

# Rights of women under Hindu Laws: An Analysis

Neeraj

Asistant Professor, Vaish College of Law Rohtak

---

## ABSTRACT

There is a certain role for women in every civilization, regardless of whether it is already developed, still evolving, or has not yet developed. There are a number of culpable parties. As a daughter, wife, mother, sister, and other roles in the family Despite the fact that she had an effect on everyone. She is a member of a social class or group that experiences difficulties as a result of social barriers and obstructions. She is dominated and oppressed by the men who run society. The situation of women in India is not much different from that in other countries. On the one hand, she is held in high esteem as the embodiment of morals and tolerance. Because she was a woman living in a society that was ruled by men, she was subjected to a lot of hardships, trials, and atrocities. This paper deals with the right of the women under various laws including a comparative study with other religion laws and examines a need for a special law with some suggestions to improve the working of such law

**Keyword:** *Womens right, property rights, marriage rights, divorce*

---

## INTRODUCTION

“A woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries she doesn't become the husband's servant but his equal partner. If his work is more important in life of the community, she is more important in the life of the family. Neither can do without the other. Neither is above the other nor under the other. They are equals.”

### *Lord Denning in 19811*

Every society, established, developing, or undeveloped, has a particular place for women. Various roles are to blame. As a daughter, wife, mother, sister, etc. Despite her impact on everyone. She belongs to a social class or group that is disadvantaged by social hurdles and impediments. Men who dominate society have tyrannised her. Indian women's condition is no better than elsewhere. On one one, she's revered as the epitome of Tolerance and morality. She has suffered many sorrows, tribulations, and horrors at the hands of a male-dominated society. As a "weaker sex," she has been abused and used to the utmost extent by male-dominated society. Economic independence has nothing to do with women's susceptibility. Regardless of her income, she's a victim. Rich and poor alike face societal hurdles and disadvantages.

“Women are important in everyone's life. Securing her birth rights would improve our society, family, and future. Gender inequality takes many forms, but the most frustrating is women's property rights. Gender discrepancy in property rights dates to ancient times. In India, a woman is adored as the embodiment of all virtues, but she is discriminated against and mistreated by male-dominated standards. Even after civilization and cultural revolutions, she hasn't been granted her rightful role in society. Most of the country still exploits women at home and abroad. Male superiority and women's disadvantages persist. Full personality development, fundamental freedom, and equal involvement by women are concomitants of national growth, which depends on social and familial stability. Gender discrimination causes discontent.”

## LITERATURE REVIEW

Scholars like **Srimati basu (2015)** also examine how individual women navigate the plurilegal system, using state law and "do-it-yourself law" to make their claims.

**Gopika Solanki (2011)** In this context, Gopika Solanki discusses a concept that she calls "shared adjudication," as was mentioned earlier.<sup>1</sup>

**Gopika Solanki (2011)** contends that legal pluralism can achieve gender equality by providing numerous options.<sup>2</sup>

**Tschalaer (2017)** contends that Muslim women litigants in Lucknow may use dispute resolution systems to maximise their prospects of justice.<sup>3</sup>

**Tschalaer** also sees the fora as a place where women "have the authority to speak and describe their experiences."<sup>4</sup> Srimati Basu is more sceptical. She argues that women don't necessarily benefit from multiple (quasi-)legal options. Women must navigate difficult choices and sometimes contradictory directives when pursuing grievances.

### Hypothesis

The strength of women's bargaining power in society may have led to the expansion of their rights. The relative rarity of women in society may influence their negotiating position. Many people believe that states with a shortage of women might strive to attract them by changing their legal structure, especially in regards to married women's property rights. There is a strong need for personnel laws.

### Research Objectives:

The present piece of work provides the following objectives: -

- 1) To study the rights of women under the Hindu law.
- 2) To study the rights of women under different laws with respect to the marriage, divorce, property rights and others.
- 3) To study the gaps left out in relation to the present legal norms relating to need of a personnel law for the protection of a women's right.
- 4) To come up with certain suggestions or findings.

## RESEARCH METHODOLOGY

This research is analytical, descriptive, and interpretive in nature. The doctrinal studies have been conducted concurrently. Additional analysis has been conducted addressing women's right in relation to numerous laws, organizations, Conventions, Statues, law commission reports and court pronouncements.

### Rights of Widow Under Hindu Succession

The Hindu Widow's Remarriage Act, 1856, was a colonial creation. "A Hindu widow had to give up any right to property or support from her dead husband's property if she remarried.

This led to widespread lawbreaking. Hindu families denied widows remarriage rights, even though customary law allowed it." The law also denied widows' rights if they were "unchaste," a nebulous term with no apparent meaning. Reformers criticised this approach as arbitrary in the early 20th century. "The 1937 Hindu Women's Property Right Act took effect. Single widows who did not remarry had some rights to maintenance and property from the joint family inheritance. 1956's Hindu Succession Act and Hindu Marriage Act changed things."

---

<sup>1</sup> Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge University Press 2011).

<sup>2</sup> Ibid.

<sup>3</sup> Mengia Hong Tschalaer, *Muslim Women's Quest for Justice: Gender, Law and Activism in India* (Cambridge University Press 2017) 52.

<sup>4</sup> Ibid.

**“Hindu Widows’ Remarriage Act, 1856”<sup>5</sup>** – “All rights and interests which any widow may have in her deceased husband’s property ... shall upon her remarriage cease; and the next heirs of her deceased husband, or other person entitled to the property on her death, shall thereupon succeed to the same.”

Act was repealed. The Bombay High Court found that the 1956 Hindu Succession Act trumped the 1856 Hindu Widows' Remarriage Act.

**“The Current Inheritance Laws For Widows”**- A legitimate will describing property division trumps everything else. Succession laws apply without a will. Succession means inheriting property after death. Religion determines inheritance laws.

**Accordingly:**

- “The Hindu Succession Act, 1956 applies to Hindus, Sikhs, Jains and Buddhists for intestate succession/inheritance.
- The Indian Succession Act, 1925, particularly Sections 50 to 56, apply to Parsis for intestate succession.
- The Indian Succession Act, 1925, particularly Sections 31 to 49, apply to Christians and Jews for intestate succession.
- The law of succession governing Muslims, for intestate succession, is the Muslim Personal Law (Shariat) Application Act, 1937.”

**“Provisions under the Hindu Succession law”<sup>6</sup>**-“Under the Hindu Succession Act, 1956, the estates of a Hindu male who dies without a will are divided equally among his sons, daughters, widow, and mother. Class I of the Hindu Succession Act, 1956 mentions heirship distribution. First, if a person dies without a will (intestate), his widow or all widows collectively take one share. Class-II heirs include the husband’s relatives. Class-I heirs include:

- a) son, daughter, mother,
- b) son of a predeceased son, daughter of predeceased son,
- c) widow of predeceased son, son of a predeceased daughter,
- d) daughter of predeceased daughter, son of predeceased son of predeceased son,
- e) daughter of predeceased son of a predeceased son,
- f) widow of predeceased son of a predeceased son.”

It must be noted:

- “a) Adopted children (sons or daughters) are also counted as heirs.
- b) Children born out of void or voidable marriages are considered to be legitimate by virtue of Section 16, and are entitled to succession.
- c) Section 14 allows a bereaved mother (who may be an adopted mother) to inherit alongside other heirs. She can inherit even if she's divorced or remarried.
- d) If there's an adoptive mother, the natural mother can't inherit the intestate's property. Section 3(I) allows a mother to inherit her son's property (J).
- e) Some remarried widows can't inherit. Any heir linked to an intestate as the widow of a pre-deceased son or brother cannot inherit as such if she has remarried on the day of succession.”

**“Rights of Widow of Christians & Parsis Under The Indian Succession Act”**

**For the Parsi community** – Christian widows receive a share. This portion relies on the deceased's surviving relatives. If the heirs are children, the widow gets one-third of the share. If the heirs aren't children, the widow gets half and the rest goes to other relatives. Without children or relatives, the widow inherits everything.

**“Rights of Widow Under Islamic Law”**

The Islamic law of succession is essentially a codification of four different sources of Islamic law. These sources are as follows,

- “a) The Holy Koran, the Sunna (the practice of the Prophet),
- b) The Ijma (the consensus of the learned men of the community on what should be the decision on a particular point),
- c) The Qiya (an analogical deduction of what is right and just in accordance with the good principles laid down by God).
- d) The Muslim Personal Law (Shariat) Application Act, 1937.

---

<sup>5</sup> Ibid (n 4)

<sup>6</sup> Ibid.

No Muslim widow can inherit. After funeral and legal expenditures and obligations, a childless Muslim widow is entitled to one-fourth of the deceased husband's property.

A widow who survives her husband and has children or grandchildren is entitled to one-eighth of his estate. If a Muslim man marries when he is sick and then passes away before recuperating or consummating the marriage, his widow does not have any rights to inherit from him. In the event that her ailing spouse divorces her and subsequently passes away, the widow will continue to be eligible for an inheritance until she weds again.”

#### **Discrimination against women under hindu law<sup>7</sup>**

- Adoption of a child- Even with her husband's agreement, a married Hindu woman cannot adopt a child. Husbands only adopt children. In *Malti Ray Chowdhury v. Sudhindranath*, a married lady adopted a female child with her husband's agreement, but the court ruled that only husbands can adopt in instances of marriage; women do not have this ability. It's ironic that a woman can give birth but not adopt.
- Property Rights of Women – “Hindu law schools existed before Hindu law. According to these legal schools, only coparceners owned joint family property. At the time, women weren't considered coparceners and couldn't claim property. The Hindu Women's Right to Property Act of 1937 gave women property rights, but they weren't absolute. The Hindu Succession Act made women Class-I heirs but not coparceners. After the Hindu Succession (Amendment) Act, 2005, daughters were on the same page as sons, yet discrimination still occurs. In our society, only men are entitled to their family's property.” To perpetuate this practise, a male coparcener, or father or grandpa, might transmit his property to his sons or grandsons through a will. This is because married women are considered outsiders.
- Rights in a dwelling house- In a Hindu family, the daughter can only inherit the house if she is unmarried or divorced. After marriage, a daughter loses her home's ownership. They can't partition their house until family lives there. In the case of *Hira Dei v. Bodhi Sahu And Ors*, Hira Devi's right<sup>8</sup> to the home was taken away once she remarried. Hindu personal law discriminates against women.
- Property rights of Widow- A woman is entitled to her husband's property after his death, but she cannot contest a will transfer.
- Lawson Maintenance- In India, neither authorities nor cops help an abandoned wife. There's no way to compel the husband pay maintenance. In these situations, the wife must go to court to seek help, which is not easy for a woman in India, hence women often live without maintenance after divorce.

#### **Disputes about the structure of the personal law system: where do the problems originate?**

Many readers know that personal laws are sexist. However, the gender aspect of personal laws was not always prominent. Feminist critiques of personal laws were once rare. Due to feminist critiques of "mainstream" personal law studies, gender has entered the discourse. "Mainstream literature on personal laws, such as handbooks and student literature on family law or specific studies on the legal systems of the different communities, tended to engage normatively with the provisions of the different personal law systems and case law from the Indian higher judiciary. Popular discussion on the personal law system centred on secularism, national identity, and modernity. The vast amount of study on the topic has placed the personal law system in its historical context and described its growth from colonial times. It has addressed secularism and religious identity or contrasted the Indian personal law system with other countries to provide principles for creating and implementing a UCC.”<sup>9</sup> In some of these works, gender equality is a subplot.

Feminists criticise this "gender blind hole." Nivedita Menon argues that India needs a UCC to be truly secular. How much is the UCC problem about "secularism"? Is it about church-state relations? Isn't it about constitutionally-enshrined gender inequality? ... All personal laws on marriage, inheritance, and child guardianship bias against women. Shouldn't this make the issue of the Uniform Civil Code more visible? Shouldn't it be "India can't be gender-just as long as discriminatory personal laws exist"? Only feminists ask this.<sup>10</sup>

“Feminist scholars have also emphasised that all personal laws discriminate against women. They wanted to dispel the idea that only Muslim personal law was gendered problematic. Agnes argues that "progressive" Hindu law should not

---

<sup>7</sup> Ibid.

<sup>8</sup> *Hira Dei v. Bodhi Sahu And Ors* A.I.R. 1954 Ori. 172

<sup>9</sup> Shimon Shetreet and Hiram E Chodosh, *Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse* (Oxford University Press 2015).

<sup>10</sup> Nivedita Menon, *Seeing Like a Feminist* (Penguin 2012) 151.

be pitted against "regressive-fundamentalist" Muslim law, a term that originated during the 1950s reform of Hindu personal law."<sup>11</sup>

"The feminist critique of personal laws is part of a larger body of study that critically examines legal norms or Indian women's sociolegal position."<sup>12</sup>

### The personal laws

The personal laws' heritage is criticised. Much scholarship contextualises legislation historically. The British conquerors exempted aspects of religious law from their regulatory action, but the colonial system altered the content of personal laws through legislation and judicial interpretation. Between 1865 and 1939, more than 20 legislative Acts altered personal laws.<sup>13</sup> Scholars claim that colonial jurisprudence "Brahmanized" Hindu personal law and "Islamized" Muslim personal law, as well as rigidified personal laws overall.<sup>14</sup> British conceptions have also entered the interpretation of personal laws, making them a "strange mixture of religious precepts and English legal concepts."<sup>15</sup>

Flavia Agnes provides a feminist review of Indian family law and in-depth critiques of problematic personal legislation. Archana Parashar, Laura Dudley Jenkins.<sup>16</sup> "They detail marriage, divorce, maintenance, inheritance, adoption, and guardianship conventions and rules. They don't just criticise triple talaq or polygamy among Muslims; they also criticise Hindu, Christian, and Parsi law, concluding that all religious personal laws treat women less favourably than men. Flavia Agnes' two works on Family Law stand out because of the author's feminist perspective. Agnes challenges the idea that law is a neutral, objective, rational set of norms unfettered by the sentiments and opinions of people who hold legal power. She believes law is decided by courts, legal offices, and political stations, not statutes or erudite treatises"<sup>35</sup>

## SUGGESTION

### Reforms proposed by the Law commission regardless of religion

- The commission wants mandatory marriage registration. By amending the Births and Deaths Registration Act, it's feasible. Law Commission's 270th report and marriage registration bill proposed it before.
- In Indian society, it's assumed that wives should be younger than their husbands. Law commission recommends standard consent and marriage ages. The legal age for men in India is 21 and for women it's 18.
- Many phoney gravity cases are filed to attend divorce. To eliminate this, the law panel has advised requiring a retrievable breakdown of the marriage for divorce when there is no chance of reconciliation. This will reduce the amount of fraudulent cruelty cases filed to obtain a divorce.
- Recommends equal sharing of the couple's marital possessions after divorce. But that doesn't mean it must be distributed evenly in every case; the court's ruling stands. Report 'no-fault divorce with self-acquired property distribution.
- Law commission recommends disabled-friendly legislation. Leprosy is a divorce ground, the paper said. To establish an inclusive society, the commission recommends not using curable or controllable diseases as divorce grounds.
- Report commends making second marriages void by conversion. When children from such marriages are regarded legitimate and granted all the advantages of a legend's children. Also, legislation is needed to handle

<sup>11</sup>Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011) 21.

<sup>12</sup> "In feminist literature, the personal laws thus often feature as one among many aspects, including the situation of rural, tribal or Dalit women, women's economic rights and work participation, women's right to health, women's sexuality, sex work, domestic violence and custodial rape." Publications that address the personal laws in such broader context include the following: Rajeswari Sunder Rajan, *The Scandal of the State: Women, Law and Citizenship in Postcolonial India* (Duke University Press 2003); Geetanjali Gangoli, *Indian Feminisms: Law, Patriarchies and Violence in India* (Ashgate 2007); Neera Bharihoke (ed), *Rights of Hindu and Muslim Women* (Serials 2008); Archana Parashar and Amita Dhanda (eds), *Redefining Family Law in India: Essays in Honour of B. Sivaramayya* (Routledge 2008). Kirti Singh has tackled the socio-economic components of the family laws and the gap between the law and the lived reality: Kirti Singh, *Separated and Divorced Women in India: Economic Rights and Entitlements* (Sage 2013).

<sup>13</sup>Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legacies and the Indian State* (Oxford University Press 2006);

<sup>14</sup>Agnes, *Family Law Volume I* (n 13) 5

<sup>15</sup>Archana Parashar, (n 16)

<sup>16</sup>Archana Parashar, 'Just Family Law: Basic to all Indian Women' in Indra Jaising (ed), *Men's Laws, Women's Lives: A Constitutional Perspective on Religion, Common Law and Culture in South Asia* (Women Unlimited 2005).

the issue of purported Bala Dafa level live-in relationships that did not end in marriages. Children should be answerable for their parents' property.

### Reforms Propose in specific religious law

Hindu law -In Hindu law, the Law Commission advised abolishing central Paris entry. The Law Commission stated that women stay under the supervision of a man, first her father and then her spouse. The Law Commission's report recommends considering men and women equally when providing guardianship under the Hindu minority and guardianship statute.

In Muslim law, the law commission demanded new inheritance laws that will control both Shias and Sunnis. The Muslim Personal Law Shariat application act will be eliminated after this law's enactment. The Law Commission suggested making infidelity a cause for divorce by revising the Muslim Marriage Act.

### “Setting up one’s own system: women’s courts”

“So-called ‘women’s courts’ are another option to avoid system disadvantages (mahila adalat or mahila mandal). These government- or nonprofit-run dispute-resolution forums handle women’s marriage and family difficulties.<sup>17</sup> They attempt to provide a safe and unthreatening setting where women can air their problems, negotiate with husbands and in-laws, or flee uncomfortable situations. As Basu shows for the family court, Vatuk says the women conducting these courts aim to reconcile couples.<sup>18</sup> Vatuk wonders if woman-only courts can live up to the feminist principles of the NGOs who set them up.<sup>19</sup> Vatuk says one of the best things about these courts is that peer mediators can recommend solutions based on the women’s experiences, taking their social and cultural context into account.”<sup>20</sup>

## CONCLUSION

The distribution of property in Indian society is heavily influenced by religious traditions. Religious slogans that portray women as respectable members of society ought to be brought to the attention of students in schools, colleges, and other public institutions. Screenings of local documentaries on a smaller scale should take place in cities, towns, and villages. In order for the laws to be enforced, it is imperative that women speak up for their rights. They are not going to let their rights slip away. They have the option of filing a claim in court for their respective shares of the family property. The modification that was made to the legislation governing succession in 2005 was a productive step toward increasing the property rights of Hindu women. The Hindu Succession (Amendment) Act of 2005 must now be applied by both the executive branch and the judiciary. Following the efforts of legislative bodies, the participation of courts is essential. In the interest of society as a whole, it is anticipated that the courts will award a more expansive and all-encompassing interpretation of legislation that provide property rights to women.

## BIBLIOGRAPHY

- [1]. K. Asra Shifaya , *Property Rights of Women under Hindu Law: A Critical Study*, 4 (3) IJLMH Page 2999 - 3008 (2021), DOI: <https://doi.org/10.1000/IJLMH.11797>
- [2]. Srimati Basu, *The Trouble with Marriage: Feminists Confront Law and Violence in India* (University of California Press 2015) 97.
- [3]. Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge University Press 2011).
- [4]. Mengia Hong Tschalaer, *Muslim Women’s Quest for Justice: Gender, Law and Activism in India* (Cambridge University Press 2017) 52.
- [5]. Hira Dei v. Bodhi Sahu And Ors A.I.R. 1954 Ori. 172
- [6]. Shimon Shetreet and Hiram E Chodosh, *Uniform Civil Code for India: Proposed Blueprint for Scholarly Discourse* (Oxford University Press 2015).
- [7]. Nivedita Menon, *Seeing Like a Feminist* (Penguin 2012) 151.
- [8]. Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011) 21.

---

<sup>17</sup> Sylvia Vatuk, ‘The “Women’s Court” in India: An Alternative Dispute Resolution Body for Women in Distress’ (2013) 45 *The Journal of Legal Pluralism and Unofficial Law* 76.

<sup>18</sup> Ibid 95.

<sup>19</sup> Ibid 96.

<sup>20</sup> Ibid 97.



- [9]. “In feminist literature, the personal laws thus often feature as one among many aspects, including the situation of rural, tribal or Dalit women, women’s economic rights and work participation, women’s right to health, women’s sexuality, sex work, domestic violence and custodial rape.” Publications that address the personal laws in such broader context include the following: Rajeswari Sunder Rajan, *The Scandal of the State: Women, Law and Citizenship in Postcolonial India* (Duke University Press 2003); Geetanjali Gangoli, *Indian Feminisms: Law, Patriarchies and Violence in India* (Ashgate 2007); Neera Bharihoke (ed), *Rights of Hindu and Muslim Women* (Serials 2008); Archana Parashar and Amita Dhanda (eds), *Redefining Family Law in India: Essays in Honour of B. Sivaramayya* (Routledge 2008). Kirti Singh has tackled the socio-economic components of the family laws and the gap between the law and the lived reality: Kirti Singh, *Separated and Divorced Women in India: Economic Rights and Entitlements* (Sage 2013).
- [10]. Rina Verma Williams, *Postcolonial Politics and Personal Laws: Colonial Legacies and the Indian State* (Oxford University Press 2006);
- [11]. Archana Parashar, ‘Just Family Law: Basic to all Indian Women’ in Indira Jaising (ed), *Men’s Laws, Women’s Lives: A Constitutional Perspective on Religion, Common Law and Culture in South Asia* (Women Unlimited 2005).
- [12]. Sylvia Vatuk, ‘The “Women’s Court” in India: An Alternative Dispute Resolution Body for Women in Distress’ (2013) 45 *The Journal of Legal Pluralism and Unofficial Law* 76.