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From Margins To Mainstream: Realizing Women's Property Rights Through Legal Reform And Social Justice In India

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Abstract:

Property rights are crucial aspect of women's empowerment, economic independence, and social justice. Despite constitutional guarantees and legal reforms, women in India continue to face structural and societal barriers to owning and inheriting property. This paper examines the intersection of women's property rights, gender equality, and human rights within the Indian socio-legal framework. The study analyses constitutional provisions, statutory laws, and international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In these contexts, patriarchal customs, traditional inheritance practices, and a lack of legal awareness hinder women's access to land and property. Although enactments like the Hindu Succession (Amendment) Act, 2005 have aimed to address gender disparities in inheritance, their impact remains limited due to poor implementation and deep-rooted societal resistance. The Constitution of India, with its commitment to social and economic justice, offers a strong framework, but practical enforcement is lacking. Strengthening women's property rights is essential not only for upholding human rights but also for advancing the Sustainable Development Goals, reducing poverty, and promoting inclusive growth.

Methodology: The study is doctrinal in nature, analysing legal frameworks, judicial rulings, and scholarly views to explore the principles related to human rights and social justice.

Purpose: This article aims to examine the impact of the Hindu Succession (Amendment) Act, 2005, in securing women's property rights, highlighting its role in promoting gender equality and economic independence, while identifying key legal and social barriers, and analysing the role of judiciary and policy in bridging the gap between law and practice.

Key Words: Women, Property Rights, Equality, Social Justice, Empowerment.

Introduction:

Today, the world recognizes that protecting women's property rights is essential for achieving gender equality and empowering women, as highlighted in Millennium Development Goals 3.¹ Many countries have laws that support women rights to own and inherit property, and more laws are being introduced. However, in reality, a large number of females still struggle to access these rights, often due to social, cultural, or legal barriers. The gap between rights and reality is mainly because property rights are not covered by just one set of laws. Instead, they are layered by different and sometimes conflicting laws, like the Constitution, land ownership laws, marriage and divorce laws. In addition, customary laws also play a crucial role in deciding who has the right to property thereby serving the blend of contradictory rules, laws and customs leading to confusion and contradictions in relation to rights of women. Many of these laws still support unequal treatment of women, making it harder for them to claim and enjoy their property rights. In modern democratic societies, the principles of human rights, gender equality, and social justice form the foundation of inclusive governance, aimed at upholding dignity, autonomy, and fairness for all individuals. Human rights are the universal and inalienable rights that belong to every person, regardless of gender, caste, religion, or socioeconomic background.² Social justice goes a step further by seeking to redress historic inequalities through the fair distribution of opportunities, resources, and legal protections. Yet, when it comes to women's property rights, a significant gap remains between what the law guarantees and what women actually experience. Discriminatory customs, weak enforcement, and social stigma continue to deny many women their rightful access to land and inheritance, keeping them at the economic and social margins. Bridging this gap requires not just legal reform but a transformative social justice approach that brings women's rights from the margins to the mainstream.

Evolution of women's property rights.

1. International Perspective

The evolution of women's property rights internationally reflects a long struggle for equality, dignity, and recognition. While global legal frameworks like Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³ and the Sustainable Development Goals (SDGs)⁴ have helped to create pressure for reform, real-world challenges remain especially in communities where customary, religious, or patriarchal norms still dominate. Achieving true equality in property rights requires more than just legal changes. It demands strong implementation, education and awareness, and societal transformation to ensure women around the world can own, inherit, and control property on equal terms with men.

¹ Millennium development Goals and beyond 2015 *available at:* <https://www.un.org/millenniumgoals/gender.shtml> (last visited on May 18, 2025).

² What are Human Rights? *available at:* <https://www.ohchr.org/en/what-are-human-rights> (last visited on May 18, 2025).

³ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international treaty adopted by the United Nations General Assembly in 1979. It is referred to as the "International bill of rights for women".

⁴ The Sustainable Development Goals (SDGs), 2015–2030 offer a global development agenda that directly recognizes the importance of women's property rights including land ownership rights. The 17 Goals, Department of Economic and Social Affairs Sustainable Development, United Nations *available at:* <https://sdgs.un.org/goals> (Last visited on May 19, 2025)

Early History

In most parts of the world, women were historically excluded from owning or inheriting property. Patriarchal systems in Europe, Asia, Africa, and the Americas typically saw men as the heads of households and primary property holders.

- In ancient societies (like Greece, Rome, and early Islamic empires), women's access to property was limited and often controlled by male guardians.
- During the medieval period in Europe, under the feudal system, women had few legal rights and were considered dependent on their fathers or husbands.
- Colonial legal systems often reinforced gender inequality in property rights, applying discriminatory norms across Asia, Africa, and Latin America.

19th to Early 20th Century Reforms

The movement for women's rights during the 19th and early 20th centuries led to significant legal reforms in some countries, especially in the West. The Married Women's Property Acts, 1882 (UK, US, Canada, Australia) were introduced in the mid-1800s, allowing married women to own and control property in their own name, rather than it being automatically controlled by their husbands. Property rights for women in Europe and North America gradually improved, particularly with women's suffrage movements, which demanded both political and economic rights. In Latin America the reforms emerged slowly, with many countries beginning to update civil codes in the 20th century to recognize women's independent property rights.⁵

Post-World War II Era and the Rise of International Human Rights

The end of World War II and the formation of the United Nations marked a turning point in recognizing women's rights globally, including property rights.

- Universal Declaration of Human Rights (UDHR, 1948)⁶ provides that everyone has the right to own property alone as well as in association with others.⁷ Article 2 ensures that these rights apply without discrimination of any kind, including on the basis of sex.
- International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸ emphasize equal rights to economic resources, including property.

⁵ Carmen Diana Deere (2005) "Married Women's Property Rights as Human Rights: The Latin American Contribution," Florida Journal of International Law: Vol. 17: Issue. 1, Article 5. Available at: <https://scholarship.law.ufl.edu/fjil/vol17/iss1/5> (last visited on May 15, 2025).

⁶ Universal Declaration of Human Rights (UDHR), 1948

⁷ UDHR, 1948, Art. 17.

⁸ International Covenant on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Progress made by Countries to align international obligations

Many regions have taken steps to align national laws with international human rights obligations:

- **Africa:** The Maputo Protocol (2003)⁹ reinforces women's right to property. However, customary law still dominates in many rural areas, limiting practical access.
- **Latin America:** Many countries, like Colombia, Brazil, and Mexico, have adopted laws ensuring equal land ownership rights, but rural and indigenous women still face implementation challenges.
- **Middle East and North Africa:** Progress has been slower due to personal status laws based on religious frameworks, though some countries are making gradual reforms (e.g., Tunisia, Morocco).
- **Asia:** In countries like India, Nepal, and Bangladesh, constitutional and legal guarantees exist, but customary and family laws often undermine women's rights.
- **Europe:** Most countries now provide full legal equality in property ownership, but issues like the gender wealth gap and unequal inheritance still persist.

2. Indian Evolution

India has made significant legal progress in securing property rights for women especially after 2005. However, implementation, awareness, and cultural change remain critical to realizing these rights fully. Women's empowerment is closely tied to economic independence, and land/property ownership is central to that. The evolution of women's property rights in India is a complex journey shaped by ancient traditions, colonial laws, and modern constitutional values.

Ancient and Medieval Periods

The property rights for women were minimal and also ownership and inheritance were largely patrilineal. According to *Manu Smriti & Dharma shastra* limited "Stridhan" (woman's own property received at marriage) is a good practice, but inheritance was not equal to men.¹⁰ **Widows & Daughters** were generally excluded from ancestral property; widows had temporary use rights but not full ownership.

British Colonial Period (1858–1947)

Britishers codified personal laws in India thereby reinforcing traditional norms with minimal reforms. Hindu widows got limited rights (e.g., Hindu Widow's Remarriage Act, 1856¹¹), but daughters remained largely excluded. **The Hindu Women's Right to Property Act, 1937¹²** is a landmark law allowing

⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Protocolonthe Rights of Women.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Protocolonthe%20RightsofWomen.pdf) (last visited on May 16, 2025).

¹⁰ Dr. Santosh K. Panigrahi, Property Rights of Women in India 40 (Best Publishing House, New Delhi, 2018).

¹¹ The Hindu Widow's Remarriage Act, 1856 was a pioneering piece of social reform legislation enacted during British rule in India.

¹² The Hindu Women's Right to Property Act, 1937, the Act laid the foundation for future gender-equity reforms in Hindu succession laws.

widows to inherit husband's property (though only a limited estate) and daughters still had no equal claim as sons.

Post-Independence Period

Women's property rights are closely linked to social justice and human rights because they are essential for ensuring equality, dignity, and economic independence. Denying women the right to own or inherit property has historically reinforced gender discrimination and economic dependence. Recognizing these rights helps correct past injustices and promotes fair access to resources. Property ownership gives women financial security, reduces their vulnerability to poverty and violence, and increases their role in family and community decisions. It also benefits future generations, especially daughters. International laws like CEDAW and India's Constitution¹³ support equal rights for women, making property rights not just a personal matter, but a key step towards achieving gender equality and a just society.

Legal Framework Governing Women's Property Rights in India

The legal framework governing women's property rights in India has evolved significantly, especially with the 2005 amendment to the Hindu Succession Act and key judicial rulings. However, legal recognition alone is not enough. Bridging the gap between law and lived reality requires social reform, administrative support, and proactive state action. Ensuring that women can exercise their property rights fully is critical for achieving gender equality, social justice, and inclusive development in India.

1. Constitutional Provisions

The Indian Constitution¹⁴ provides the foundational framework for gender equality under Article 14 thereby guaranteeing equality before the law and equal protection of laws, by prohibiting discrimination based on sex and allows for special provisions for women.¹⁵ Article 21 ensures the right to life with dignity, which includes the right to own and enjoy property too. The Directive Principles of State Policy encourage the state to promote justice, including gender-based equity in ownership and economic opportunities.

2. Personal Laws and Statutory Provisions

The Hindu Succession Act, 1956¹⁶: The Hindu Succession Act marked a watershed moment in India's legal history by codifying property inheritance laws for Hindus, Jains, Sikhs, and Buddhists. For the first time, daughters were recognised as heirs to their father's property, breaking away from the patrilineal traditions of the Mitakshara school of law. However, daughters were excluded from coparcenary rights, limiting their claim to ancestral property. **The Hindu Succession (Amendment) Act, 2005¹⁷:** The 2005 Amendment has brought a change by granting daughters equal coparcenary rights,

¹³ The Constitution of India, which came into effect on January 26, 1950, is the supreme law of the land.

¹⁴ *Supra* note 15, at 8

¹⁵ The Constitution of India, Art. 15(3).

¹⁶ The Hindu Succession Act, 1956 is a landmark law enacted by the Indian Parliament to codify and reform the laws related to inheritance and succession among Hindus.

¹⁷ The Hindu Succession (Amendment) Act, 2005 is a major legal reform that granted equal inheritance rights to daughters in Hindu joint family property.

placing them on par with sons in inheriting ancestral property. This amendment ensured that daughters had the same rights and liabilities as sons, regardless of their marital status.

The Muslim Personal Law (Shariat) Act, 1937¹⁸: The Muslim Personal Law codifies Islamic inheritance laws, granting daughters a defined share in the estate. Under these laws, daughters inherit only half the share of sons.

3. Other Relevant Laws

- The Indian Succession Act, 1925¹⁹: Applies to Christians and Parsis, providing inheritance rights to women.
- The Transfer of Property Act, 1882²⁰: Recognizes women's legal capacity to own, sell, and transfer property.
- The Dowry Prohibition Act, 1961²¹: Although aimed at preventing dowry, it indirectly deals with women's right to retain gifts and property received during marriage.
- The Protection of Women from Domestic Violence Act, 2005²²: Includes the right to reside in a shared household, providing a form of property security for women in abusive relationships.

Persistent Challenges and Ground Realities

While legal reforms have laid a strong foundation for women's property rights in India, ground realities reflect persistent gender inequality. The challenge lies not only in making laws but in changing mindsets, improving access to justice, and building systems that truly support women in claiming what is rightfully theirs. Ensuring women's secure rights to property is essential for achieving gender justice, reducing poverty, and promoting inclusive development.

Socio-Cultural Norms and Patriarchy: Preference for male heirs remains strong in many families. Daughters are often expected to give up their share in property voluntarily in favour of brothers. Women asserting property rights may face family backlash, social stigma, or even violence. Marriage customs reinforce the idea that a woman's rightful share is given through dowry or gifts, not inheritance.

Lack of Awareness: Many women are unaware of their legal rights to own, inherit, and manage property. In rural and marginalized communities, women often do not know how to claim property or approach legal institutions. Legal language and procedures are complex and inaccessible, especially for uneducated women.

Legal and Administrative Barriers: Land and property records are often in the name of male family members. Inheritance procedures are cumbersome, with delays in issuing succession certificates or mutation of records.

¹⁸ Muslim Personal Law (Shariat) Act, 1937 is a key legislation in India that provides for the application of Islamic personal law (Shariat) to Muslims in matters of family and property.

¹⁹ The Indian Succession Act, 1925 is a comprehensive law that governs the inheritance and succession of property for individuals who are not governed by Hindu, Muslim, Buddhist, Sikh, or Jain personal laws.

²⁰ The Transfer of Property Act, 1882 the Act supports equal legal capacity for women to participate in property transactions.

²¹ The Dowry Prohibition Act, 1961 is an important Indian law that prohibits the giving or taking of dowry in marriages.

²² The Protection of Women from Domestic Violence Act, 2005 is a landmark law in India aimed at protecting women from domestic violence in a broad and inclusive manner.

Economic Dependency and Fear of Conflict: Many women, especially homemakers, are economically dependent on male relatives and fear losing support if they claim property. Fear of litigation or family disputes deters women from asserting their rights. In joint families, women rarely have control over productive assets like agricultural land, even if they live or work on it.

Judicial interventions

Judicial interventions have played a pivotal role in advancing women's property rights, often bridging the gap between codified laws and customary practices. Landmark cases such as *Vineeta Sharma vs. Rakesh Sharma* (2020) have reaffirmed daughters' equal coparcenary rights under the Hindu Succession (Amendment) Act, 2005, regardless of their father's date of death. Similarly, the Supreme Court's ruling in *Mary Roy vs. State of Kerala* (1986) overturned discriminatory provisions in the Travancore Succession Act, 1092²³, ensuring equal inheritance rights for Christian women in Kerala. However, systemic barriers continue to undermine the impact of these judicial decisions. But the judicial rulings often face resistance at the grassroots level, where societal norms and customary practices dominate. Moreover, the lengthy and complex the nature of judicial process discourages many women from seeking legal recourse, particularly in rural areas where awareness of legal rights is limited. The judgement of **Vineeta Sharma vs. Rakesh Sharma**²⁴ upheld daughter's coparcenary rights under the Hindu Succession (Amendment) Act, 2005, declaring that daughters are entitled to the same protections regardless of whether their father was still living at the time the amendment was made. The ruling was seen as a daring move towards guaranteeing gender equality, emphasising the Supreme Court's proactive role in resolving legal issues. But the ruling also revealed strong social opposition, with families frequently refusing to fairly split ancestral property. In **Mary Roy vs. State of Kerala (1986)**²⁵ the discriminatory provisions of the Travancore Succession Act, which denied equal inheritance rights to Christian women were challenged. The Supreme Court ruled in favour of Mary Roy, ensuring that Christian women in Kerala could inherit property on par with men. This judgment is seen as a milestone in women's rights, but its practical implementation faced significant challenges due to social resistance and lack of awareness among Christian communities. **Jaisri Laxman Rao Patil vs. Chief Minister (2021)**²⁶ upheld the need for uniformity in personal laws, urging the government to consider implementing a Uniform Civil Code (UCC)²⁷. The judgment underscored the inconsistencies in inheritance rights across religious communities, which often disadvantage women. Chakrabarti argued that the UCC could address these disparities, but cautioned that its implementation would require careful negotiation to respect cultural and religious diversity. In the case of **Danamma vs. Amar (2018)**²⁸ the Court held that daughters have coparcenary rights even if the father died before the 2005 Amendment, reinforcing the principle of gender

²³ The Travancore Christian Succession Act, 1092 (later known as the Travancore Christian Succession Act, 1916), was a law that governed the inheritance of property among Indian Christians.

²⁴ *Vineeta Sharma v Rakesh Sharma*, Civil Appeal, Diary No 32601 of 2020, Supreme Court, judgment dated 11 August 2020
²⁵ 1986 AIR 1011

²⁶ *Journal of Family Law and Justice*. 2021;14(1): pg.22-28.

²⁷ The Indian Constitution of India, art. 44.

²⁸ AIR 2018 S.C 721

equality. **C. Masilamani Mudaliar vs. Idol of Sri Swaminatha swami Thirukoil (1996)**²⁹ The court emphasised that gender equality is a constitutional mandate that overrides religious and customary practices. This judgment is often cited as a foundational precedent for subsequent rulings on women's property rights.

Conclusion

The study of women's property rights, particularly in light of the Hindu Succession (Amendment) Act, 2005, reveals that significant legal reforms have indeed strengthened the statutory position of women in matters of inheritance and ownership. The amendment marked a critical shift toward gender parity by granting daughters equal rights in coparcenary property, which had traditionally been reserved for male heirs only. This has been a landmark step in reinforcing women's legal status within the family structure and promoting their financial autonomy.

However, the realisation of these rights on the ground continues to face multifaceted challenges. Despite progressive legal provisions, entrenched patriarchal norms, socio-cultural barriers, lack of legal awareness, and procedural hurdles in accessing property records remain persistent obstacles. These issues hinder the effective implementation of women's property rights, especially in rural and economically weaker sections of society.

Women's access to property is not merely a matter of legal entitlement; it is deeply intertwined with broader themes of social justice and human rights. Property ownership plays a crucial role in enhancing gender equality, promoting economic independence, and upholding a woman's dignity and agency in both private and public spheres. It serves as a foundational tool for empowerment and protection against various forms of violence and dependency.

The judiciary has played an instrumental role in upholding and interpreting these rights progressively, with several landmark judgments reinforcing the spirit of equality envisioned in the amended laws. Simultaneously, government schemes, policy interventions, and legal aid services need to be strengthened and made more accessible to bridge the gap between law and its practical enforcement. This includes legal literacy campaigns, gender-sensitive administrative processes, digitization of land records, and sustained judicial activism.

²⁹ 1996 AIR 1697