinu Saraswat<sup>2</sup>

### Abstract

Property rights are central to socio-economic empowerment, and in India, gender equality in property ownership has been a long-standing concern. The Indian Constitution guarantees equality and non-discrimination on the basis of sex, but women's rights to property have historically been restricted by patriarchal customs and personal laws. This article examines the constitutional perspective of gender equality in relation to property rights, analysing relevant provisions of the Constitution, judicial pronouncements, and legislative developments. It highlights the progressive role of the judiciary and reforms such as the Hindu Succession (Amendment) Act, 2005, while also addressing the persistent challenges faced by women in realizing equal property rights.

**Keywords:** Gender Equality, Property Rights, Constitution of India, Article 14, Hindu Succession Act, Women's Rights, Personal Laws.

---

### Introduction

Property ownership is more than just a legal right; it is a source of economic security, social recognition, and empowerment. In the Indian context, women have historically faced systemic barriers to property ownership, rooted in patriarchal traditions and religious personal laws. The Constitution of India, however, guarantees the principles of equality, liberty, and non-discrimination, laying the foundation for gender justice in property rights. Over the years, the interplay between constitutional mandates, statutory reforms, and judicial interpretations has shaped the framework of women's property rights in India.

This article explores the constitutional provisions and their application in ensuring gender equality in property rights. It also critically examines the evolution of women's property rights in India through legislative changes and judicial activism, highlighting the gap between constitutional ideals and social realities.

### Historical Perspective Of Women's Property Rights In India

#### Ancient and Early Hindu Law

The status of women in property ownership in ancient India was largely defined by **patriarchal and patrilineal structures**. The concept of *Stridhana* emerged as one of the earliest forms of property that a woman could own independently. Stridhana included gifts received by a woman from relatives, her husband, or others at the time of

---

<sup>1</sup> Research Scholar, Apex School of Law, Apex University, Jaipur (Rajasthan)- 303002

<sup>2</sup> Supervisor, Apex School of Law, Apex University, Jaipur (Rajasthan)-303002

marriage or during her lifetime. While it granted women some degree of control, the scope of Stridhana was limited, and in many cases, even its enjoyment was subject to the control of male relatives.

The **Mitakshara** and **Dayabhaga** schools of Hindu law further institutionalized gender-based inequality in inheritance. Under the Mitakshara system, women were excluded from coparcenary property and could only receive a limited estate (commonly referred to as a “life estate”), meaning that they could use the property during their lifetime but could not dispose of it absolutely. The Dayabhaga school, prevalent in Bengal, was somewhat more liberal, as women could inherit in the absence of male heirs, but still within a restrictive framework.

### Medieval Period

During the medieval period, women's property rights continued to be circumscribed. Customary laws, influenced by religious interpretations and feudal traditions, reinforced male dominance in property matters. Women were often considered dependents—first under their fathers, then husbands, and later sons. The idea of women as independent property owners was virtually absent in mainstream society, although in certain communities and matrilineal systems (such as among the Nairs of Kerala and certain tribal groups), women enjoyed comparatively greater property rights.

### Colonial Period and Codification

The colonial era marked the beginning of formal legal codification in India. British administrators, while attempting to bring uniformity in personal laws, largely reinforced existing patriarchal systems rather than dismantling them. Hindu and Muslim personal laws were codified, but they continued to privilege men in matters of succession and inheritance.

Key developments included:

- **Hindu Women's Right to Property Act, 1937:** This was the first major step toward recognizing women's rights in property. It allowed Hindu widows a limited share in their husband's property, though still as a limited estate without full ownership rights.
- **Indian Succession Act, 1925:** Governing Christians and Parsis, it was more gender-neutral compared to Hindu and Muslim laws but still reflected some discriminatory practices.

These reforms, though incremental, set the stage for post-independence debates on equality and justice in property ownership.

### Post-Independence Era and Constitutional Mandates

After independence in 1947, the framers of the Constitution recognized that **formal equality before law** would be meaningless without addressing entrenched social inequalities. With the adoption of the Constitution in 1950, gender equality was enshrined as a fundamental right under Articles 14, 15, and 16.

The State undertook a series of legislative reforms to align personal laws with constitutional principles:

- **Hindu Succession Act, 1956:** Consolidated Hindu property laws but continued to deny daughters coparcenary rights, reinforcing gender disparity. Daughters could inherit property as Class I heirs, but their rights were inferior compared to sons in joint family property.
- **Hindu Succession (Amendment) Act, 2005:** A landmark reform that corrected historical injustice by granting daughters equal coparcenary rights as sons, irrespective of marital status.

Despite these changes, women's property rights in practice often lagged behind legal recognition due to deep-rooted patriarchy.

### Persistent Challenges

1. Patriarchal mindset and cultural resistance.
2. Inadequate awareness of women's property rights.
3. Administrative hurdles in registration and enforcement.
4. Unequal treatment under personal laws.
5. Practical barriers such as family pressures and financial dependence.

The historical trajectory of women's property rights in India demonstrates the long struggle against systemic discrimination entrenched in religious personal laws and patriarchal customs. From the limited notion of *Stridhana* to the transformative constitutional guarantees of equality, women's property rights have evolved significantly. However, this evolution has been uneven marked by resistance, delayed reforms, and persistent gaps between law and practice.

The Constitution of India provides a strong foundation for gender equality, and progressive judicial interpretations have reinforced this vision. Yet, the challenge remains to translate constitutional ideals into social reality. Legal reforms must be complemented by **awareness campaigns, gender-sensitive administrative mechanisms, and a societal shift in attitudes** toward women's autonomy. Only then will property ownership truly serve as a means of empowerment, fulfilling the constitutional promise of equality and justice.

### Constitutional Framework On Gender Equality And Property Rights

The Constitution of India serves as the supreme law of the land, and its provisions embody a vision of social justice, gender equality, and non-discrimination. Property rights, though historically skewed against women under personal laws, are gradually being harmonized with constitutional guarantees. **Article 14** assures equality before the law and equal protection of the laws, a cornerstone in challenging discriminatory succession practices. When women were denied equal rights to ancestral property under the Hindu Succession Act, 1956, constitutional equality became the basis for reform. Similarly, **Article 15(1)** prohibits discrimination on grounds of sex, while **Article 15(3)** empowers the State to enact special provisions for women, thereby legitimizing reforms in property and inheritance laws.

In addition, **Article 16** guarantees equality of opportunity in public employment, indirectly ensuring women's access to financial independence and resources. Although the **Right to Property** was downgraded from a fundamental right to a constitutional right under **Article 300A** after the 44th Amendment (1978), it remains protected by law, and women have an enforceable entitlement to it. The **Directive Principles of State Policy**, particularly **Article 39(a) and (d)**, mandate equal access to means of livelihood and equal pay, reinforcing economic equality as a constitutional goal. **Article 51A(e)** also imposes a fundamental duty on citizens to

renounce practices derogatory to women's dignity, thereby underscoring the moral obligation to respect women's property rights. Collectively, these provisions provide the constitutional bedrock for advancing gender justice in property ownership, even when personal laws have historically resisted change.

### 1. Right to Equality

- **Article 14** guarantees equality before the law and equal protection of laws.
- **Article 15(1)** prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.
- **Article 15(3)** permits special provisions for women and children, thereby empowering the legislature to enact laws that advance women's rights.
- **Article 16** provides equality of opportunity in matters of public employment, indirectly supporting women's economic independence.

These provisions collectively ensure that laws relating to property rights should not be discriminatory against women and must uphold gender equality.

### 2. Right to Property (Historical Context)

- Originally a fundamental right under **Article 31**, the right to property was later relegated to a constitutional/legal right under **Article 300A** after the 44th Amendment (1978).
- Though no longer a fundamental right, the right to property still has constitutional protection, and women are entitled to exercise this right on an equal footing with men.

### 3. Directive Principles and Fundamental Duties

- **Article 39(a) and (d)** emphasize equal right to livelihood and equal pay for equal work.
- **Article 39(b)** directs that material resources of the community be distributed to subserve the common good, which implies fair access to property.
- **Article 51A(e)** imposes a fundamental duty on citizens to renounce practices derogatory to the dignity of women.

### Judicial Perspective

The judiciary has been instrumental in bridging the historical gap between **traditional personal laws** and the **constitutional mandate of equality**. Courts have consistently invoked Articles 14 and 15 to reinterpret personal laws in line with gender justice. In **Mary Roy v. State of Kerala (1986)**, the Supreme Court struck down discriminatory provisions in the Travancore Christian Succession Act and granted Christian women in Kerala equal inheritance rights under the Indian Succession Act, 1925. This case symbolized a direct confrontation between patriarchal customs and constitutional equality.

Later, in **C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil (1996)**, the Court held that personal laws cannot override constitutional guarantees. The judgment reaffirmed that gender justice is part of the constitutional ethos, and property rights must evolve to reflect it. This was a pivotal step in aligning religious laws with constitutional principles. The judiciary again made history in **Vineeta Sharma v. Rakesh Sharma (2020)**, when the Supreme Court declared that daughters, by birth, are equal coparceners in Hindu joint family property,

irrespective of whether their fathers were alive at the time of the 2005 amendment. This ruling effectively corrected centuries of gender bias entrenched in Mitakshara law.

Through these judgments, the courts have acted as a balancing force, ensuring that women's property rights are not undermined by archaic traditions. The judiciary's proactive stance has thus functioned as a bridge, transforming constitutional ideals into enforceable rights and progressively dismantling patriarchal structures embedded within personal laws. The Indian judiciary has played a crucial role in interpreting constitutional provisions to ensure gender equality in property rights.

- **Mary Roy v. State of Kerala (1986)**: The Supreme Court upheld equal inheritance rights for Syrian Christian women, marking a landmark in property rights reform.
- **C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil (1996)**: The Court held that personal laws are subject to fundamental rights and must not violate constitutional guarantees of gender equality.
- **Vineeta Sharma v. Rakesh Sharma (2020)**: The Court clarified that daughters have equal coparcenary rights in Hindu joint family property by birth, regardless of whether the father was alive on the date of the 2005 amendment.

These rulings reaffirm the supremacy of constitutional equality over discriminatory personal laws.

### Legislative Developments

Legislative reforms in India reflect the gradual shift from patriarchal inheritance systems to a more **equitable legal framework** for women. The earliest step was the **Hindu Women's Right to Property Act, 1937**, which gave widows a limited share in their husband's property but denied them absolute ownership. Though progressive for its time, it reinforced the notion of women as life-long dependents. Post-independence, Parliament attempted to codify Hindu personal laws through the **Hindu Succession Act, 1956**. While this law consolidated property rules, it continued to exclude daughters from coparcenary rights, granting them only inheritance rights as Class I heirs.

The inadequacy of the 1956 Act led to widespread criticism and calls for reform. The most significant breakthrough came with the **Hindu Succession (Amendment) Act, 2005**, which granted daughters equal coparcenary rights by birth, placing them on par with sons. This amendment corrected a major historical wrong and brought Hindu law in line with constitutional principles of equality. For Christians and Parsis, the **Indian Succession Act, 1925** provided relatively gender-neutral inheritance rules, though certain discriminatory aspects persisted until challenged in courts. For Muslim women, the Shariat law provides defined inheritance shares, yet socio-cultural practices often restrict women from exercising these rights fully.

In addition, supportive legislation such as the **Dowry Prohibition Act, 1961**, the **Protection of Women from Domestic Violence Act, 2005**, and the **Benami Transactions (Prohibition) Act, 1988** indirectly safeguard women's property interests. Together, these legal developments demonstrate India's gradual movement toward aligning property rights with the constitutional vision of gender equality, though unevenly across communities.

## Hindu Law Reforms

- **Hindu Succession Act, 1956** initially excluded daughters from coparcenary rights, granting them only limited rights of inheritance.
- **Hindu Succession (Amendment) Act, 2005**: A landmark reform that granted daughters equal rights as sons in coparcenary property by birth, thereby addressing centuries of inequality.

## Other Personal Laws

- Muslim women are governed by Shariat, which provides limited but defined shares in inheritance.
- Christian and Parsi women's rights are governed by their respective succession laws, which have been relatively more gender-neutral but still influenced by patriarchal biases.

## Other Legislations Supporting Women's Rights

- **The Dowry Prohibition Act, 1961** and **Protection of Women from Domestic Violence Act, 2005** indirectly safeguard women's property interests.
- **The Benami Transactions (Prohibition) Act, 1988** protects against fraudulent transfer of property that could deprive women of their legitimate rights.

## Persistent Challenges

Despite constitutional and statutory guarantees, women in India continue to face obstacles in exercising property rights:

1. **Patriarchal Mindset** – Social norms still discourage women from claiming inheritance.
2. **Awareness Gap** – Many women remain unaware of their legal rights.
3. **Implementation Issues** – Delays in courts, lack of gender-sensitive administration, and family pressures limit enforcement.
4. **Personal Laws** – Discrepancies across different personal laws create inequality in practice.
5. **Economic Dependence** – Women often forgo their legal claims due to financial or emotional dependence on male family members.

## Conclusion

The constitutional vision of gender equality in India provides a robust foundation for equal property rights for women. Judicial pronouncements and legislative reforms, especially the Hindu Succession (Amendment) Act, 2005, have significantly advanced this cause. However, the realization of these rights in practice continues to be hampered by social, cultural, and institutional barriers.

True gender equality in property ownership requires not only progressive laws but also effective implementation, awareness campaigns, and a transformation of patriarchal attitudes. Only then can the constitutional promise of equality be fully realized, ensuring that women enjoy equal dignity, security, and empowerment through property rights.

## References

- [1] The Constitution of India, 1950.
- [2] Hindu Succession Act, 1956 and Hindu Succession (Amendment) Act, 2005.
- [3] Mary Roy v. State of Kerala, AIR 1986 SC 1011.
- [4] C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil, AIR 1996 SC 1697.
- [5] Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.
- [6] Agnes, Flavia. *Women and Law in India: An Omnibus*. Oxford University Press, 2011.
- [7] Kapur, Ratna. *Gender, Alterity and Human Rights: Freedom in a Fishbowl*. Edward Elgar, 2018.
- [8] Hindu Women's Right to Property Act, 1937.
- [9] Indian Succession Act, 1925.
- [10] Ahmedabad Women Action Group (AWAG) v. Union of India, (1997) 3 SCC 573.
- [11] Law Commission of India, *174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law*, 2000.
- [12] Parashar, Archana. *Women and Family Law Reform in India*. Sage Publications, 1992.
- [13] Sharma, Bina Agarwal. *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge University Press, 1994.
- [14] Basu, Durga Das. *Commentary on the Constitution of India*. LexisNexis, 2018.
- [15] United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.