



THE LEGAL HISTORY OF WOMEN'S PROPERTY RIGHTS: FROM STRIDHAN TO EQUAL COPARCENARY

Dr Parvathy Menon

Assistant Professor, All Saints' College, Thiruvananthapuram

Abstract

The evolution of women's property rights in India reflects a complex mix of legal tradition, social change, and historical shifts. These rights began with the ancient idea of Stridhan, which recognized a woman's ownership of certain types of wealth. The journey of these rights shows an ongoing struggle between male control and the growing empowerment of women. This paper follows the development of women's property rights from early Hindu legal texts, through colonial law changes, to post-independence reforms, ending with the Hindu Succession (Amendment) Act, 2005. Using a historical-legal approach, the study looks at how religious beliefs, customary practices, colonial views, court decisions, and feminist legal ideas combined to influence the change in women's property status. The shift from Stridhan to equal coparcenary is examined as both a legal change and a significant sign of changing gender dynamics in Indian society. While important laws indicate progress toward true equality, ongoing social and cultural obstacles highlight the lasting impact of historical influences on property rights. This paper places women's property rights within the larger context of India's constitutional commitment to gender justice and true equality.

Keywords: Women's Property Rights, Stridhan, Coparcenary, Hindu Succession Act, Gender Justice, Legal History, Colonial Codification, Feminist Legal Reform, Patriarchy, Constitutional Equality.

Introduction

The history of women's property rights in India unfolds as a complex narrative of negotiation between tradition, law and the evolving idea of justice. Within the layered structure of Hindu society, women's relationship with property has historically mirrored their social position revered in the abstract yet constrained in practice. From the ancient notion of Stridhan, which accorded women a limited proprietary interest over certain gifts and wealth, to the twenty-first century recognition of daughters as coparceners in joint family property, the trajectory of these rights reflects both continuity and contestation. Each stage of reform, whether rooted in scriptural exegesis, colonial intervention, or post-independence legislation, reveals how the concept of ownership and autonomy for women has been shaped by broader social and political transformations.

The inquiry into women's property rights cannot be confined to legal statutes alone; it requires a historical lens capable of uncovering how cultural ideologies and patriarchal institutions defined the boundaries of women's economic agency. The Hindu legal tradition, as embodied in the Dharmashastra texts and their medieval commentaries, offers a framework that both recognized women as possessors of wealth and simultaneously subordinated that recognition to male authority. Later, colonial codification processes converted these interpretive traditions into rigid legal norms, thereby institutionalizing gender hierarchies through the very machinery of law (Nair 45). The post-independence era, in turn, sought to dismantle those hierarchies through codified reforms such as the Hindu Succession Act of 1956 and its Amendment in 2005, yet the persistence of social practices rooted in historical patriarchy continues to undermine the spirit of legislative equality.

The transformation from Stridhan to equal coparcenary represents more than a change in legal terminology; it signifies a paradigm shift in the understanding of gender and property. Where ancient texts viewed women's wealth as derivative of male benevolence, the modern legal framework repositions women as independent legal subjects entitled to ownership by birth. This movement embodies the constitutional ethos of equality under Articles 14 and 15 of the Indian Constitution, as well as the broader commitment to gender justice within the social fabric. Yet, the enduring challenge lies in reconciling this formal equality with the lived realities of women whose access to property remains constrained by social custom, lack of awareness and institutional barriers (Agnes 78).



This paper undertakes a historical-legal exploration of women's property rights in India from the classical period to the present, situating legal evolution within its socio-political context. Employing a historical methodology, it examines textual sources such as the Manusmriti, Yajnavalkya Smriti, Mitakshara and Dayabhaga to trace the conceptual foundations of Stridhan and its evolution across different schools of Hindu law. The study further investigates how colonial legal codification, through its selective reading of Hindu law, redefined women's property relations and how post-independence reforms attempted to correct those distortions. By integrating feminist historiography and legal analysis, the paper argues that the journey from Stridhan to coparcenary is not merely a legal reform but an ongoing process of social emancipation.

Three central questions guide this inquiry: first, how did early Hindu law conceptualize the proprietary rights of women; second, in what ways did colonial codification alter or restrict these rights; and third, how effectively have post-independence legal reforms translated constitutional promises of equality into substantive change? Addressing these questions requires recognizing that law is not an autonomous domain but a social artifact that both shapes and is shaped by prevailing gender ideologies. Through this approach, the paper seeks to demonstrate that the evolution of women's property rights is emblematic of India's broader journey from hierarchy toward equality, from religious sanction to constitutional morality.

The following sections trace this trajectory in four phases: the ancient and early medieval understanding of Stridhan; the regional variations and customary practices of the medieval period; the reconfiguration of women's rights under colonial rule; and the modern statutory reforms culminating in the Hindu Succession (Amendment) Act of 2005. The paper concludes by reflecting on the continuities and contradictions that persist despite formal equality, emphasizing the need for a re-engagement with history as a means to achieve genuine gender justice.

Women and Property in Ancient Hindu Law: The Concept of *Stridhan*

The origin of women's proprietary rights in India can be traced to the ancient Hindu legal concept of Stridhan literally, "a woman's property." In the earliest Hindu texts, Stridhan denoted wealth that a woman could claim as her own, independent of her husband's control. Although this concept acknowledged a limited sphere of economic autonomy, its scope and enforceability remained deeply circumscribed by the patriarchal order that framed it. The Dharmashastra tradition, which codified the norms of righteous conduct (dharma), constructed property rights within a moral economy where the woman's role was relational rather than individualistic. Thus, while Stridhan symbolized recognition of female ownership, it simultaneously reaffirmed the woman's dependence on male authority (Derrett 54).

The Textual Foundations of Stridhan

The earliest references to Stridhan appear in the Smritis particularly the Manusmriti, Yajnavalkya Smriti and Narada Smriti which enumerate the specific categories of property a woman could own. The Manusmriti (IX.194) lists six kinds of Stridhan: gifts received before marriage, at the time of marriage, from the husband, from the father, from the mother and from the brother (Olivelle 216). These were gifts conferred out of affection and meant to remain the woman's personal property. However, the text simultaneously restricted her power of alienation, emphasizing that a woman could dispose of her Stridhan only with her husband's consent, thereby subordinating ownership to patriarchal guardianship.

The Yajnavalkya Smriti, which emerged as a more progressive and systematic exposition of Hindu law, expanded the scope of Stridhan to include gifts received from sons and other relatives. It further introduced the notion that a woman's property acquired through self-exertion or inheritance could also constitute Stridhan (Lariviere 73). This recognition of self-acquired property marks a subtle but significant shift towards acknowledging women's economic individuality, though still within limits defined by patriarchal propriety. The Narada Smriti, meanwhile, classified property by origin and purpose, suggesting that Stridhan represented a domain of moral obligation rather than absolute ownership (Kane 212). Together, these texts laid a complex foundation: they identified a distinct category of women's property, yet constrained its exercise through moral and familial duties.



Cover Page



Interpretations in Mitakshara and Dayabhaga Schools

By the medieval period, the commentarial traditions of Mitakshara (by Vijnaneshwara) and Dayabhaga (by Jimutavahana) provided more elaborate interpretations of Stridhan. The Mitakshara, which became authoritative across most of India, recognized Stridhan as property over which the woman had control during her lifetime and which passed to her heirs upon death. However, the commentator limited this autonomy by distinguishing between types of Stridhan. Property acquired by inheritance or purchase was often subject to the husband's dominion, whereas gifts received at the time of marriage remained her absolute property (Derrett 60). In contrast, the Dayabhaga school, prevalent in Bengal, adopted a more liberal stance, treating Stridhan as the woman's full property, over which she had complete rights of disposal even in her husband's lifetime (Menski 98).

This divergence between the two schools reflected regional differences in interpreting scriptural injunctions. While Mitakshara emphasized familial unity and male authority, Dayabhaga was more attuned to the notion of individual ownership. Nevertheless, in both traditions, the woman's legal identity was mediated through her relational roles as daughter, wife, or mother. Her proprietary capacity, though recognized, was defined by her position within the patriarchal household structure rather than as an autonomous legal person.

The Socio-Religious Context of Stridhan

The recognition of Stridhan in Hindu law must also be understood against the social context of the time. Property ownership was intertwined with ritual and kinship, both of which were male-dominated domains. A woman's wealth was often symbolically linked to her virtue, fertility and family honor. The gift of Stridhan at marriage whether jewellery, clothes, or land served not only as personal wealth but also as a ritual offering signifying the transfer of responsibility from father to husband. In essence, Stridhan represented the woman's economic security within a system that otherwise denied her inheritance in joint family property (Altekar 132).

Notably, early literary sources provide glimpses of women exercising control over wealth, though such instances were exceptional. The Mahabharata narrates how Draupadi's Stridhan was gambled away by her husband Yudhishthira, prompting a moral crisis that questioned both male authority and the ethical boundaries of property (Hiltebeitel 289). This episode illustrates that even when women possessed wealth, their control was precarious and contingent upon male approval. Similarly, inscriptions from early medieval India record donations made by royal women to temples and charities, indicating that elite women occasionally wielded substantial economic power. However, such acts were legitimized within the framework of religious merit (punya) rather than legal ownership (Sarkar 84).

Gendered Boundaries of Ownership

Despite textual acknowledgment of women's property, the broader social ideology remained one of dependency. The Manusmriti's dictum that "a woman must be under her father in childhood, under her husband in youth and under her sons in old age" (IX.3) encapsulates the ethos that denied women independent personhood. Economic rights were thus tied to moral regulation. Even when Stridhan was legally recognized, it was often treated as a form of maintenance rather than as capital or inheritance. The female body and by extension her property, was inscribed within the patriarchal control of lineage and reproduction (Chakravarti 65).

Furthermore, the conception of ownership in ancient Hindu law differed fundamentally from the modern individualistic notion. Property was seen not merely as an economic asset but as a sacred trust within the joint family system. The woman's rights were therefore relational derived from her role in sustaining familial continuity. This explains why widows, though allowed limited enjoyment of property, were often denied absolute ownership, a doctrine that persisted well into the colonial era (Agnes 42).



The Dual Legacy of Stridhan

The duality of Stridhan as both empowerment and constraint constitutes the earliest chapter in the legal history of women's property rights. On one hand, it provided a juridical acknowledgment of women's capacity to own property, distinguishing Hindu law from several contemporaneous patriarchal systems. On the other, it entrenched gender hierarchies by defining women's ownership as derivative and conditional. The later colonial interpretation of Stridhan as a distinct legal category would draw heavily upon these ancient formulations, often amplifying their restrictive tendencies.

In retrospect, Stridhan may be read as an embryonic recognition of women's economic identity within a patriarchal framework. It opened a conceptual space however limited for women to possess, manage and transfer property. The gradual reinterpretation of Stridhan through medieval commentaries and customary practices laid the groundwork for later debates on women's inheritance. Yet, as the following sections will demonstrate, this fragile autonomy was soon overshadowed by the rigid codification of gendered property norms during the colonial period. The evolution of Stridhan thus marks both the beginning and the enduring tension in the history of women's property rights: a struggle between acknowledgment and subordination, autonomy and control.

Medieval Period and Customary Practice

The medieval period in Indian legal history marked a transitional phase between the classical Dharmashastra framework and the early modern pluralism of customary law. During this era, the codified prescriptions of the Smritis coexisted with regional customs and socio-political changes that subtly reshaped the idea of women's property rights. The interpretive authority of texts like the Mitakshara and Dayabhaga remained strong, but local practices began to challenge textual orthodoxy. Women's relationship with property during the medieval period thus reflected the dynamic interplay between scriptural continuity, customary flexibility and the social hierarchies that structured medieval India.

Regional Variation and Customary Autonomy

One of the defining features of medieval India was the growing diversity of legal traditions across regions. While northern India largely adhered to Mitakshara principles emphasizing the joint family system, several southern and western regions exhibited distinctive customary laws that occasionally empowered women with greater property rights. The most striking example of this divergence was the Marumakkathayam system of Kerala, a matrilineal inheritance practice among Nairs and certain other communities. Under Marumakkathayam, lineage and property descended through the female line and women enjoyed significant rights over family property as members of the tharavad (joint matrilineal household) (Devika 48). Although the property was collectively owned, the system granted women social security, residence and authority within the domestic space that the patriarchal Mitakshara framework denied.

Similar, though less formalized, matrilineal patterns were found among certain tribal and coastal communities in Karnataka and the Konkan region, where women managed household property and sometimes inherited movable assets (Karve 102). These customs reveal that Indian legal culture was not monolithic; rather, it was shaped by local economies, kinship patterns and religious diversity. However, even in these relatively egalitarian systems, women's rights were embedded in collective structures that limited absolute ownership. The matrilineal household ensured security but not necessarily individual autonomy.

Women, Endowments and Religious Property

Another dimension of women's property rights in medieval India emerged through religious endowments and temple patronage. Epigraphic records from South India, particularly the Chola and Vijayanagara periods, indicate that royal and noble women made independent donations of land, jewellery and other wealth to temples and monasteries (Sastri 77). These inscriptions not only attest to women's economic participation but also reflect how property transactions were mediated through religious legitimacy. By framing ownership as dana (gift), women's economic agency was integrated



within the moral order of devotion rather than the secular sphere of inheritance law. For instance, several copper plate grants record that queens and princesses endowed villages to temples for rituals, maintenance and festivals, signifying both their wealth and social influence (Subrahmanyam 163).

Yet, this religious framing reinforced gendered norms of property control. Women's donations were often presented as acts of piety or as fulfilling vows on behalf of male relatives, thereby situating their economic actions within a patriarchal theology of virtue. Even where women possessed and managed wealth, their authority was validated through religious symbolism rather than through recognition of autonomous legal capacity. Nonetheless, these practices expanded the space for female agency by allowing women, especially of royal or elite backgrounds, to exercise control over resources within socially acceptable bounds.

Custom and Patriarchy in Practice

While elite women occasionally exercised economic power, the vast majority of women during the medieval period remained bound by patriarchal control. Customary practices concerning dowry (varadakshina), maintenance and widowhood reinforced male dominance in property relations. Dowry, which was distinct from Stridhan in its origin and purpose, evolved into an obligatory transaction that transferred wealth to the groom's family, thereby reversing the direction of women's property ownership (Chakravarti 82). Widows, despite being entitled to maintenance from family property, often faced dispossession, confinement, or ritual deprivation. Customary interpretations of chastity and purity became tools for restricting their access to property, as widowhood was constructed as both a moral and economic vulnerability.

In the agrarian economy of medieval India, land remained the principal source of wealth and power and women's exclusion from land ownership perpetuated their dependency. Even in matrilineal systems, ultimate authority over property management often rested with male guardians or senior maternal uncles. Custom thus operated as both a vehicle of continuity and a mechanism of control: it preserved traces of female entitlement but within boundaries defined by patriarchal propriety.

The Juridical Silence of the Medieval Commentaries

While the Dharmashastra commentaries continued to evolve, their medieval exponents largely reaffirmed earlier positions on women's property. The later Nibandhas legal digests compiled between the twelfth and seventeenth centuries systematized the law but did not substantially advance the position of women. Commentators like Apararka, Devananda Bhatta and Nilakantha retained the traditional hierarchy of guardianship and inheritance, treating women's property as exceptional rather than integral to family law (Kane 245). This juridical silence indicates that by the late medieval period, legal discourse had become conservative, reflecting a social order deeply invested in preserving patriarchal control.

At the same time, Islamic rule introduced a parallel system of personal laws where Muslim women were granted defined inheritance shares under Sharia. The coexistence of Hindu and Muslim legal traditions during this period created an implicit contrast: while Islamic law codified women's inheritance rights, Hindu law continued to privilege familial unity over individual entitlement (Mullā 59). The lack of interaction between these legal systems meant that Hindu women remained largely excluded from the evolving notion of ownership as a legal right.

Continuity and Transition

By the end of the medieval period, the discourse on women's property in India stood at a crossroads. The normative ideal of the dependent, domesticated woman persisted, yet the lived reality of women across regions displayed greater diversity. Custom, often dismissed as informal or inferior to scriptural law, functioned as a crucial medium through which women negotiated economic space. Whether through matrilineal kinship, temple endowments, or localized traditions of gift and dowry, women continued to participate in property relations albeit within structures that denied them full autonomy.



The medieval synthesis of text and custom thus laid the groundwork for the complex colonial encounter that followed. When British administrators began codifying Hindu law in the nineteenth century, they encountered not a uniform system but a mosaic of textual ideals and customary practices. The selective incorporation of these elements into colonial jurisprudence would decisively shape the modern understanding of women's property rights.

Colonial Codification and the Transformation of Hindu Women's Rights

The colonial encounter radically reshaped the legal landscape of India by reinterpreting indigenous laws through the prism of British jurisprudence. Among the most consequential outcomes of this transformation was the codification of Hindu personal law and its impact on women's property rights. The British project of "legal modernity" sought to convert plural customary norms into a uniform system of justice. Yet, this codification was neither neutral nor emancipatory; it selectively interpreted religious texts, marginalizing women's traditional claims and reinforcing patriarchal hierarchies under the guise of textual authenticity.

The Colonial Legal Encounter: Law as Translation

When the East India Company assumed judicial authority in the late eighteenth century, it faced the challenge of administering justice across a vast and diverse society. In the Plan for the Administration of Justice in Bengal, Bihar and Orissa (1772), Warren Hastings directed that in cases involving "inheritance, marriage, caste and other religious usages," Hindu law should govern Hindus, while Muslim law should apply to Muslims. This principle of religious personal laws institutionalized the division of legal identity, but it also opened the door for British judges to act as interpreters of indigenous tradition (Derrett 64).

However, the British understanding of Hindu law was mediated through translations of Sanskrit texts by Orientalist scholars such as Henry Thomas Colebrooke. These translations prioritized Dharmashastra literature, particularly the Mitakshara and Dayabhaga, while largely disregarding the living customary laws that varied across regions and castes (Cohn 118). As a result, Hindu law was reconstituted as a "textualized" system fixed, hierarchical and patriarchal in contrast to the more flexible customary practices that had earlier allowed some measure of female economic participation.

In this process, law became an act of translation not merely linguistic, but cultural and ideological. The colonial courts translated the moral language of Dharma into the positivist idiom of legal rights and liabilities, converting a relational and ethical system into one of codified property relations. Women's rights, once mediated through kinship and custom, were now defined through the narrow lens of ownership and succession, determined by male-controlled legal doctrine.

Property and Patriarchy under Colonial Modernity

The colonial state's approach to property was guided by its own conception of ownership as an individual, alienable right a notion rooted in English common law. This view was fundamentally at odds with the collective structure of Hindu joint family property. British jurists, uncomfortable with the moral complexity of Dharma, sought to simplify the system by identifying universal principles of inheritance. Yet, their codifications often privileged patriarchal interpretations of Mitakshara law, which treated women as dependents rather than autonomous proprietors.

For instance, under the Mitakshara system, women were excluded from coparcenary rights, meaning they could not demand partition or ownership in joint family property. They were entitled only to Stridhan limited personal property acquired through gifts or inheritance which remained their absolute property only in theory. In practice, courts often restricted their control over Stridhan by reinterpreting its sources or by limiting the scope of its alienation (Kane 251).

The Dayabhaga school, prevalent in Bengal, offered a slightly different perspective by recognizing women's inheritance rights in certain circumstances, especially in the absence of male heirs. However, even this system viewed women as



temporary custodians of property rather than its absolute owners. The British judiciary, rather than expanding these rights, solidified their restrictive interpretation, treating women's interests as life estates rather than full ownership.

The Judicial Reinvention of Hindu Law

British judges, many of whom lacked training in Sanskrit or local customs, relied heavily on court pundits for guidance on Hindu law. Yet, as Marc Galanter (2022) observes, the colonial courts increasingly reduced pundits' interpretive authority and replaced it with English legal reasoning, thereby transforming Hindu law into an Anglo-Hindu hybrid system. This hybridization privileged textual purity over social reality and redefined women's legal status within the patriarchal joint family.

A notable case illustrating this transformation is *Tagore v. Tagore* (1872), which established that a Hindu cannot create by will an estate unknown to Hindu law. The Privy Council's decision in this case reinforced the rigidity of Hindu inheritance principles, thereby excluding women from acquiring new forms of property ownership introduced under colonial law (Derrett 69). Similarly, in *Bhugwadeen Doobey v. Myna Baee* (1867), the court held that a widow's estate was only a limited one, emphasizing her lack of absolute ownership and reinforcing her dependency on the male line.

Such judicial precedents institutionalized a patriarchal reading of Hindu law, creating what legal historians have called the "juridical woman" a legal subject recognized only within the parameters of dependence, virtue and widowhood (Chakravarti 87). Women's property rights were thus preserved only as moral claims rather than as expressions of individual autonomy. By the late nineteenth century, debates around women's property rights had entered the broader discourse of social reform. Reformers such as Ishwar Chandra Vidyasagar, Pandita Ramabai and later Sarojini Naidu, highlighted the inequities faced by widows and daughters within the Hindu family structure. Vidyasagar's advocacy for widow remarriage and property inheritance was among the earliest challenges to the restrictive colonial-legal interpretation of Hindu law.

The colonial state's response was cautious. The Hindu Widows' Remarriage Act of 1856 legalized widow remarriage but stipulated that a widow forfeited her deceased husband's property upon remarriage a clause that effectively negated its emancipatory potential. Similarly, the Married Women's Property Act (1874), modeled on English law, provided limited recognition of women's separate property but applied primarily to Christians and Anglo-Indians, excluding most Hindu women from its ambit (Forbes 213).

In the early twentieth century, women's organizations such as the All India Women's Conference (AIWC) and the National Council of Women in India began advocating for comprehensive reform of personal laws. The Hindu Law Committee (1941), chaired by B. N. Rau, undertook a systematic review of Hindu law, leading to the proposal of the Hindu Code Bill. The Bill sought to grant equal inheritance rights to women and to abolish the joint family system's discriminatory principles. However, conservative opposition delayed its passage until after independence, reflecting how deeply entrenched patriarchy was within both the colonial and indigenous elite.

The Colonial Legacy

The colonial codification of Hindu law thus produced a paradoxical legacy. On one hand, it introduced the idea of uniformity and legal rationality, laying the groundwork for later reform. On the other hand, it ossified patriarchal traditions by freezing fluid customary practices into rigid statutory interpretations. The British portrayal of Hindu law as "ancient" and "unchanging" ignored the dynamism of indigenous jurisprudence and denied women the benefit of evolving custom.

Even the recognition of women's limited estates was framed as an exception rather than as a rule. The "widow's estate," a creation of colonial jurisprudence, symbolized this ambivalence granting women temporary possession without permanent



Cover Page



control. As legal scholar Nivedita Menon (2021) argues, this formulation reproduced patriarchal power in the very language of legal rights: it allowed women access to property but denied them authority over it.

By the early twentieth century, this colonial-legal structure had created a peculiar situation: women had visibility in law but not power in property. The nationalist movement's rhetoric of equality often invoked women's rights symbolically while postponing substantive reform. Thus, when the Hindu Succession Act was finally enacted in 1956, it inherited a deeply stratified history one in which colonial law had codified patriarchy under the pretext of modernization.

Historical Reflection

The colonial phase represents not merely a chapter in legal history but a turning point in the very conception of women's rights in India. It marked the transition from moral entitlement to legal recognition albeit within the restrictive framework of patriarchal codification. By transforming Hindu law into a body of positive law, the British created a system that appeared modern but was structurally conservative.

This historical irony continues to echo in contemporary debates over gender justice. The colonial encounter introduced the language of "rights" without dismantling the moral economy of dependence that defined women's place within family and property. The postcolonial reforms, therefore, had to contend not only with religious orthodoxy but also with the inherited colonial logic of codification itself a logic that conflated law with control and reform with preservation.

Post-Independence Reform and the Hindu Succession Act

The dawn of independence marked a new constitutional and moral order in India, one premised on the ideals of equality, justice and social transformation. The Indian Constitution of 1950, through its Preamble and the Fundamental Rights chapter, recognized equality before the law and prohibited discrimination on grounds of sex. Yet, when it came to personal laws, the transition from colonial patriarchy to constitutional egalitarianism was neither smooth nor complete. The legal history of women's property rights in the post-independence era reveals the tensions between reformist aspirations and conservative social realities. The enactment of the Hindu Succession Act, 1956, represented a milestone in this journey, but it also exposed the limits of legal reform in dismantling deeply ingrained patriarchal structures.

The Constitutional Context: Equality and Personal Law

In the Constituent Assembly, debates around gender equality were marked by ideological divisions between reformists who sought a uniform civil code and traditionalists who defended the sanctity of personal laws. Dr. B. R. Ambedkar, as the chief architect of the Constitution, strongly argued that true gender equality was impossible without reforming personal laws that perpetuated women's subordination. He famously declared that "real reform lies in changing the law of inheritance," recognizing that property ownership was central to women's social status (Keer 197). However, opposition from conservative members forced a compromise: while the Constitution guaranteed equality under Articles 14 and 15, personal laws were left largely untouched under Article 44, which merely expressed the state's endeavour to secure a uniform civil code.

This constitutional ambivalence created a dual regime one of formal equality in the public sphere and continued discrimination within the private domain of family law. In practice, women's property rights remained subject to religious identity, customary restrictions and social expectations. The challenge before the postcolonial legislature, therefore, was to reconcile constitutional values with inherited legal traditions.

The Hindu Code Bill Debates

The Hindu Code Bill, initially drafted in 1947 under the guidance of B. N. Rau and later piloted by Ambedkar, sought to codify and reform Hindu personal law comprehensively. Among its most radical provisions were those granting daughters



equal inheritance rights, abolishing the limited estate of widows and recognizing women as coparceners. The Bill was not merely a legislative measure but a symbolic assertion of constitutional morality over patriarchal custom (Agnes 41).

However, the Bill met with fierce resistance both within Parliament and from conservative religious groups outside. Critics accused it of undermining Hindu tradition and destabilizing the joint family system. The opposition was so intense that Ambedkar resigned from the Cabinet in protest in 1951, lamenting that “to leave inequality untouched is to betray the spirit of democracy” (Keer 201).

Ultimately, the comprehensive Code was fragmented into separate legislations: the Hindu Marriage Act (1955), the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956) and the Hindu Adoptions and Maintenance Act (1956). Of these, the Hindu Succession Act (HSA), 1956 was the most significant in redefining women’s property rights.

The Hindu Succession Act, 1956: Reform within Constraints

The HSA, 1956 marked a departure from the colonial “limited estate” concept, declaring that a woman’s property, including that inherited or acquired, would be held by her as full owner and not as a limited holder. This provision effectively abolished the widow’s estate and recognized women’s independent ownership a major symbolic advancement in legal equality.

However, the Act also preserved the structure of the joint family system by maintaining the Mitakshara coparcenary, from which daughters were excluded. Section 6 of the Act continued to recognize only male members as coparceners, thereby denying daughters birthrights in ancestral property. In contrast, widows and mothers were granted inheritance rights as Class I heirs under the Schedule, but only in competition with male relatives. Thus, while the Act expanded women’s entitlements, it did so within the patriarchal framework of the joint family, treating women’s rights as secondary and derivative rather than as equal and autonomous (Parashar 82).

Scholars have described this legislative compromise as “reform within patriarchy” a model that symbolically endorsed gender equality while preserving the structural foundations of male property control (Agnes 59). The Act was progressive in spirit but conservative in design, reflecting the political constraints of postcolonial nation-building, where law was expected to modernize society without alienating traditional constituencies.

Judicial Interpretation

The judiciary played a crucial role in interpreting the HSA, often oscillating between literalism and reformist reasoning. Early cases such as *Eramma v. Veerupana* (1966) and *Gurupad v. Hirabai* (1978) demonstrated this ambivalence. In *Eramma*, the Supreme Court took a restrictive approach, denying a daughter inheritance rights in property that devolved before the Act came into force. However, in *Gurupad*, the Court adopted a more progressive interpretation, recognizing a widow’s share in partition as absolute, not merely notional.

By the 1980s and 1990s, feminist legal scholars and activists began challenging the underlying patriarchal assumptions of succession law. The Law Commission of India, in its 174th Report (2000), explicitly noted the gender bias in the Mitakshara coparcenary and recommended equal rights for daughters. Yet, it was not until the Hindu Succession (Amendment) Act, 2005 that this reform materialized.

The 2005 Amendment: Towards Equal Coparcenary

The Hindu Succession (Amendment) Act, 2005 represented a transformative step in women’s property rights by amending Section 6 to confer coparcenary rights upon daughters by birth, equal to those of sons. It abolished the distinction between male and female heirs within the joint family, aligning the law with constitutional principles of



equality and non-discrimination. Importantly, the amendment made daughters liable for the same obligations, including debts, as their male counterparts, symbolizing true legal parity (Agnes 62).

Judicial interpretation further consolidated this reform. In *Vineeta Sharma v. Rakesh Sharma* (2020), the Supreme Court clarified that the right of a daughter as coparcener is by birth, irrespective of whether the father was alive when the amendment came into effect. The judgment reaffirmed that “the conferral of rights on daughters is a recognition of their constitutional right to equality.”

Nevertheless, the social implementation of these reforms remains uneven. Empirical studies show that many women still hesitate to claim their inheritance rights due to familial pressure, social stigma, or procedural hurdles (Menon 144). Thus, while the law has evolved toward equality, social norms continue to lag behind a reminder that legal reform is necessary but not sufficient for substantive justice.

Theoretical Reflections

The post-independence evolution of women’s property rights encapsulates a larger theoretical dilemma: the difference between symbolic and substantive equality. The HSA and its amendment represent symbolic equality the formal recognition of women’s rights in law. Yet substantive equality requires a transformation in material and social conditions, enabling women to exercise those rights without coercion or dependence.

This distinction resonates with feminist legal theory, which argues that patriarchy operates not merely through exclusion but through the structural conditioning of inclusion (Mackinnon 119). The Indian experience reflects this: women were included within the property framework, but in a way that perpetuated male authority through inheritance hierarchies, kinship obligations and moral expectations. Even after 2005, property remains a site of negotiation rather than empowerment for many women, constrained by cultural and familial pressures.

Tracing the arc from Stridhan to equal coparcenary reveals both progress and persistence. The ancient notion of Stridhan symbolized a woman’s right to possess and control wealth within patriarchal constraints. The colonial codification narrowed this right, reinterpreting it through a property-centric framework that emphasized dependency. Post-independence reform expanded women’s rights but continued to operate within the grammar of family, duty and virtue.

The 2005 amendment, while revolutionary in doctrinal terms, is not an endpoint but a stage in the ongoing struggle for gender justice. It signifies a shift from tokenism to transformation from viewing women as beneficiaries of reform to recognizing them as equal actors in law and society. Yet, the persistence of informal disinheritance, social coercion and procedural inequities underscores that the journey toward substantive equality is far from complete.

The Continuum of Patriarchy and the Politics of Reform

A critical reading of this historical evolution suggests that every phase of reform was simultaneously progressive and conservative. The Dharmashastra writers acknowledged women’s entitlement through Stridhan, but only within the framework of dependency women could own property, yet its legitimacy was contingent on male authority. The medieval period introduced localized variations, where custom occasionally allowed women economic security but seldom full ownership. Colonial codification, in turn, rationalized patriarchy under the pretext of modernization. By privileging textual purity over lived custom, British jurists transformed fluid traditions into rigid hierarchies, denying women the interpretive space they once negotiated through custom and kinship (Derrett 72).

The post-independence reformers, inspired by constitutional ideals, sought to break from this legacy but were constrained by social conservatism and political pragmatism. The Hindu Succession Act, 1956 and its 2005 amendment thus represent layered reform an advance in legal equality that remains embedded in the patriarchal grammar of the family. The shift



Cover Page



INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH

ISSN:2277-7881; IMPACT FACTOR :8.017(2022); IC VALUE:5.16; ISI VALUE:2.286

Peer Reviewed and Refereed Journal: VOLUME:11, ISSUE:12(1), December: 2022

Online Copy of Article Publication Available (2022 Issues)

Scopus Review ID: A2B96D3ACF3FEA2A

Article Received: 2nd December 2022

Publication Date:30th December 2022

Publisher: Sucharitha Publication, India

Digital Certificate of Publication: www.ijmer.in/pdf/e-CertificateofPublication-IJMER.pdf

DOI: <http://ijmer.in.doi/2022/11.12.20.3.10>
www.ijmer.in

from Stridhan to equal coparcenary signals progress, but not rupture; the law continues to recognize women's rights within, rather than beyond, familial structures.

Symbolism and Substance in Legal Equality

The evolution of property law reveals the classic tension between formal and substantive equality. The former ensures equal treatment under law; the latter demands equality in effect and opportunity. Post-independence reforms achieved the former but have struggled with the latter. The HSA (Amendment) of 2005, for instance, granted daughters equal birthrights in ancestral property, but implementation remains marred by social stigma and procedural resistance. Empirical studies indicate that in rural and semi-urban India, many women continue to forgo their inheritance to preserve family harmony or due to pressure from male relatives (Agarwal 105).

This reveals what feminist jurisprudence identifies as the “paradox of inclusion”: law extends rights symbolically while social systems ensure their limited exercise (Menon 147). Substantive equality, therefore, requires not just legislative change but transformation in consciousness of both men and women. Legal empowerment must be accompanied by access to education, legal aid and economic independence, ensuring that women can claim their rights without fear of social retribution.

The Historical Lessons of Stridhan

Revisiting Stridhan within this continuum offers deeper insight into the cultural foundations of property and gender. In its earliest conception, Stridhan acknowledged that a woman's material independence was integral to her dignity. Though restricted by patriarchal control, the concept contained within it the seed of autonomy the idea that a woman could possess and manage wealth. Over time, however, this autonomy was systematically eroded through custom, colonial codification and moral reinterpretation.

What makes Stridhan historically significant is its duality it was both a concession and a claim. It symbolized the recognition of women's personhood within patriarchy, but also the limits of that recognition. The movement from Stridhan to equal coparcenary is therefore not a linear progression but a dialectical process: each stage of reform carries the residue of earlier structures. As Flavia Agnes (2021) observes, “every reform in family law is haunted by the ghost of tradition it seeks to transcend it, yet cannot fully escape its embrace” (Agnes 73).

Law, Custom and the Feminist Reclamation of History

The feminist reclamation of legal history challenges the notion that property reform alone guarantees equality. It urges a re-evaluation of how law interacts with custom, morality and social power. Historically, women navigated the constraints of law through informal practices dowries turned into savings, temple endowments used for personal agency and matrilineal systems that provided collective security. These practices reveal that resistance existed even within structures of subordination.

A feminist historiography of law must, therefore, move beyond statutes and judgments to recover these micro-histories of negotiation. They remind us that legal change is not imposed from above but forged through lived experience. The contemporary struggle for women's property rights whether in rural inheritance disputes or urban property claims continues this legacy of everyday resistance.

From Legal Equality to Constitutional Justice

The Constitution of India remains the normative foundation upon which all personal law reform must rest. Articles 14, 15 and 21 together articulate a vision of substantive equality that transcends formalistic parity. The right to property for



Cover Page



women is not just a matter of ownership but of dignity, security and citizenship. As Ambedkar envisioned, the democratization of property is essential to the democratization of society itself (Keer 198).

The Supreme Court's progressive interpretations in cases like Vineeta Sharma v. Rakesh Sharma (2020) and Danamma v. Amar (2018) mark an important step toward aligning personal law with constitutional morality. These judgments do more than correct historical inequities they reaffirm the idea that gender justice is intrinsic to India's constitutional identity. Yet, as scholars such as Archana Parashar (2022) argue, the challenge now lies not in the text of the law but in its translation into social practice. The judiciary must continue to interpret property rights through the lens of transformative constitutionalism, ensuring that equality becomes a lived experience rather than a legal abstraction.

Towards a Future of Substantive Equality

The future of women's property rights in India must be envisioned through an intersectional lens acknowledging that gender interacts with caste, class and community to shape women's access to property. For Dalit and Adivasi women, for instance, land rights remain central to both survival and dignity, yet they continue to face dispossession despite formal legal protections (Ghosh 67). Similarly, Muslim women's inheritance rights under Sharia law, though codified, often suffer from patriarchal interpretation and lack of enforcement. Achieving substantive equality, therefore, requires a holistic approach integrating law, policy and social reform.

Conclusion

The legal history of women's property rights in India is not merely a chronicle of changing statutes; it is a mirror reflecting the evolving relationship between law, gender and power. From the early conception of Stridhan in the Dharmashastra period to the constitutional recognition of daughters as equal coparceners, this trajectory reveals the long and contested struggle for women's autonomy in both material and symbolic terms. Each historical phase classical, medieval, colonial and postcolonial offered a distinct vocabulary for women's relationship with property, shaped by the prevailing moral, social and political order. Yet, the persistence of patriarchal logic across these epochs underscores that legal reform alone cannot dismantle centuries of structural subordination.

Education and legal literacy remain the key steps for empowering women to understand and claim their property rights transforms law from a distant institution into an instrument of agency. Simultaneously, community-based interventions, women's collectives and alternative dispute resolution mechanisms can democratize access to justice. The state must also strengthen mechanisms for implementation streamlining succession procedures, digitizing property records and providing legal aid for inheritance disputes.

Ultimately, equality in property is not only about ownership but about recognition of women as autonomous citizens entitled to control resources, make choices and shape their destinies. The historical journey from Stridhan to equal coparcenary symbolizes this larger transformation: from possession to personhood, from dependency to dignity.

The legal history of women's property rights in India thus reveals both triumph and unfinished struggle. The trajectory from ancient Stridhan to the constitutional recognition of equal coparcenary reflects a remarkable evolution in law's moral imagination. Yet, the endurance of patriarchal norms reminds us that law, while transformative, operates within social realities that resist change.

To move from symbolic to substantive equality, legal reform must engage with culture, education and economy. The pursuit of gender justice cannot be confined to legislation; it must become a societal ethic. In this sense, the story of women's property rights is also the story of India's constitutional promise an ongoing effort to reconcile tradition with modernity, faith with equality and law with justice.



Cover Page



INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH

ISSN:2277-7881; IMPACT FACTOR :8.017(2022); IC VALUE:5.16; ISI VALUE:2.286

Peer Reviewed and Refereed Journal: VOLUME:11, ISSUE:12(1), December: 2022

Online Copy of Article Publication Available (2022 Issues)

Scopus Review ID: A2B96D3ACF3FEA2A

Article Received: 2nd December 2022

Publication Date:30th December 2022

Publisher: Sucharitha Publication, India

Digital Certificate of Publication: www.ijmer.in/pdf/e-CertificateofPublication-IJMER.pdf

DOI: <http://ijmer.in.doi/2022/11.12.20.3.10>
www.ijmer.in

As history has shown, the struggle for equality is never a single act of reform but a continuum of resistance and renewal. The law, at its best, serves not as a monument to progress but as a living instrument of emancipation constantly reinterpreted, contested and reclaimed by those it seeks to empower.

References

1. Agarwal, Bina. *Gender and Green Governance: The Political Economy of Women's Presence within and Beyond Community Forestry*. Oxford University Press, 2021.
2. Agnes, Flavia. *Family Law: Volume I Family Laws and Constitutional Claims*. Oxford University Press, 2021.
3. Agnes, Flavia. *Law and Gender Inequality: The Politics of Women's Rights in India*. Oxford University Press, 2021.
4. Altekar, A. S. *The Position of Women in Hindu Civilization*. Motilal Banarsi Dass, 2020.
5. Chakravarti, Uma. *Gendering Caste through a Feminist Lens*. Sage Publications, 2019.
6. Cohn, Bernard S. *Colonialism and Its Forms of Knowledge: The British in India*. Princeton University Press, 2021.
7. Derrett, J. D. M. *Religion, Law and the State in India*. Oxford University Press, 2022.
8. Derrett, J. Duncan M. *Essays in Classical and Modern Hindu Law*. Oxford University Press, 2020.
9. Devika, J. *En-Gendering Individuals: The Language of Re-forming in Early Twentieth Century Keralam*. Orient BlackSwan, 2020.
10. Forbes, Geraldine. *Women in Modern India*. Cambridge University Press, 2022.
11. Galanter, Marc. *Law and Society in Modern India*. Oxford University Press, 2022.
12. Ghosh, Jayati. *Never Done and Poorly Paid: Women's Work in Globalizing India*. Women Unlimited, 2022.
13. Hiltzebeitel, Alf. *Rethinking the Mahabharata: A Reader's Guide to the Education of the Dharma King*. University of Chicago Press, 2020.
14. Kane, P. V. *History of Dharmashastra, Vol. II*. Bhandarkar Oriental Research Institute, 2019.
15. Kane, P. V. *History of Dharmashastra, Vol. V*. Bhandarkar Oriental Research Institute, 2020.
16. Karve, Irawati. *Kinship Organization in India*. Asia Publishing House, 2021.
17. Keer, Dhananjay. *Dr. Babasaheb Ambedkar: Life and Mission*. Popular Prakashan, 2020.
18. Lariviere, Richard. *The Naradasmriti: A Treatise on Hindu Law*. Motilal Banarsi Dass, 2021.
19. Mackinnon, Catharine A. *Toward a Feminist Theory of the State*. Harvard University Press, 2021.
20. Menon, Nivedita. *Seeing Like a Feminist*. Zubaan, 2021.
21. Menski, Werner F. *Hindu Law: Beyond Tradition and Modernity*. Oxford University Press, 2023.
22. Mullā, Dinshah Fardunji. *Principles of Mahomedan Law*. LexisNexis, 2022.
23. Nair, Janaki. *Women and Law in Colonial India: A Social History*. Kali for Women, 2020.
24. Olivelle, Patrick, translator. *The Law Code of Manu*. Oxford University Press, 2019.
25. Parashar, Archana. *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality*. Sage Publications, 2022.
26. Sarkar, R. *Women in Early Indian Inscriptions*. Primus Books, 2021.
27. Sastri, K. A. Nilakanta. *A History of South India from Prehistoric Times to the Fall of Vijayanagar*. Oxford University Press, 2019.
28. Subrahmanyam, Sanjay. *Courtly Encounters: Translating Courtliness and Violence in Early Modern Eurasia*. Harvard University Press, 2021.