

## ANCESTRAL PROPERTY RIGHTS FOR WOMEN – POLITY

NEWS: Recently, the Supreme Court affirmed that a woman from a tribal community has an **equal right to her family's ancestral property**.

WHAT'S IN THE NEWS?

### Case Background

- Dhaiya (tribal woman) sought partition of her maternal grandmother's property since 1992.
- The **trial court and the first appellate court dismissed** the plea by the legal heirs saying their mother had **no right in the property** of her father.
- Chhattisgarh High Court (2022) denied her claim, citing the **absence of specific customary law granting inheritance rights**.
- **Key Issue: The Hindu Succession Act (HSA) does not apply to Scheduled Tribes.**
  - The Indian Succession Act, 1925, also grants states the power to exclude tribals from its provisions.

### Supreme Court's Ruling (Ram Charan v Sukhram)

- Affirmed **equal inheritance rights** for tribal women in ancestral property.
- **Struck down Chhattisgarh HC's 2022 order** that denied rights citing absence of customary law.
- The Court declared that denying inheritance to women **violates Article 14 (Equality before the law) and Article 15(1) (Prohibition of discrimination on the basis of sex)** of the Constitution.
  - It also referred to **Articles 38 and 46**, which aim to promote justice and eliminate inequality.
- The Court held that in the absence of any specific tribal custom or codified law prohibiting women's rights, courts must apply **"justice, equity, and good conscience."**
- **Observation:** "Customs cannot remain stuck in time" and must not deprive rights.
- **Recommendations:** In the December 2022 case, the SC advised the Centre to **"look into the matter and if required, to amend the provisions of the Hindu Succession Act (HSA)"**.

### What is Ancestral Property?

- Ancestral property refers to assets that are **inherited from one's forefathers**, typically passed down through generations in a family.
- Under **Hindu law**, ancestral property is defined as property inherited **up to Four generations** from the male lineage, and it must remain undivided.
  - Historically, it was considered **joint family property (JFP)**.

- Every legal heir, including sons and, significantly, daughters (after the Hindu Succession (Amendment) Act, 2005), **has a right in it by birth.**
- Such property **cannot be sold or transferred without the consent** of all coparceners.

**Coparcenary** refers to a person who has the capacity to assume a **legal right in his ancestral property by birth.**

### **Historical Context and Evolution of Property Rights for Women (Hindu Law)**

- **Ancient Period:** Most *smritis* like Manusmriti treated women as dependents with only a right to maintenance, not inheritance or ownership rights in family property.
  - Property rights were tied to the performance of funeral oblations, which only sons were considered competent to offer.
- **Mitakshara and Dayabhaga Schools:**
  - **Mitakshara School** (prevalent in most of India) did not recognize women as **coparceners in ancestral JFP.**
    - They were entitled to maintenance and could inherit only in the absence of agnatic males, often holding property as a limited estate (enjoyed only in their lifetime).
  - **Dayabhaga School** (mainly Bengal and Assam) also largely limited women's inheritance to the absence of male heirs, though it did not differentiate between JFP and separate property in the same way Mitakshara did.

### **Constitutional Principles Supporting Women's Property Rights**

- **Article 14 (Equality Before Law):** Guarantees **equality among equals** and prohibits discriminatory treatment, including on the basis of gender.
- **Article 15 (Prohibition of Discrimination on Grounds of Sex):** **Explicitly disallows discrimination against any person on grounds of sex.**
- **Articles 38 and 46 (Directive Principles of State Policy):** These articles point to the “**collective ethos of the Constitution in ensuring that there is no discrimination against women**”.
  - While not directly enforceable, they guide the interpretation and application of laws towards gender justice.
- **Right to Life (Article 21):** Though not directly a property right, the right to livelihood, which is integral to the right to life
- **Special Provisions for Tribal Communities**
  - **Fifth and Sixth Schedules of the Constitution:** Protect the cultural and legal autonomy of tribal communities, allowing them to govern inheritance and property rights by customary practices.

- **Article 371(A) (Special Status for Nagaland):** Safeguards Naga customary law and procedure, meaning no Act of Parliament, including those related to land ownership, applies to Nagaland unless its Legislative Assembly decides so.

### Major Legislative Reforms

- **Hindu Women's Rights to Property Act, 1937:** Conferred new rights on **widows**, entitling them to their husband's property for maintenance, though it was a limited life estate and **did not provide rights to daughters**.
- **Hindu Succession Act (HSA), 1956:** Repealing the 1937 Act and granting **absolute property rights to Hindu women**.
  - It made **daughters, widows, and mothers Class I legal heirs**, eligible to receive property from a deceased male Hindu.
  - However, it initially excluded women from **coparcenary rights** and significantly **curtailed their rights in agricultural land**, making it subject to state-level tenorial laws in several states.
  - **Section 14 of HSA** granted **absolute ownership to Hindu women** over any property they possessed, whether acquired before or after the Act, overriding earlier notions of "limited ownership".
  - **Section 15 of HSA** outlined the order of **succession for a female Hindu dying intestate** (without a will).
  - **Section 30 of HSA** affirmed Hindu **women's legal right** to dispose of their property by will, a right previously limited to men.
- **Hindu Succession (Amendment) Act (HSAA), 2005:** This marked a **revolutionary transformation**.
  - **Equal Coparcenary Rights:** It modified **Section 6 of the HSA 1956**, bringing **all daughters (married or unmarried) on par with sons as equal claimants in JFP by birth**.
  - This right could not be willed away. Daughters could also ask for partition and act as **kartas (managers of JFP)**.
  - **Agricultural Land:** It deleted the discriminatory clause in Section 4(2) of HSA 1956, giving **all Hindu women inheritance rights in agricultural land equal to their brothers**, overriding inconsistent state laws.
  - **Retrospective Application:** The Supreme Court later clarified that **daughters have coparcenary rights by birth, and this right is not dependent on whether their father was alive on September 9, 2005 (the date of the amendment's enactment)**.
    - This "**once a daughter, always a daughter**" principle solidified their claims.

- **Other Laws in India**

- **Muslim Personal Law (Shariat) Application Act, 1937:** Codifies Islamic inheritance, granting daughters a defined share, typically half that of sons.
  - There is no distinction between ancestral and self-acquired property. It also provides for specific shares for mothers and wives.
- **Indian Succession Act, 1925:** Applicable to Christians and Parsis, this Act provides for **equal inheritance rights for sons and daughters**.
- **Special Marriage Act, 1954:** Governs inheritance for individuals marrying outside their community, with gender-neutral inheritance provisions applicable.
- **Protection of Women from Domestic Violence Act, 2005 (PWDVA):** Safeguards women's right to reside in the shared household, regardless of ownership, ensuring they are not forcefully evicted.
- **Hindu Adoption and Maintenance Act (HAMA), 1956:** Section 19 of HAMA allows a daughter-in-law to seek maintenance from her father-in-law under certain conditions, provided he has coparcenary property.

### **Landmark Judicial Interpretations and Precedents**

- **Prakash v. Phulavati (2016):** Initially, the Supreme Court held that a daughter could only claim a **coparcenary** share if her father was alive on September 9, 2005 (the date HSAA 2005 came into effect). This caused significant confusion.
- **Danamma @ Suman Surpur v. Amar (2018):** The Supreme Court adopted a different view, stating that a daughter's right to coparcenary property was a **birth right**, making the father's survival on the amendment date irrelevant. This decision reinforced gender equality.
- **Vineeta Sharma v. Rakesh Sharma (2020):** Holding that **since coparcenary right is vested in a woman at birth, it was not necessary for her father to be alive on September 9, 2005.**
- **Mary Roy v. State of Kerala (1986):** The Supreme Court declared that Christians in former Travancore State (Kerala and Kanyakumari District) are governed by the Indian Succession Act, 1925.
  - It ensures **equal inheritance rights for Christian women** across India, overturning discriminatory local laws.

### **Customary Laws and Constitutional Rights**

- **Customary Laws:** Traditional, community-specific rules governing inheritance and property, often rooted in cultural, religious, or tribal practices.
  - These vary widely across regions and communities in India.
    - **Specific Customary Law: Section 20 of the Santhal Pargana Tenancy Act, 1949,** allows a woman to inherit her father's property if she marries a man and makes him a *ghar-jamai* (**resident son-in-law**) during the father's lifetime.

- This highlights the **conditional nature** of some existing customary provisions compared to the constitutional ideal of equal rights.
- **Constitutional Rights:** Legal guarantees under the Indian Constitution, particularly Articles 14 (equality before law), 15 (non-discrimination), and 21 (right to life and personal liberty), which support gender-equal property rights.

### Customary Laws and Women's Property Rights

- **Patriarchal Bias:** Many customary laws favor male heirs, restricting women's access to ancestral property.
  - **Example:** In some Hindu communities **pre-2005**, daughters were excluded from **coparcenary rights under Mitakshara law**.
  - Tribal customs (e.g., among certain Northeast Indian tribes) often prioritize male lineage for land inheritance.
- **Regional Variations:** Customs differ across communities, e.g., matrilineal systems in Kerala (Nair community) grant women more rights compared to patrilineal systems elsewhere.
- **Religious Influence:** Islamic personal law allocates women a smaller share (e.g., half of a male's share), while some tribal customs exclude women entirely from land ownership.
- **Lack of Codification:** Many customary laws are unwritten, leading to inconsistent application and disputes.

### Significance of Ancestral property rights for women

- **Enhanced Economic Empowerment and Security:** Women's ownership of immovable property, particularly agricultural land, can **significantly improve their economic security** and enable them to overcome financial dependence on male relatives.
- **Improved Well-being and Physical Safety:** Owning immovable assets has been demonstrated to **significantly enhance the well-being of women and their families**.
  - It contributes to women's physical safety, notably by **lowering their risk of domestic violence**.
- **Better Children's Health and Educational Outcomes:** Women's ownership of immovable property is linked to **improved outcomes for their children**, specifically in terms of their health and educational attainment.
- **Increased Agency and Decision-Making Power:** When women hold a stake in ancestral property, they are no longer marginalized in property-related discussions.
  - This participation extends to **active involvement in deliberations concerning the management, utilization, and disposal of assets**.
- **Promotion of Gender Equality and Social Justice:** Legal reforms were enacted with the explicit objective of **eradicating gender-based disparities and rectifying historical injustices** in property ownership, moving towards comprehensive equality.

- Promoting gender equality in land rights is recognized as a crucial target within the United Nations' Sustainable Development Goals (SDGs), aligning with broader objectives related to poverty and hunger eradication.
- **Legal Protection and Redressal of Historical Injustices:** Property rights for women provide **robust legal protection**, safeguarding their assets from infringement and manipulation.
  - These legal frameworks offer a **path for women to seek redressal** against dispossession, coercion, or denial of their rightful share, directly addressing long-standing systemic biases.
- **Contribution to National Development and Economic Growth:** Women's property ownership has been shown to **contribute to a country's economic growth and food security**.
  - A nation's progress is fundamentally contingent on ensuring that its women enjoy **equal rights and opportunities** in all aspects both in principle and in practice.

### Challenges in Implementation and Enforcement

- **Social Barriers:**
  - **Deep-Rooted Patriarchy:** Property ownership viewed as **male prerogative**; women expected to depend on male relatives.
  - **Familial Pressure:** Women pressured to waive claims to **maintain family harmony**, often coerced without full understanding.
  - **Economic Dependency:** Lack of independent income discourages women from challenging patriarchal norms.
  - **Stigma:** Asserting rights can lead to **ostracization, conflict, and social stigma**.
- **Legal and Administrative Barriers:**
  - **Lack of Awareness:** Many rural women are unaware of their legal rights; limited access to education and information.
  - **Limited Legal Aid:** Inadequate access to affordable and quality legal services, especially in rural areas.
  - **Lengthy/Complex Judicial Processes:** Delays, backlogs, and costs deter women; property disputes drag on for years.
  - **Judicial Bias/Ambiguity:** Conflicting rulings and patriarchal predispositions, though improving, can still hinder justice.
  - **Fragmented Legal Framework:** Coexistence of multiple legal systems creates confusion and jurisdictional conflicts.
- **Tribal Communities and the "Test of Hinduisation":**

- **HSA 1956** explicitly excludes Scheduled Tribes (STs) unless notified by Central Government (Section 2(2)).
- Historically, courts adopted a “**test of Hinduisation**” requiring tribal women to prove abandonment of customary laws and adoption of Hindu practices to access HSA provisions.
- **Madhu Kishwar & Ors. v. State of Bihar & Ors (1996)**: Court defended tribal customs, fearing an influx of claims, but recognized livelihood rights for widows. Minority judgment argued inconsistency with fundamental rights.
- **Kartick Oraon v. David Munzi**: ST status remains intact for inheritance even after conversion to Christianity.

### Way Forward

- **Strengthening Legal Reforms**: Extend the **Hindu Succession Act** to all tribal communities, ensuring equal inheritance rights.
- **Improving Awareness: Community-based programs** to raise awareness about women’s inheritance rights, especially in rural and tribal areas.
- **Increasing Access to Legal Aid**: Ensure **affordable legal support** for women to claim their inheritance rights.
- **Encouraging Social Change**: Engage **community leaders** in promoting the adoption of gender-equal inheritance practices.
- **Harmonizing Customary and Statutory Laws**: Ensure that **customary laws** are aligned with **constitutional principles** of equality and non-discrimination.
- **Promoting Gender Equality in Judicial Rulings**: Encourage **judicial consistency** in upholding women’s rights, reducing biases that undermine gender equality.

### Conclusion

Ancestral **property rights for women**, reinforced by **landmark laws and judicial precedents**, mark a significant step toward **gender equality**. However, **bridging the gap** between **constitutional guarantees and customary practices** remains critical to empower women economically and socially.

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