



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Critical Analysis of Women’s Property and Inheritance Rights Under Personal Laws in India

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*Received* 03 August 2024; *Accepted* 05 September 2024; *Published* 09 September 2024

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*Women’s rights to inheritance, dignity, and child custody remain inequitable throughout cultures and religions. Despite legal progress in many nations, customary laws and patriarchal norms frequently favour men, limiting women’s access to property and decision-making inside households. Inheritance rules, inspired by traditional and religious norms, usually give women smaller shares than men, prolonging economic reliance and inequity. Societal views diminish women’s dignity by limiting their roles to home settings and subjecting them to violence and prejudice. While international conventions and grassroots organizations promote gender equality, deeply ingrained cultural opposition and a lack of understanding continue to impede the full realisation of women’s rights. This study looks at the historical and current legal restrictions on women’s property and inheritance rights in various legal frameworks and cultural contexts. Despite the campaigns for gender parity, various Indian religions uphold customs and laws that discriminate against women and limit their access to inheritance and property. The impact of these legal restrictions on women’s economic autonomy, empowerment, and general well-being is examined in this paper. To further the larger objectives of social justice and gender equality, the ends with policy recommendations that seek to end legal discrimination and strengthen women’s rights to property and inheritance.*

**Keywords:** *equality, gender equality, inheritance, rights, succession, uniform civil code, women.*

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## **STATEMENT OF PROBLEM**

The Uniform Civil Code refers to the formation and implementation of a code that would establish a single common law for all people instead of individual laws based on religion, customs, and traditions. In India, there are separate laws for separate communities. The four broad sets of laws include Hindu law, Muslim law, Christian law, and Parsi law. These laws are based on religion, derived from religious texts. Religiously inspired personal rules have frequently disadvantaged women, especially when it comes to divorce, inheritance, and polygamy. These religious texts date back to primitive times. As society has developed from primitive times to modern society, religion-based laws are unable to meet the demands of modern society, such as inter-caste marriage, homosexual and transgender relationships, or relationships. The idea of procreation as the basis of marriage has received new aspects to it with modern technologies. Similarly, there are new aspects to the concept of maintenance, cruelty, domestic violence, and the addition of issues such as marital rape, which fails to find a place in the personal laws. It would address areas such as marriage, divorce, maintenance, property, succession, inheritance, adoption, and guardianship. A progressive reform will allow India to move past its disparate religion and gender norms and become a homogenous society under a single legal system.

## **INTRODUCTION**

Women still encounter major obstacles when trying to exercise their rights to inheritance and property, even in the face of tremendous global progress toward gender equality. A complex interaction of sociocultural, legal, and economic factors is the reason why this issue still exists. These obstacles are frequently ingrained in discriminatory legal frameworks, patriarchal norms, and customs that give preference to male inheritance and property ownership. Because of this, women are frequently denied their legal access to property, undermining their independence and financial security as well as sustaining cycles of poverty and gender inequality. Women's rights to property and inheritance are especially problematic in areas where statutory laws are heavily influenced by customary law, creating contradictions and difficulties with enforcement. Moreover, institutional frameworks frequently fail to adequately support legal reforms aimed at improving women's property rights, which limits their effectiveness. A multimodal strategy

that includes strong enforcement mechanisms, public awareness campaigns, and legal reforms is needed to address these obstacles. It also calls for a critical analysis of the sociocultural processes that support gender inequality in inheritance and property rights.

## **WOMEN'S RIGHTS OF SUCCESSION UNDER HINDU LAW: THE HINDU SUCCESSION ACT 1956**

The conventional and narrow-minded ideas follow a woman from the moment of her conception, persist with her throughout her life, and, paradoxically, refuse to let go of her even after she passes away. People of different religions are governed by their laws in India under the current legal system about inheritance, marriage, separation, custody, etc. In this sense, the Hindu Succession Act, 1956 (HSA) governs the succession among Hindus. This Act differs in how males and females inherit intestate succession, which is a peculiar feature. The deceased female's method of property acquisition has an impact on her intestate succession.<sup>1</sup> One of the many patriarchal adages found in the *Manusmriti*, the codified Hindu law of ancient India, is '*Na stree swatantram arhati*,' which translates to '*Woman does not deserve freedom.*' Hindu females were consistently facing a battle to have their fundamental rights acknowledged on a sociocultural level. Sadly, the legal tools provided to them by codified Hindu personal law have only made their struggles worse. Strangely, misogyny permeates codified laws, particularly those about married women, in a faith where most goddesses represent married women. Nevertheless, the judiciary has made significant headway in creating a progressive and socially inclusive India. Removing discriminatory laws to promote gender equality and inclusivity, such as the *Triple Talaq* ruling and Section 377 of the Indian Penal Code.<sup>2</sup> But one of the primary causes of the gender gap that persists in our laws and our people has yet to be addressed. The Hindu Succession Act establishes a succession plan for Hindus who die intestate or without a will. Thus, if a Hindu dies intestate, that is, without a Will, his or her property is distributed to his or her heirs by the terms of the Hindu Succession Act of 1956.<sup>3</sup> A Hindu man who passes away

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<sup>1</sup> Singhal Ayushi, 'Female Intestate Succession under the Hindu Succession Act, 1956: An Epitome of Inequality and Irrationality' (2015) 4(2) Christ University Law Journal <<https://doi.org/10.12728/culj.7.9>> accessed 10 July 2024

<sup>2</sup> Indian Penal Code 1860, s 377

<sup>3</sup> Bidisha Das and Shivangi Banerjee, 'Hindu female intestate succession laws and their impact on fundamental rights of the elderly' (2021) SSRN <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3837895](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3837895)> accessed 10 July 2024

intestate that is, without a will, leaves his property to his heirs by Section 8 of the Hindu Succession Act, 1956.<sup>4</sup> The Hindu Succession Act's Class I relatives list will determine how the property is divided. The Act offers a list of relatives in Class II if there are no living relatives in Class I. Class I heirs are given priority over Class II heirs in the chronological sequence of intestate succession. If neither Class I nor Class II heirs exist, agnate heirs and cognate heirs follow. The Class I heir includes "*Son; daughter; widow; mother; son of pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a predeceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son*".<sup>5</sup> The Class II heirs include

*"I. Father.*

*II. (1) Son's daughter's son, (2) Son's daughter's daughter, (3) brother, (4) sister. Etc."*<sup>6</sup>

Under the Hindu Succession Act, 1956 (HSA), a Hindu woman's property is classified into three categories: 'property inherited from her mother or father, property inherited from her husband or father-in-law, and third-kind property', which is a property that is not covered by either of the first two categories. Section 15 of the Hindu Succession Act 1956 establishes a plan for the succession of property when a Hindu female dies intestate. According to the Act, the property is divided among the following:

*'a) sons and daughters (including lineal descendants of deceased sons and daughters),*

*b) husband's heirs,*

*c) mother and father,*

*d) father's heirs, and*

*e) mother's heirs.'*

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<sup>4</sup> Hindu Succession Act 1956, s 8

<sup>5</sup> Hindu Succession Act 1956, s 10

<sup>6</sup> Hindu Succession Act 1956, s 11

## LANDMARK AMENDMENT OF 2005- DAUGHTER AS A COPARCENER

With the enactment of The Hindu Succession Act in 1956, the survivorship rule – which states that property only passes to the survivor upon the death of the common ancestor – was introduced. This rule applied to the inheritance of ancestral property. Only male heirs who are within three degrees of the coparcener are entitled to the coparcenary rights on such property. They were referred to as the ancestor's lineal descendants. Before the amendment, Section 6 of the Hindu Succession Act, 1956 said: *“Devolution of interest in coparcenary property- When a Hindu male dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not by this Act”*.<sup>7</sup>

But it was never thought of as true that women and men were the same legal heirs to the ancestral property. She was excluded because, eventually, she would get married and join a different family. The explanation for this was that the wife of a coparcener does not belong to the ancestor's direct bloodline.

The Hindu Succession Act 1956 needed to be amended due to this gender-based discrimination and the suppression of women's fundamental rights. Changes made by the Hindu Succession (Amendment) Act 2005 was that, like their son, a coparcener's daughter must also be one from birth. It established testamentary succession and intestate succession and abolished the survivorship rule-based succession. Both the son and the daughter in a Hindu Undivided Family have the right to request a partition. A daughter may dispose of her portion of the coparcenary property at her independence. It turned out that the Hindu Succession (Amendment) Act of 2005 was more gender-neutral. It eliminated the parts of the 1956 Act related to gender discrimination and the oppression of women's fundamental right to equality. It made it possible for women to inherit the *Mitakshara* coparcenary property and serve as coparceners. Giving women the same rights as men upheld the fundamental principles of the Constitution. However, the Amendment Act had unforeseen consequences that left the law unclear.

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<sup>7</sup> Hindu Succession Act 1956, s 6

Section 6 (a) of the Act states, “*the daughter of a coparcener shall, by birth, become a coparcener in her own right the same manner as the son*”<sup>8</sup> Here the daughter by birth has been recognized as a coparcener and not an adopted daughter which is discriminatory as an adopted son under The Hindu Adoptions and Maintenance Act of 1956 Section 12 ‘Effects of adoption’ “*An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption.*”<sup>9</sup>

This Section defines an adopted son as deemed a naturally born son of an adoptive mother or father and recognized as a coparcener. The word 'child' has created uncertainty as to whether it implies a daughter also, but as the Hindu Succession (Amendment) Act mentions a daughter by birth, it is interpreted that an adopted daughter is not recognized as a coparcener. In the *Prakash v Phulavati*<sup>10</sup> case, the daughter obtained the property from her late father, who had obtained it from his mother-in-law. In the current case, the appellant argued that the respondent was only entitled to the father’s self-acquired property. But at this point, the 2005 Amendment was proposed, and the respondent started claiming their share by the amendment.

According to the Supreme Court, ‘*only living daughters of living fathers could become coparceners*’, and there would be no legal remedy if the father passed away before the Hindu Succession (Amendment) Act, 2005 went into effect. Consequently, the Act could not have any retroactive effect, and if the father had already passed away, the property would pass according to survivorship laws. As a result, a daughter of this type whose father passed away before the Act’s effective date would only be entitled to his independently acquired property, not coparcenary property. In the case of *Danamma v Amar*,<sup>11</sup> the Supreme Court ruled that if the case had been pending before the 2005 Amendment Act, daughters could be considered coparceners and awarded a share in coparcenary property. Furthermore, it made no difference when the daughter was born; the only requirement was that she had to be alive on the day of partition. Due to their contradictions, both cases contributed to additional conflicts. In 2020, the conflict was finally resolved.

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<sup>8</sup> Hindu Succession (Amendment) Act 2005, s 6

<sup>9</sup> Hindu Adoptions and Maintenance Act 1956, s 12

<sup>10</sup> *Prakash v Phulavati* (2015) SCC Online SC 1114

<sup>11</sup> *Danamma v Amar* (2018) 3 SCC 343

The case of *Vineeta Sharma v Rakesh Sharma*<sup>12</sup> In this case, the Supreme Court overruled Phulavati and partially overruled Danamma, holding that the right in coparcenary is granted by birth. Therefore, in this context, a daughter's birthdate is irrelevant. Furthermore, it specified that the father did not have to be living when the 2005 Amendment Act took effect. It concluded that the Act would take effect immediately. In other words, even if the father passed away before 2005, the daughters will still receive a portion of the coparcenary property. The Supreme Court cited the Act's goal of eliminating gender discrimination regarding coparcenary regulations. Therefore, the Act had to be applied retroactively for the purpose to be achieved.

### CONCEPT OF STRIDHAN IN HINDU WOMEN

The historical *Vedas* and commentaries provide sufficient evidence that women could own property. They were not granted such rights. Additionally, the transactions they completed were regarded as invalid. They had two types of property: *non-stridhan* and *stridhan*. The former was separated into *non-saudayika* and *saudayika* categories. Property in the *saudayika* culture was fully owned by women. Gifts from her parents, spouse, and other relatives were included in this category of property. *Non-saudayika* property: after marriage, women's ownership of their *non-saudayika* property was restricted, and alienation required the husband's approval. These items included presents from other people. *Non-stridhan* property: these comprised gifts and assets she inherited from a male or female family member. She could only use such property, so her rights over it were restricted, and she was not allowed to alienate it.

The name *Stridhan* is derived from the words '*Stri*' meaning '*woman*' and '*dhana*' meaning '*property*'. *Stridhan* refers to everything a woman receives during her lifetime. It encompasses all mobile and immovable property presents that women get before marriage, throughout marriage, childbirth, and widowhood. *Stridhan* differs from dowry in that it is a voluntary gift made to a lady before or after marriage, with no element of force. Women have ultimate control over their *Stridhan*. The woman's right to *Stridhan* is legally protected. Section 14 (1) of the Hindu Succession Act of 1956 states, "*Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited*

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<sup>12</sup> *Vineeta Sharma v Rakesh Sharma* (2020) SCC Online SC 641

owner."<sup>13</sup> All forms of property are stated explicitly in the explanation, regardless of the name given to it. It states, " "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or instead of maintenance or arrears of maintenance, or by a gift from any person, whether a relative or not, before, at or after her marriage, or by her skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act."<sup>14</sup> Due to the Hindu Succession Act of 1956, a Hindu woman was granted complete ownership of any property she possessed. This implied that her *saudayika* property, *non-saudayika* property, and *non-stridhan* property were all the same as of this moment. She was, therefore, no longer required to obtain her husband's approval or follow any restrictions, even when it came to property that was not *saudayika* property.

In *Rashmi Kumar v Mahesh Kumar Bhada*<sup>15</sup> (1997), the Supreme Court held that stridhan property does not become joint property of the wife and the husband. The latter has no title or independent dominion over the property. In the case of *Punithavalli Ammal v Ramalingam and Anr*<sup>16</sup>, the Supreme Court ruled that women have an absolute right guaranteed by Section 14(1), which cannot be restricted in any way by legal interpretation or assumption. It further held that the date of possession of such property is immaterial because women who had the property before the law's passage would now have full rights, whereas they had only limited rights before.

In the case of *Pratibha Rani v Suraj Kumar*<sup>17</sup>, the Supreme Court decided that any Hindu woman who marries becomes the sole owner of her *Stridhan* property. She can handle the property however she pleases, and even if she names her husband or in-laws as trustees, she still has the right to demand the property back. If the trustees fail to do so, she may hold them accountable under Section 406 of the Indian Penal Code, which stipulates that a criminal breach of trust is punishable by three years in prison, a fine, or both. This is further defined under Section 405 of the Indian Penal Code.

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<sup>13</sup> Hindu Succession Act 1956, s 14

<sup>14</sup> Hindu Succession Act 1956, s 14

<sup>15</sup> *Rashmi Kumar v Mahesh Kumar Bhada* (1996) 7 SCC 705

<sup>16</sup> *Punithavalli Ammal v Ramalingam and Anr* (1970) 3 SCR 894

<sup>17</sup> *Pratibha Rani v Suraj Kumar* (1985) 2 SCC 370



## SECTION 15 - GENERAL RULES OF SUCCESSION IN THE CASE OF FEMALE HINDUS

Section 15(1) states, *“The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16 —*

*(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*

*(b) secondly, upon the heirs of the husband;*

*(c) thirdly, upon the mother and father;*

*(d) fourthly, upon the heirs of the father and*

*(e) lastly, upon the heirs of the mother”*.<sup>18</sup>

For the property of a Hindu female who died intestate to be devolved, the nature or source of property which she acquired to be known is very important. Here, the word ‘property’ mentioned implies the deceased female’s self-acquired property to be devolved firstly to her children and the husband and secondly, to heirs of the husband this is discriminatory as all her hard-earned property should be devolved to her mother and father which is mentioned in third entry they should be prioritized before the heirs of husband.

It is further stated in 15(2) (a) that *“any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father;”*<sup>19</sup>

The property she acquired from either of her parents will go to her father’s heir. It also stipulates that if a deceased individual acquires property from her mother, the property will be transferred to her father’s heir instead of to her mother’s successor. However, in this case, the mother’s heir should have the power to acquire the property.

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<sup>18</sup> Hindu Succession Act 1956, s 15

<sup>19</sup> Hindu Succession Act 1956, s 15(2)(a)

## THE DISPARITY AMONG THE PROVISIONS

The blood relations of a Hindu woman differ from those under Parsi, Muslim, or Christian law, where a woman's blood relatives inherit even when her husband or her husband's relatives are present and are placed at a lower tier than her husband's descendants. This means that even in situations when there is a distant heir to the husband, her relatives will not be able to inherit. The current state of Hindu law prevents women from disposing of their property in the manner that they would have preferred if they had still been living, notwithstanding their long battle to inherit it. A man's marital status and the source of his property acquisition have no bearing on the devolution of his property. The various categories allude to a woman's possession and ownership. Of her property as its interim custodian since the property reverts to the original owner's family upon her passing.

According to Section 15(1) (b) of the Hindu Succession Act of 1956, if a Hindu lady dies intestate, her husband's heirs inherit her property, this legal bias can lead to economic unfairness since the woman's property, which includes her hard-earned money and contributions to the marital household, may be channeled away from her natal family to her in-laws. Reforming these regulations to ensure equal inheritance rights, as well as raising knowledge about women's *stridhan* rights, are critical steps towards achieving gender equality and justice, including *stridhan*, while her parents are only considered under clause (c) if there are no heirs on the husband's side. This prioritization minimises the importance of a woman's parents, who have supported her throughout her life, reinforcing patriarchal standards and reducing her ties to her natal family. Ironically, whether or not a Hindu lady has children depends on her marital status and where she purchased her property; all have a significant role in determining how her property will be inherited, which can have unintended effects.

According to the Hindu Succession Act of 1956, whatever she earns would be passed on to her husband's heir, i.e., his mother. In the absence of her husband's mother, father, and siblings. But not to her parents or siblings if the husband's parents, siblings, or other distant relatives are still alive. In other cases, although experiencing this, her relatives failed to handle the childless widow properly: following her death, her in-laws owned her self-acquired property rather than her parents. The deceased Hindu woman's parents do not have priority, but her relatives do.

This biased behaviour is not restricted to biological differences between men and women; it also appears to affect the elderly. If a woman of Hindu heritage dies, it is apparent that she will prioritize the interests of her parents over those of her husband.

The wife's parents are likely to be left behind in the line of succession to her property and may never receive the opportunity to inherit it as a result of this clause, in addition to losing their child. A serious issue seems to be present when the woman's self-acquired property goes to her in-laws rather than her parents simply because she is a woman and not a Hindu man or because of her sex. There exist many parents with only one female child who experiences emotional distress and injustice when their lone kid marries and dies because they are not given the opportunities they should have had to grow up. They also begin to experience financial difficulties. The Hindu Succession Act and other associated legislation have always been pragmatic in their pursuit of progressive adjustments towards justice and equality rather than remaining traditional. *Om Prakash v Radha Charan*<sup>20</sup> is a prime illustration of how HSA has failed to demonstrate its reliability. The lawsuit is a dispute about Narayani's property succession following her death. Ramkishori, Narayani's mother, sought a succession certificate according to Section 372 of the Indian Succession Act 1925. The defendants, who were Narayani's husband's brothers, brought an identical petition to inherit her self-owned properties.

Even though Narayani Devi had just recently reached puberty, she was already married. Her spouse soon passed away from a snakebite. The husband's family threw the 15-year-old girl out, believing her to be a terrible omen. Her parents helped to save her. She completed her education and pursued a career in teaching. With her profits, she amassed both movable and immovable estate. After her death, the childless Narayani Devi left behind her mother, who claimed her belongings.<sup>21</sup>

The heirs of her husband, who had not given her any attention or even searched for her while she was living, contested it. Dismissing the mother's assertion, The Supreme Court transferred Narayani Devi's property to her husband's heirs. The Supreme Court rejected Narayani Devi's mother's claim by using the method of succession outlined in Section 15 of the HSA, 1956. The

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<sup>20</sup> *Om Prakash v Radha Charan* (2009) 15 SCC 66

<sup>21</sup> Ananya Singh, 'Succession Under Hindu Law in the Case of a Woman Dying Intestate - a Case of Gender Bias?' (2023) SSRN <<https://dx.doi.org/10.2139/ssrn.4643382>> accessed 10 July 2024

aforementioned circumstances demonstrate how the various intestate succession plans in the event of an intestate Hindu male and female death resulted in the apparent injustice towards Narayani Devi's mother.

The misguided fact in which gender is positioned in social, political, economic, and cultural transactions indicates that legislation is not gender-based and is frequently not even gender-neutral. Gender neutrality is insufficient if it just maintains the prevailing conditions, which are nothing more than the protection of gender discrimination. Women require and deserve legal and societal validation of their equality. For example, Section 15 of the Hindu Succession Act, which governs the sequence of succession in the case of an intestate Hindu lady, should be modified because it reflects a long-standing system of female subjugation. The outcome of this lawsuit is distressing to the conscience. The judges emphasised that sentiments and sympathies should not be used to interpret the law in a way that contradicts the legislature's intent. The court ruled in favour of the respondents, citing the HSA's provision that self-acquired property passes to the husband's heirs in the absence of the spouse and any concerns, which also applied to the Narayani Case. These precedent harms future cases by interpreting the HSA in a way that contradicts the institution's commitment to justice.

The court acknowledged that it could not go beyond the legislature's objective but did not fully support it. Critics argue that the judgment disregards concepts of equity, justice, good conscience, and public policy. Succession laws apply to those entitled to property and those who should not be. The court handed the property to those who were nasty to her and did not sustain the relationship during her most vulnerable time. Respondents recognised their relationship with the plaintiff only when there was a potential benefit. They deserved punishment, not reward. According to Mulla's commentary on Hindu law, the underlying principle is to retain the property within the joint family, which comes first in familial historical order, and prevent it from passing into the hands of people to whom justice requires that it should not pass. This is the basis for the provision of distinct schemes of intestate succession to the properties of a Hindu male and female.

The Hindu Succession Act, 1956's Section 15(2) serves as the foundation for this idea. However, the Apex Court's Judgement in *Omprakash v Radhacharan*, in the Case of Narayani Devi, poses a

legitimate legal question: Does gender justice require a challenge to the conventional foundation of familial historical order to allow for reversionary devolution-based succession in such cases, as provided differently in Sections 8 and 15 of the HSA, 1956. Every citizen is guaranteed fundamental rights under our constitution, regardless of biological or cultural distinctions. The fact that laws such as Art. 15(1) of the HSA serve as formalised vehicles for the discriminatory treatment of married women is extremely depressing. Going one step further, Article 25 (2) (b) grants the State the authority to modify or enact reforms for any issue originating from religious grounds.

In the *Sardar Syedna Taher Saifuddin v The State of Bombay*<sup>22</sup> case, a similar rule was established. The State of Bombay, as stated, laws providing for social welfare and reform are not intended to enable the legislature to reform the religion out of existence or identity. Thus, social welfare and rights are prioritised by the Constitution over religious practices enforced through individual legislation. The HSA amendment from 2005 did not specifically highlight the direct violation of Part III of the Constitution in the circumstances outlined in Section 15 of the Act, affecting the liberties of many of these women’s dependent parents as well as married women. The laws that the provision violates regarding women and seniors are discussed in greater detail below. The Bombay High Court initially dismissed Section 15’s constitutional validity in 1983, saying that it breached both Article 14 and Article 15 of the Indian Constitution. However, in 2012, a Single Division Bench of the same High Court found that the Section breached Articles 14 and 15 of the Constitution.

## **THE CONCEPT OF SELF-ACQUIRED PROPERTY FOR HINDU WOMEN**

Earned property, whether it falls under coparcenary or self-acquired property, and the criteria used to classify property into either category were topics of debate for a long time before the Hindu Gains of Learning Act of 1930 was passed. The patriarchal society in which Karta was the head of the family and made all the decisions is where the Joint Hindu family first emerged. According to Hindu law, a coparcener or a member of a joint family may acquire property on their own. The concept of self-acquisition is summed up in the following test of Yajanvalkya. *“Whatever is acquired by the coparcener himself, without detriment to the father’s estate, as a present*

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<sup>22</sup> *Sardar Syedna Taher Saifuddin v The State of Bombay* (1962) 2 SCR SUPPL. 496

*from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he who recovers hereditary property which has been taken away give it up to coparceners; nor what has been gained by science.”<sup>23</sup>*

The following categories define gains of learning as listed by Katyayana:

1. Anything acquired by demonstrating exceptional learning following the offering of a reward;
2. Anything acquired from a student or through acting as a priest, or for addressing any inquiry or settling a point of argument, or for reciting the Vedas, or by demonstrating one's knowledge or winning a debate;
3. Anything acquired by demonstrating one's superior skill by defeating an opponent in a play;
4. Anything acquired by boasting of knowledge, anything obtained from a student, or by making a sacrifice;
5. Anything acquired by an artist by their creations and performances, or anything they acquire in excess or through prescribed hire; and
6. Anything they acquire through learning superiority, including things they have learned via art and science, sacrifice, or student acquisition.

After this act took effect, the self-acquired property was acknowledged legally. This Act's primary meaning denotes all the qualities that a person acquires via learning. Any kind of education can be used for learning. Self-acquired property is anything an individual obtains through their education, professions, or occupations. The Hindu Gains of Learning Act recognizes that only the person owning property has the right to control the property; not even a member of the Joint Hindu family is permitted to do so. This paper implies the benefits a Hindu female member can use under this Act through her skills or learning where she can independently establish her self-acquired property. It also mentions several important court rulings and individual property rights to examine the benefits of the Hindu Learning Act of 1930 in detail.

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<sup>23</sup> Paras Diwan, *Modern Hindu Law*, (26th edn, Bharat Law House 2023)

## **BEFORE THE HINDU GAINS OF LEARNING ACT**

Since the 2005 amendment, patriarchal property has been passed down from generation to generation with equal rights for men and women. As a result, the parties share joint ownership of the property. None of the individuals can, however, dispose of the coparcenary property. A person is limited to selling their portion of the property. But since the self-acquired property belongs to one person, he can dispose of it as he pleases. There were divergent opinions because the status of self-acquired property was unclear before 1930. There was no independent law that recognized the self-acquired property itself. The previous rule was unfair since it prohibited anyone from owning self-acquired property since it was believed that any property acquired through a joint Hindu family's funds would eventually become a part of the Joint Hindu family. It even covers funding for education. Property earned by an individual through his or her efforts and learnings, even if it had been provided for by the Joint Hindu family, would still be considered joint property.

## **AFTER THE HINDU GAINS OF LEARNING ACT**

This disparity was eliminated in 1930 with the passage of the Hindu Gains of Learning Act. It is stipulated that all benefits resulting from education or training, regardless of the type of training, will belong to the acquirer separately. The Act defines 'training' as any form of instruction that is typically meant to help a person pursue any trade, industry, profession, or avocation in life, and 'learning' as any form of education, whether it be elementary, technical, scientific, special, or general. 'Gains of learning' are defined as acquisitions acquired either before or after the Act's implementation, regardless of whether they represent the typical or exceptional outcome of the learning.

## **PROVISIONS OF THE ACT**

The purpose of this act is to eliminate any uncertainty on the rights of a Hindu individual who has acquired property via learning. Section 1 of the Act defines that it may apply to the whole of India. Section 2 'Definitions' clause (a) states 'acquirer' "*means a member of a Hindu undivided family, who acquires gains of learning*".<sup>24</sup> Clause (b) 'gains of learning' "*means all acquisitions of*

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<sup>24</sup> Hindu Gains of Learning Act 1930, s 2(a)

*property made substantially using learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning".<sup>25</sup> Clause (c) 'learning' "means education, whether elementary, technical, scientific, special or general and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession of avocation in life."<sup>26</sup>*

*Section 3: 'Gains of learning not to be held, not to be separate property of acquirer merely for certain reasons. – Notwithstanding any custom, rule, or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely because of–*

*(a) his learning had been; in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or*

*(b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.'<sup>27</sup>*

Section 3 is significant since it eliminates all the Act's ambiguities and weaknesses. It states that even if a person's education is fully or partially funded by shared property, or even if their family provided for them while they were pursuing their education, the property will still be their own. Section 4 kept some savings in place to ensure that the legislation does not conflict with other laws or policies. Enacting this legislation would not impact the operation of the Transfer of Property Act. Whatever validity or invalidity existed before the Act's commencement. Any division completed before the Act's implementation. Any court cases that were ongoing when the Act commenced.

## **ANALYSIS OF THE ACT - HINDU WOMEN'S RIGHT TO SELF-ACQUIRED PROPERTY THROUGH LEARNING**

The Hindu Gains of Learning Act of 1930 eliminated any doubt or uncertainty regarding self-acquired property. This statute states that a person's self-acquired property is that which they

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<sup>25</sup> Hindu Gains of Learning Act 1930, s 2(b)

<sup>26</sup> Hindu Gains of Learning Act 1930, s 2(c)

<sup>27</sup> Hindu Gains of Learning Act 1930, s 3



have achieved via their efforts and where their learning is predominant. The purpose of this Act was to safeguard each person's rights. In analysis, the statute has been correctly established to give individual's right to enjoy the property as per their wish. It also encouraged the individual to maintain their property acquired through their learning. It also has enhanced the right to enjoy self-acquired property within the purview of Article 21 of the Constitution of India. The Long Title of the Act states '*the rights of a member of a Hindu undivided family in property acquired by him using his learning.*'<sup>28</sup> This implies that the Act has given the rights to the whole members of the Hindu undivided family rather than to the coparceners of the family which is efficiently drafted. The research paper analyzed that the members of the family such as wives, widows, married or widowed or divorced daughters (coparceners by the virtue of the Hindu Succession (Amendment) Act, 2005, as well as members) can have their self-acquired property, through their skills, education which is in very a good initiative for women empowerment. If they desire to earn through their skills and knowledge, any profession they are in will amount to their self-acquired property and will not be dependent upon the other members of the family. All things considered, we can state that passing this legislation is a positive step towards protecting individual rights, for that person to become independent of others and acquire their own identity and possessions via education. Thus, in cases where the money from the joint property is the dominating component, the share will belong to the family property; in cases where the person's services and knowledge are the dominant factors, the property will be his own. The Long Title of the Act mentions the rights of the members of the family which also includes the female members who are not coparceners as well as those who are members and coparceners can through their gains of learning have their self-acquired property leading to their self-employment. Hindu women have frequently found themselves severely impeded in their pursuit of complete independence by long-standing Hindu conventions and regulations. Even, after being amended in 2005, the Hindu Succession Act continues to actively promote unfairness towards Hindu women and their parents. This is because the deceased woman's in-laws receive all her property, and the husband's distant heirs are given precedence over her blood.

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<sup>28</sup> Hindu Gains of Learning Act 1930

## MUSLIM WOMEN'S RIGHTS OF SUCCESSION UNDER MUSLIM LAW

Women's rights are a frequently discussed issue around the world. In Muslim societies, many women are denied the right to inherit property after their parents' death. The Qur'an explicitly states the concept of inheritance of property. The law of inheritance applies after an ancestor dies, not when a person is born. When an ancestor passes away and succession occurs, the heir inherits the property. The method of division of inheritance for Muslims is governed by several Muslim personal laws that are based on pre-Islamic customary succession rules as well as primary scriptural sources such as the Holy Quran, the Sunnah, the Ijma, and the Qiyas. The Islamic inheritance system distinguishes between two types of heirs: Sharers, or Quranic heirs, and conventional heirs, known as residuary. Sunnis in India largely follow the Hanafi school of law. The Hanafi rules seek to create a more harmonious relationship between customary and Quranic law by ensuring that the inclusion of the Quranic class of heirs does not rob the customary heirs of their part, but rather allows only a portion of the inheritance to the Quranic heirs. The standing of the Quranic heirs and the customary heirs in terms of inheritance differs in two ways: If the Quranic heir is closer to the deceased than the customary heir, the Quranic heir receives a piece of the estate first, and the residuary is handed to the customary heir. If the Quranic and customary heirs are equally near, the customary heir receives double the part assigned to the Quranic heir. Furthermore, Sunni law distributes estates per capita, which means that the deceased's inheritance is split similarly among the heirs. Therefore, the number of shares one receives is proportionate to the number of heirs. In a devolution of shares, a husband typically receives 1/2 of a share if there are no children or if a son does not have any children. However, in the same case, a woman is entitled to 1/4 share. If there is a child or child of a son, the husband receives 1/4 of the share, while the wife receives 1/8 of the part. If a daughter is a sharer, she is entitled to 1/2 of the share. However, if there is a son, she will inherit as a residuary and receive half of the son's share. These provisions disproportionately benefit male relatives and severely dilute the rights of women to inherit property. In *Khairunnisabegum v Nafeesunisa Begum*<sup>29</sup>, the Bombay High Court addressed the ability of full sisters to inherit property in the presence of the deceased male's daughter. Based on Hanafi inheritance law, the Court

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<sup>29</sup> *Khairunnisabegum v Nafeesunisa Begum High Court of Bombay (2014) SPECIAL Civ Suit No 229/2009*

determined that a complete sister is a sharer if there are no children or children of a son. If the deceased had a daughter, the daughter's share would take precedence, leaving the sister with a residuary inheritance. The most frequently debated topic with hereditary rights for female heirs is the lack of inheritance that they get, which is half that of male heirs. Female heirs normally receive half of the sum obtained by male heirs. Under Islamic inheritance laws, which are often derived from the Quran and Hadith, inheritance shares are specified differently for men and women, resulting in what many view to be discriminatory effects.

**1. Shares of Daughters v Sons:** According to the Quran, a male's share is equivalent to that of two females. This indicates that if a father dies leaving a son and a daughter, the boy will inherit twice as much as the daughter.

**2. Shares of Parents:** When a deceased person leaves behind children, each parent receives a portion. If there are no children, the mother receives one-third, with the remainder going to other relatives, mainly males. This frequently results in a higher share going to male relatives.

**3. Shares of the Spouses:** A widow receives one-fourth if there are no children and one-eighth if there are children. In contrast, a widower receives half if there are no children and one-fourth if there are children. This mismatch demonstrates that the husband's part is frequently larger than the wife's share.

**4. Sibling Shares:** If someone dies without parents or children, their siblings inherit. A brother receives twice the share of a sister. For example, if an estate is divided among siblings, a brother will receive twice as much as a sister.

**5. Shares of Grandchildren:** When the deceased's children die, their grandchildren can inherit. However, the male grandson's portion will be double that of the female grandchild.

The notion in Islamic inheritance law that males receive twice as much as females stems from historical situations in which men were viewed as the principal financial providers for their families. This law attempted to ensure that men could complete their responsibilities, including providing financial support for wives and children, while women were considered largely as dependents. The allocation was intended to provide women with financial security without forcing them to work, which was progressive in comparison to other modern legal systems in

which women had no inheritance rights. In modern times, this inheritance regulation appears out of date and discriminatory. Women today actively participate in the workforce and make major contributions to household income. The legal distinction of providing males a bigger inheritance portion might foster gender inequality, implying that women's contributions are worth less. This can exacerbate economic gaps and societal norms that devalue women's roles in the home and society. As societies evolve, there is an increasing acknowledgment of the need to evaluate and maybe reform these laws to ensure they represent current values like gender equality and economic independence.

### **THE INDIAN SUCCESSION ACT 1925 FOR CHRISTIANS AND PARSIS WOMEN**

The property inherited by Christians and Parsis is governed through the Indian Succession Act of 1925. In India, women have battled for their property rights for a very long time, and there is still some legal discrimination. The case of *Mary Roy v State of Kerala*<sup>30</sup>, in this instance, Mary, a Christian widow residing at her father's Travancore home, was subjected to coercion and intimidation from her brothers to leave the property. The brothers argued that the Travancore Succession Act, 1916 (the Act) gave them ownership of the property. They cited Section 24 of the Act, which declared that a married daughter who received *Stridhan* had no claim to the property and that a widowed mother had a life interest in it. The Supreme Court opposes the validity of Section 24 of the Act under Article 32 of the Indian Constitution. According to the Supreme Court, which upheld Mary's rights,

Article 14 of the Indian Constitution is violated by Section 24 of the Act. The Indian Constitution overrules all personal laws, and any act that causes any of its provisions unconstitutional is null and void. Instead of the Act, the Indian Succession Act, 1925 will be applicable in this instance; Mary will own one-third of the father's property. Regarding the equal rights of Indian Christian sons and daughters on their father's property, this case turns out to be one of the landmark rulings. It's interesting to note that Christians follow different laws in different regions of the nation. Christians in Travancore, for instance, followed a different set of laws than Christians in Cochin. Whereas Christians in Goa, Daman, and Diu followed Portuguese law, Pondicherry

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<sup>30</sup> *Mary Roy v State of Kerala* (1986) 2 SCC 209

adopted French regulations. By the Indian Succession Act, all these laws were eliminated. However, there are still some Christians in the nation who follow the old laws.

## **RULES OF SUCCESSION FOR CHRISTIAN WOMEN**

The property inherited by Christians is governed through the Indian Succession Act of 1925. A predetermined share is due to a Christian woman. The identity of the deceased's other relatives will determine how much of that share is provided. If the deceased left children, his widow would get one-third of his property, and the children would get the remaining portion. She also gets half of the property. With the remaining portion going to the deceased's other relatives, if the heirs are not the children. She inherits the whole property if there are no other family members or children, the provisions for the same are discussed under Section 32 'Devolution of such property' states that the property of an intestate passes to the surviving spouse or members of the deceased's family in the following order and accordance with the guidelines outlined in this Chapter. Section 33 'Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred' clause (a) states that wherein the widow and any lineal descendants of the intestate have been survived with 1/3 going to the widow and the remaining 2/3 going to his lineal descendants. Clause (b) states that if he has no immediate descendants but has left his widow half of his share to his widow and the other half to people who are kindred to him. Clause (c) states that the entire property would belong to his widow if he left no kindred to inherit it. In case where a female Christian dies intestate he has the same rights over her property as a widow has over her husband's property as defined under Section 35 'Rights of widower'. Section 41 'Rules of distribution where intestate has left no lineal descendants' states that Sections 42 to 48 will govern how his property will be distributed if any widow has been left after the widow's share is deducted. Section 42 'Where intestate's father living' states the intestate's father will inherit the property if he is alive and Section 43 'Where intestate's father dead, but his mother, brothers, and sisters living' states when if the intestate's father has died and mother, siblings, are all still alive and there is no child living of any deceased brother or sister, the property will be inherited in equal shares by the mother and each surviving brother or sister. This means that the mother of the intestate will only get the right to inheritance only after her husband dies, and not when he is still alive as mentioned under Section 44 'Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother

or sister, living' this is discriminatory as she should be allowed to succeed an equal share as her husband's succeeds the entire property of their child. Only when there is no intestate's father, brother, sister, nephew or niece alive and only mother is alive then she is entitled to succeed the entire property under Section 46 'Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.'

## **RULES OF SUCCESSION FOR PARSI WOMEN**

The property inherited by Parsis is governed through the Indian Succession Act of 1925. Section 51 'Division of intestate's property among widow, widower, children, and parents' clause (a) states that if a Parsi passes away, leaving behind a widow or widower and children, each of them receives an equal portion. Clause (b) of the Section states when a Parsi passes away, leaving behind children but neither a widow nor a widower, the children get property in equal shares. Clause (c) states that the property of a Parsi who passes away intestate will be divided so that each parent will receive a share equal to half of each child's share if the Parsi leaves behind one or both parents in addition to children, widows, or widower. In this Section where clause (a) defines equal share to widow or widower and children and clause (b) where the intestate left no widow or widower, but among children property will be equally divided between them, clause (c) is discriminatory as the parents of the deceased intestate are getting the half of the share violating the right of getting an independent share, the mother of intestate has to share her share with her husband and vice-versa, they should be allotted share separately as allotted to widow or widower and children. The mother should be getting an independent share. Section 54 'Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow or widower of any lineal descendant' clause (a) states the widow or widower will inherit half of the property if the intestate leaves a widow or widower but not a widow or widower of any lineal descendants. Clause (b) if the intestate leaves a widow or widower, his widow will receive one-third of the property, and the widow or widower of any lineal descendant will receive another one-third. Clause (c) states one-third of the property will go to the widow or widower of the lineal descendant if the intestate leaves no widow or widower. Clause (d) states that the residue, following the division specified in clause (a), clause (b), or clause (c), shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II the next of kin listed first in Part I of that Schedule shall be preferred to

those listed second, the second to the third, and so on in succession, provided that the property shall be distributed so that each male and female standing in the same degree of propinquity shall receive equal shares. This clause is discriminatory as the property of the parents of the deceased intestate if alive is given as residuary why not consider giving share equal to all? The mother must share her share with her husband and vice versa. The mother's share is bound with her husband if alive. Part I of Schedule II defines if the parents are not alive, the residuary share will be allotted to the full brothers and sisters and should be allotted equally regardless of widow or widower and widow or widower of child of deceased intestate is alive. Similarly, if siblings are not alive, the share will be allotted as per Schedule II. In case there is no widow or widower or any lineal descendants the property will devolve under Section 55 'Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant' the property shall devolve in the order outlined in Part II of Schedule II.

## SUGGESTION

To remove the ongoing hurdles to women's property and inheritance rights, a comprehensive approach must be taken that combines legal reforms, strong enforcement measures, and cultural shifts. One of the primary recommendations is to create a Uniform Civil Code (UCC). A UCC can standardize and integrate the rules governing personal concerns such as marriage, divorce, and inheritance, removing discrepancies caused by the coexistence of multiple legal systems. This standardization is critical for ensuring that women's rights are consistently safeguarded across communities, perhaps reducing the influence of patriarchal attitudes and customary laws that frequently disadvantage women. The following policy should be brought up as a UCC assures that all individuals, regardless of religious or cultural background, are subject to the same rules by establishing a unified legal framework. This can help undermine the legal reasons for gender discrimination and provide women equal access to their property and inheritance rights. Furthermore, a UCC might work as a catalyst for greater societal change by confronting and reforming long-standing patriarchal attitudes and behaviours.

**1. Rights of Widowed Person:** After the death of either of the parties the widowed person along with the children and parents of a widowed person shall have equal rights to have all the

property rights, financial documents, and materialistic objects and each of them should be allotted share equally, the in-laws of the deceased should not be getting the share of the property earned by the deceased during his or her lifetime.

**Exception:**

(1) if neither children nor parents are present, the property shall be equally distributed to siblings of a deceased person or in their absence to their lineal descendants if any.

(2) if neither sibling is present then the property will go to the government.

(3) that the deceased person had already made a statement regarding the transfer of his or her rights to his or her child or his parents or any other person of the family as per his or her choice.

**2. Rights of Children:** After the death of either of the parties whether mother or father the child born out of wedlock, IVF, surrogacy, adoption, voidable and void marriage should be equally divided in case of two or more children and shall have equal rights for the nomination of inheritance of all the property rights held by the deceased person along with their deceased mother or father parents.

**3. Rights of Parents of the Deceased:** After the death of either of the parties, parents of the deceased shall have equal rights to have all the property rights, financial documents, and materialistic objects along with their grandchildren and daughter-in-law or son-in-law property earned by the deceased.

**Provided** that the property inherited by the deceased's parents willingly wanted to transfer to the widowed person or wanted to nominate to their grandchild or any other person of the family as per their choice.

**4. Rights of the Widowed Person in Voidable Marriage:** After the death of either of the parties whose marriage was in the voidable state, the widowed person shall have equal rights to have all the property rights, financial documents, materialistic objects along with his or her in-laws and children property earned by the deceased.

**Provided** that the deceased person had made a statement regarding the transfer of his or her rights to his or her child or any other person as per his or her choice.



**5. Rights of a Legitimate Child born out of Voidable Marriage:** The child may be nominated equally to inherit all the deceased person's property rights, financial records, and material possessions upon the death of either of the individuals whose marriage was in the state of voidable marriage along with the deceased's parents.

**6. Rights of Parents of the Deceased whose Marriage was in the State of Voidable Marriage:** after the death of either of the parties, parents of the deceased shall have equal rights to have all the property rights, financial documents, materialistic objects along with their grandchildren.

**Provided** that the property inherited by the deceased's parents willingly wanted to transfer to the widowed person or wanted to nominate to their grandchild or any other person of the family as per their choice.

**7. Rights of Children born out of Void Marriage or Relationship:** The child may be nominated equally to inherit all the deceased person's property rights, financial records, and material possessions upon the death of either of the individuals whose marriage was in the state of void or was live-in-relationship.

**Provided** that the property inherited by the deceased's parents willingly wanted to transfer to the widowed person or wanted to nominate to their grandchild or any other person of the family as per their choice.

Irrespective of whether a child is born from a valid, void, or voidable marriage the children born out of it whether male or female should be given the right to inherit the deceased parent's property. Gender equality and women's empowerment through legal reforms necessitate robust enforcement mechanisms and public awareness initiatives. Legal reforms must be accompanied by effective implementation techniques, such as educating judicial and law enforcement authorities to handle property and inheritance conflicts sensitively and equitably. Public awareness campaigns are vital for educating women about their rights and empowering them to assert and defend them. In addition, institutional support, such as legal aid services and support centers, can help women navigate the legal system effectively. Furthermore, encouraging women's economic independence is an important step towards achieving gender equality. Ensuring that women have equal access to property and inheritance rights can help

them sustain themselves and their children, invest in education and enterprises, and fully engage in economic activities. This economic empowerment can have far-reaching consequences, promoting overall social and economic development.

## **CONCLUSION**

The study emphasizes that, despite tremendous progress towards gender equality worldwide, women continue to confront severe barriers to exercising their property and inheritance rights. These hurdles are firmly rooted and varied, including socio-cultural, legal, and economic components. Socio-cultural elements, such as patriarchal norms and traditional traditions, frequently influence inheritance customs, overriding statutory rules that promote gender equality. This results in customary laws assuming precedence, which typically disadvantage women. Even progressive legal frameworks are frequently undermined by weak enforcement and societal resistance. Women's lack of awareness of their rights, along with inadequate institutional support, exacerbates these issues, hindering effective property rights realization and prolonging cycles of poverty and gender inequality. As a result, the systemic nature of these impediments necessitates a comprehensive approach to ensuring women's rights are protected and integrated into larger societal practices. Given the systemic nature of these constraints, resolving them requires a comprehensive approach that extends beyond simple legal adjustments. It demands a comprehensive plan that addresses legal, social, and economic issues while also confronting long-held cultural attitudes and conventions. Efforts must be directed toward increasing women's awareness of their rights, enhancing enforcement mechanisms, and creating a supportive institutional framework that enables women to express their rights successfully.