

Property Rights for Women

A Study of Laws & Customs Related to
Property and Inheritance in India
to Promote Pathways to Gender Justice



Property Rights for Women

A Study of Laws & Customs Related
to Property and Inheritance in India
to Promote Pathways to Gender Justice



AKP | ActionAid
Karnataka Projects

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

This study was undertaken by ActionAid Karnataka Projects in collaboration with the Global Partnership Network (GPN). GPN is one of the Centres of Excellence for Exchange and Development funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) through the Higher Education Excellence in Development Cooperation (exceed) program of the German Academic Exchange Service (DAAD).



Deutscher Akademischer Austauschdienst
German Academic Exchange Service

November, 2024



Some rights reserved. This work is licensed under a Creative Commons Attribution Non Commercial-ShareAlike 4.0 International License. Provided they acknowledge the source, users of this content are allowed to remix, tweak, build upon and share for non-commercial purposes under the same original license terms.

Published by

ActionAid Karnataka Projects

Project Office: 5/B Block F

Kailash Colony 110048

New Delhi - 110048

Phone: +91 11 40640553

Contents

<i>Foreword</i>	v
<i>Acknowledgements</i>	vii
Chapter 1: Introduction	1
Chapter 2: Religion, Custom and Law: Women's Property Rights in India	6
Property Rights of Women in India	9
Religion and Custom in Property Succession	10
Property Rights of Hindu Women	11
Property Rights of Muslim Women	15
Property Rights of Christian Women	20
Property Rights of Parsi Women	21
Property Rights of Tribal Women	21
Gender Disparities in Property Law and Custom	26
The Hindu Law of Inheritance	26
Discrepancy Between Law and Reality	31
Regional Variations in Property Rights for Women	32
Tamil Nadu	32
Uttar Pradesh	36
Rajasthan	38
Gujarat	44
Haryana	47
Himachal Pradesh	51
Jharkhand	53
Meghalaya	55

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

The Case of Agricultural Land in India	61
Three Tier Legislative Powers and Land Governance	63
Inheritance of Agricultural Land in Different States	64
Inheritance of Agricultural Land for Women	65
Legal Plurality and Divergent Court Judgments	67
Chapter 3: Experience and Stories:	69
Women's Perceptions of Property Rights Regimes	
Ideology: Negating Women's Inheritance	69
Valorising Tradition: Brother-Sister Bond	71
Inheritance Rights vs Dowry	72
Jamai vs Ghar Jamai	73
Men Deciding Women's Share	73
Challenges to Accessing Inheritance:	74
Women's Access to Property Information	
Inheritance Challenges for Single and Separated Women	76
Levels of Involvement in the Decision-Making Process of the Family	76
Property-Related Violence Against Women	76
Tradition, Stigma and Superstitious Beliefs	78
Access to Legal Redress	79
Awareness of Constitutional, Customary, or	80
Personal Laws Related to Property Rights	
Perspective of Religious Leaders	81
Success Stories	82
Chapter 4: Conclusion and Policy Implications	85
<i>References</i>	93

Foreword

Economic self-sufficiency is crucial for women's emancipation because it enables independence, decision-making power, and freedom from societal constraints. Equality in the world of work and the recognition and enforcement of women's property rights are vital to ensuring women's economic and financial independence. While inaccessibility to property is an immediate concern of women in property-owning households, there is also the challenge of patriarchal structures and values impacting women in households who are acquiring property through housing schemes and land reforms.

In India, the complex web of law, custom and social practice shapes women's right to property. Intestate succession laws — some codified in formal acts, others rooted in uncoded customs, plays a major role regarding property rights when a person dies intestate – that is without making a will.

While precise statistics on the number of individuals in India who die intestate are not readily available, it is widely recognized that a significant portion of the Indian population does not prepare wills, leading to a substantial number of intestate deaths. Consequently, many estates are distributed according to the default rules of intestate succession, which vary based on personal laws applicable to different communities in India. For instance, the Hindu Succession Act, 1956, governs intestate succession for Hindus, Buddhists, Jains, and Sikhs, while Muslims are subject to the Muslim Personal Law (Shariat) Application Act, 1937.

Even when a will exists, the personal laws, to varying degrees, impact the manner in which the will is executed, if objections are raised.

The diverse inheritance framework, and evolving social practice often disadvantages women, especially in terms of land and property rights, highlighting the urgency of securing equitable property rights for women—a central concern in feminist advocacy and essential for achieving the UN Sustainable Development Goals.

This report explores how constitutional, personal, and customary laws impact women's land rights, presenting a comparative analysis to inform policies that could lead to a fairer legal landscape. Structured in eight chapters, it examines

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

the significance of women's property rights, analyses religious and customary inheritance laws, and investigates challenges in agricultural land ownership. Through both legal analysis and insights from, this report aims to support a stronger policy framework for women's equitable access to property across all communities in India.

We hope that this report proves a resource of some value to researchers, activists and policy makers involved in the intersection of property rights and gender, and serve to advance gender equality in the realm of property ownership and inheritance.

All comments and suggestions are always welcome.

Sandeep Chachra

President & Secretary

ActionAid Karnataka Projects

Acknowledgements

This research has been enriched by the experiences and insights of the women from various communities who participated in the focus group discussions and in-depth interviews held at multiple locations across Gujarat, Haryana, Himachal Pradesh, Jharkhand, Kerala, Meghalaya, Nagaland, Rajasthan, Tamil Nadu and Uttar Pradesh. These interactions would not have been possible without the community leaders and activists who brought the participants together. We extend our gratitude to the social and ecological rights defenders Badru Nishat Hussain, Beenu Singh, Jahanara, Mahajan Ali, Mohd Yusuf, Prem Kumar Nat, Sumitraben, Yashodaben and all the other defenders who tirelessly struggle for achieving women's land rights.

We would like to thank the research consultants Aditthya Prakash, Akeina, Dorafiona, Firoz Siddiqui, Leangchi, Mayfereen, Nitu Prasad, Pravin Kumar, Sharifa Banu, Sumitra Sharma, Tosang, Vanessa Peter. They led the focus group discussions and the in-depth interviews and wrote up the reports that constitute the original research behind this report.

We thank the colleagues who led these efforts in the respective states and regions, especially Ali Faraz, Esther Mariaselvam, Jaisree Kumar, Khalid Chaudhry, Mashkoor Alam, Mathai Joseph, Mrinal Gohain, Rehana Rehman, Saurabh Kumar, Sion Kongari, Susheela Prajapati and Tanveer Kazi.

The research effort and the report writing, including the review of literature was anchored by the policy research team, Iyca Malhotra, Koustav Majumdar, LakshyaYog, Prem Ranjan and Utkarsh Kumar. We offer them grateful thanks.

Through the whole Thank you to Ali Faraz, Dipali Sharma, Esther Mariaselvam, Jaisree Kumar, Khalid Chaudhry, Mashkoor Alam, Mathai Joseph, Mrinal Gohain, Rehana Rehman, Saurabh Kumar, Sion Kongari, Susheela Prajapati, Tanveer Kazi.

Sandeep Chachra, Dipali Sharma and Malini Nambiar have provided guidance and direction throughout. Joseph Mathai and MV Rajeevan have helped bring out this publication.

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

This research and report have been supported by the Global Partnership Network (GPN). The GPN is one of the Centres of Excellence for Exchange and Development funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) through the Higher Education Excellence in Development Cooperation (Exceed) Program of the German Academic Exchange Service (DAAD). We would like to thank Dr. Elisabeth Tuijthof, Professor in Kessel University, a major collaborator with GPN, for agreeing to partner with ActionAid Karnataka Projects on this study. We are grateful to Ms. Simone Buckel, Kessel University, Global Partnership Network (GPN) for all the support she continues to provide

Chapter 1

Introduction

Intestate succession in India is governed by a complex framework of laws, some of which are codified in various Acts, while others remain uncoded yet protected by the Indian Constitution. These laws come into play when a person dies without leaving a legally enforceable will, with the applicable succession rules varying based on the deceased's religious and ethnic background.

For individuals identifying as Hindu, Sikh, Buddhist, or Jain, the Hindu Succession Act (HSA) of 1956, along with its 2005 amendment, dictates the rules of intestate succession. This law also applies to anyone who is not a Muslim, Christian, Parsi, or Jew. In contrast, Muslims follow distinct, uncoded personal laws for Shia and Sunni communities. Christians, on the other hand, are guided by the Indian Succession Act of 1925.

The Indian Constitution extends special protection to Scheduled Tribes, allowing them to maintain their customs and traditions, which include their own customary inheritance laws. These laws are essentially a set of practices that have gained the force of law through long-standing, consistent observance within a community. These traditions are deeply ingrained in tribal identities and include rules, enforcement mechanisms, and penalties for breaches. The Indian Constitution acknowledges these customs through provisions like the Sixth Schedule and specific amendments, such as Article 371A for Nagaland and Article 371G for Mizoram. The Sixth Schedule grants certain tribal areas in the northeastern states of Assam, Tripura, Meghalaya, and Manipur, as well as some parts of West Bengal and Ladakh, the autonomy to govern themselves, including the authority to establish their own inheritance laws. Similarly, the Fifth Schedule, which covers tribal regions in ten states including Andhra Pradesh, Telangana, Gujarat, Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha, and Rajasthan, upholds indigenous customary laws of intestate inheritance through the Panchayats (Extension to Scheduled Areas) Act of 1996.

The patchwork of intestate inheritance laws in India—sometimes confusing and occasionally overlapping—has significant implications for women's property rights. Securing these rights is central to feminist advocacy and crucial for achieving the

UN Sustainable Development Goals. This research project will delve into the various constitutional, personal, and customary laws governing intestate inheritance, focusing on how these legal frameworks often disadvantage women, particularly in terms of land ownership and property rights. The study aims to offer a comparative analysis of these diverse legal provisions and develop a policy framework that ensures equitable property rights for women across all communities in India.

This report is structured into four comprehensive chapters, each addressing key aspects of women's property rights in India. The first chapter provides a brief introduction, emphasising the critical importance of property rights for women and the legal frameworks that govern them. It sets the stage for understanding the necessity of these rights and their implications for gender equality.

Moving into the second chapter, the focus shifts to the specific property rights of women in India, exploring the existing legal landscape and how it shapes women's access to and control over property. The chapter goes on to examine the influence of religion on property rights, offering a detailed exploration of how these rights differ for Hindu, Muslim, Christian, Parsi, and Tribal women. This section of the chapter is divided into subsections that provide an in-depth analysis of the various religious laws and customs that govern inheritance and property ownership, highlighting the disparities that exist across different communities.

The second chapter goes on to provide a thorough analysis of how personal and customary laws often conflict with constitutional provisions. By comparing the provisions of these personal laws with the constitutional guarantees, the report underscores the ways in which these laws can be discriminatory. This section also draws on landmark judgments from the Supreme Court and High Courts, as well as ActionAid's own fieldwork, including focus group discussions (FGDs), to emphasise the often discriminatory nature of personal and customary laws, especially for those communities where adequate secondary literature and court cases are lacking.

A significant portion of the second chapter is dedicated to the issue of agricultural land—a major element of property rights. Given the complexity of state-specific inheritance laws, this section offers a nuanced examination of the challenges women face in inheriting and owning agricultural land. The unique nature of these laws across different states adds layers of complexity, which are explored in depth.

The findings from both secondary literature and on-the-ground FGDs are presented in the third chapter, offering a comprehensive overview of the current state of

women's property rights. This chapter synthesizes the research and fieldwork to provide a clear picture of the issues at hand.

Finally, the fourth chapter discusses the policy implications of these findings and offers a concluding summary. The chapter also outlines the necessary steps for creating a more equitable legal framework for women's property rights in India.

Overall, this report is an invaluable resource for anyone involved in the intersection of property rights and gender, including policymakers, researchers, activists, economists, lawyers, and others working to advance gender equality in the realm of property ownership and inheritance.

Chapter 2

Religion, Custom and Law: Women's Property Rights in India

Property rights have long been recognised as a critical factor in fostering economic development and social empowerment. For women, in particular, these rights are essential, as they directly influence their ability to secure economic independence, engage in decision-making processes, and achieve social mobility. The empowerment of women through property rights has been linked to broader societal benefits, including poverty reduction, improved health outcomes, and enhanced educational opportunities.

Traditional economic structures have often marginalised women by limiting their access to resources, including property. Feminist economic theorists have critiqued this gendered nature of property ownership as a tool of patriarchy, maintaining women in subordinate positions within society. Bina Agarwal, a prominent feminist economist, has highlighted how the exclusion of women from land and property ownership has historically reinforced gender inequalities. By securing property rights, women can challenge these entrenched structures, gain financial independence, and contribute to household and community welfare on an equal footing with men¹.

Property ownership among women has also been linked to poverty reduction, particularly in rural areas. Research conducted by the World Bank indicates that when women own property, there is a significant increase in household welfare. Women's control over land and other assets leads to better resource allocation within households, which in turn results in improved food security, health, and education outcomes for children. This aligns with the microcredit model, which suggests that empowering women financially leads to more effective poverty alleviation at the grassroots level².

-
1. Agarwal, B. (1994). *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge University Press.
 2. World Bank. (2014). *Voice and Agency: Empowering Women and Girls for Shared Prosperity*. World Bank Group.

From a political perspective, the importance of property rights for women can be analysed through various political theories. Liberal feminist theories, which are rooted in the principles of individual rights and equality before the law, argue that property rights are essential for achieving gender equality. The denial of property rights to women is viewed as a violation of their fundamental rights, and legal reforms aimed at ensuring equal property rights for women reflect the broader liberal agenda of dismantling institutional barriers to gender equality. This perspective emphasises the need for legal systems to protect women's property rights as a means of ensuring their full participation in society (Locke, 1689).

Social contract theories, particularly those of John Locke, emphasise the protection of private property as a fundamental role of the state. In a modern context, extending this protection to women is seen as essential for their participation in the social contract as equal citizens. The ability to own and control property empowers women to engage fully in civil society, participate in political processes, and hold the state accountable. Thus, securing property rights for women is not only a matter of economic necessity but also a fundamental political right (Locke, 1689).

Marxist and socialist feminist theories provide a different perspective by linking property rights to class structures and the capitalist mode of production. These theories critique the ways in which private property has historically been used to perpetuate class and gender inequalities. Friedrich Engels, for example, argued that the institution of private property was intrinsically linked to the subjugation of women. However, within the current capitalist framework, securing property rights for women can be a tool for challenging these inequalities. Women's ownership of property disrupts the traditional patriarchal family structure and contributes to the redistribution of wealth and power (Engels, 1884).

The social and cultural implications of property rights for women cannot be overlooked. In many societies, customary laws have traditionally restricted women's access to property, particularly land. These customary laws are often deeply entrenched in the social fabric and reflect patriarchal norms that view women as dependents rather than independent agents. However, the recognition of women's property rights within these frameworks is crucial for their social empowerment. Legal reforms that integrate women's property rights into customary practices can lead to shifts in social norms, gradually transforming gender relations and enhancing the status of women in society (Agarwal, 1994).

The concept of intersectionality, developed by Kimberlé Crenshaw, adds another layer of complexity to the discussion of women's property rights. Intersectionality highlights how various forms of discrimination—such as those based on race,

class, and ethnicity—intersect and compound the challenges faced by women. In the context of property rights, women from marginalised communities often face additional barriers, including systemic discrimination, lack of legal awareness, and socio-economic disadvantages. Addressing these barriers requires an intersectional approach that considers the unique challenges faced by women of different backgrounds. Policies promoting property rights for women must therefore be inclusive, ensuring that all women, regardless of their social identity, benefit from these rights³.

The significance of property rights in economic development has been extensively discussed in economic theories. Amartya Sen's capability approach, for instance, posits that access to resources, including property, expands an individual's capabilities, allowing them to lead the life they value. For women, property ownership can be transformative, enabling them to engage in entrepreneurial activities, access credit, and invest in their children's education, thus improving their family's overall well-being. Hernando de Soto's concept of "dead capital" further emphasises the importance of formal property rights. He argues that without legal recognition, assets remain "dead capital"—unable to be leveraged for economic activity. For women, who often lack formal recognition of property ownership, this concept underscores the importance of securing property rights to unlock economic potential⁴.

The recognition of women's property rights is a crucial issue for development. These rights can significantly affect decision-making, income sharing, asset acquisition, and women's roles within their communities. Land ownership is particularly vital for women in the event of family disruptions, such as desertion, divorce, polygamy, illness, or death.

Women's roles are closely linked to the sustenance of families, communities, and nations (Kevane & Gray, 1999). Globally, around 41% of female-headed households fall below the poverty line, and approximately one-third of women worldwide lack adequate housing. The lack of land access exacerbates this issue, often forcing women into urban areas where they join the growing number of female-headed households in slums (Benschop & Marjolein, 2004). The trends of globalisation and industrialisation have increased the number of women entering waged labour sectors (United Nations Statistics Division, *The World's Women*, 2000).

3. Crenshaw, K. (1989). *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. University of Chicago Legal Forum.

4. de Soto, H. (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Basic Books.

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

When discussing women's property rights, it is important to consider class differences among women. Many women are not part of the working class, and there are significant disparities among women from different socio-economic backgrounds. This is especially apparent today as education and evolving values empower women from certain classes.

Agarwal (1994) observed that a woman's social status is often determined by the men in her life, particularly through marriage. A husband's property can elevate her status, while widowhood or divorce can diminish it. She highlights common challenges faced by women across different classes, such as vulnerability to violence, responsibility for domestic work and childcare, legal gender inequalities, and the economic risks associated with marital breakdowns. Even women from affluent peasant families can find themselves destitute and seeking wage labour due to their lack of property and economic vulnerability.

In Indian society, the inheritance system has traditionally aimed to preserve property, especially land, for male heirs. In practice, family allocations are influenced by a patriarchal culture rooted in patrilineal and patrilocal practices, which shape women's roles in both economic and non-economic spheres. Women's rights are mediated through family relationships and their deeply ingrained perceptions of their roles, interests, and well-being within the family (Sen, 1990).

A woman's right to access and control property is closely tied to her overall living conditions, economic security, and physical safety. Gender discrimination correlates with lower per capita income, life expectancy, and literacy rates. The issue of gender inequality stems from deep-seated cultural biases against women.

During the Vedic period, women were highly regarded and enjoyed various rights and privileges, sharing equal rights and responsibilities with their husbands^{5,6}. The only significant discrimination they faced was in inheritance matters, though they were never completely excluded from inheriting.

Succession law, a branch of property law, intersects with land law, trusts, personal property, and family law. The disparity in women's rights compared to men's in Indian personal laws is often justified by the sanctity of religious law. However, changes over the decades suggest a selective application of this sanctity argument.

5. |10.2307/43951878-Sci_hub. (n.d.-c). <https://www.wellesu.com/https://www.jstor.org/stable/43951878>

6. Untitled. (n.d.). https://ncwapps.nic.in/pdfReports/PROPERTY_RIGHTS_OF_WOMEN_IN_TAMIL%20NADU.pdf

Ensuring women's property and inheritance rights can alleviate the economic hardships faced by women and their households, fostering economic security and empowerment. This, in turn, reduces their vulnerability to domestic violence, unsafe sex, and other health risks.

Historically, women have been marginalised in property inheritance, posing a significant barrier to achieving gender equality. To address this issue, the Government of India has established specific institutions, including the National Commission for Women and the Ministry of Women and Child Development. Additionally, India adheres to guidelines set forth in various international legal instruments, viz:

- » International Covenants on Economic, Social, and Cultural Rights and on Civil and Political Rights.
- » United Nations Commission on Human Rights Resolution 2002/49.
- » International Conventions like the Convention on Elimination of All Forms of Racial Discrimination (CERD) 1965,
- » The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979⁷.

Property Rights of Women in India

Under the Indian Constitution, both the Central and State governments have the authority to legislate on matters of succession. Consequently, some states have introduced their own variations of property laws within each personal law, resulting in a lack of uniform property rights for Indian women. Each religious community follows its own personal laws, and within these groups, various subgroups and local customs further influence property rights. Property rights are typically viewed narrowly as the right to fully and exclusively control a resource.

Meinzen-Dick et al. (2005) suggest that property rights are more accurately understood as overlapping "bundles"⁸ of rights, which can be broadly categorised into use rights and control or decision-making rights⁹.

7. Changing Rights Of Women under Hindu Law : Marriage, Property and Adoption - Simple Kanoon.
<https://www.simplekanoon.com/family-law/women-rights-under-hindu-law-537/>

8. Bundle implies several other endowments such as: food security, resistance to risk etc.

9. https://www.researchgate.net/publication/42764751_Property_Rights_Collective_Action_and_Technologies_for_Natural_Resource_Management_A_Conceptual_Framework

Hindus, Sikhs, Buddhists, and Jains follow a unified code of property rights under the Hindu Succession Act of 1956. In contrast, Christians are governed by the Indian Succession Act of 1925, while Muslims, including both Shias and Sunnis, do not have codified property rights. Tribal women across different religions and states are still subject to the customs and norms of their tribes. Some tribal cultures also have liberal attitudes towards divorce and remarriage for women. However, in most tribes, property, especially land, is inherited through the male lineage, and women do not have inheritance rights to land (Swati Sharma, 2007).

Due to the limitations and frequent violations of women's property inheritance rights, Hindu Personal laws were significantly reformed in the mid-1950s. These changes included banning polygamy and granting women rights to inheritance, adoption, and divorce. Under Hindu law, sons have an independent claim to ancestral property, while daughters' shares depend on what their fathers receive. Consequently, a father can disinherit a daughter by renouncing his share of the ancestral property, yet a son retains his share independently. Moreover, married daughters, even those enduring marital harassment, do not have residential rights in their ancestral homes.

The issue of inheritance rights became problematic, particularly with immovable property like land. Women were often excluded from inheriting such property because patriarchal norms aimed to keep properties within the family. The *Mitakshara* school of thought, though somewhat more progressive, acknowledged that women's inherited property could be considered *stridhan* (Banerjee, 1915). This issue remains highly relevant today, as it continues to deny women access to land, which is the most crucial productive resource in the Indian economy. Widows typically had the right to maintenance from their husband's heirs but received little to no share of the family property, unless the husband had already separated from the joint family.

Muslim personal laws, which permit polygamy, differ significantly from Hindu laws. Despite various laws designed to protect women's rights, traditional patriarchal attitudes continue to prevail.

Religion and Custom in Property Succession

Religion significantly influences property succession in India, with the personal laws of religious communities largely based on their respective scriptures¹⁰. In earlier

10. Right of Hindu Women in Property - 2022 20222222. <https://vakilakbarian.ir/right-of-hindu-women-in-property/>

times, succession laws were mostly unwritten and followed community traditions. As society progressed, governments began codifying these laws, often drawing on existing traditional practices. This process led to a lack of uniformity in succession laws. Religion has played a crucial role in shaping these laws, which, when codified separately for different religions, often neglected women and granted them unequal status.

During the British colonial period, several enactments aimed at improving the status of women were introduced, including the Married Women's Property Act of 1874, the Hindu Disposition of Property Act of 1916, the Hindu Inheritance (Removal of Disabilities) Act of 1928, the Transfer of Property Act of 1882, the Indian Succession Act of 1925, the Cochin Christian Succession Act of 1902, the Hindu Women's Rights to Property Act of 1937, the Muslim Personal Law (Shariat) Application Act of 1937, and the Mussalman Waqf Validating Act of 1913. After gaining independence, the Indian government retained most of these laws, resulting in citizens being governed by the religious laws of their respective communities.

Property Rights of Hindu Women

The property rights of Hindu women in India vary significantly based on their marital status—whether they are daughters, married, unmarried, deserted wives, widows, or mothers—and the nature of the property itself, whether it is inherited, acquired, a piece of land, a house, or matrimonial property. Before the 1956 Act, Hindu laws were shaped by diverse regional *Shastric* and customary laws, which varied even within the same region and sometimes across castes due to the vastness of the country and limited communication in the past. This diversity extended to succession laws, governed by different schools such as Dayabhaga in Bengal, Mayukha in Bombay, Konkan and Gujarat, *Marumakkattayam* or *Nambudri* in Kerala, and *Mitakshara* in other parts of India, each with nuanced differences.

The multitude of succession laws in India, stemming from diverse origins, added layers of complexity to property laws. During the pre-independence era, the social reform movement highlighted gender discrimination, prompting various initiatives. A key reform advocated for equitable distribution between male and female heirs in succession, aiming to elevate Hindu women from limited estates to full ownership rights. Despite these efforts, the realisation of absolute ownership remained confined largely to *stridhan*, which denotes women's property.

Under the *Mitakshara* tradition, upon birth, a son gains a right and interest in the family property. Sons, grandsons, and great-grandsons form a group of coparceners by virtue of their birth into the family. However, women are not considered

members of the coparcenary under this tradition. Coparcenary refers to a specific group within a joint family structure, typically comprising a father, his sons, and their male descendants. Within this system, joint family property passes through survivorship within the coparcenary. This means that with each birth or death of a male member, the shares of surviving males either diminish or expand. For example, if a coparcenary consists of a father and his two sons, each would initially own one-third of the property. However, upon the birth of another son, each male's share would decrease to one-fourth. Additionally, the *Mitakshara* tradition recognises inheritance by succession, which applies to property individually owned by males or females. Females are included as heirs to such individually owned property.

In various sub-schools of the *Mitakshara* tradition such as Bengal, Benaras, and Mithila, inheritance rights for females were limited to five specific relations: widows, daughters, mothers, paternal grandmothers, and paternal great-grandmothers. On the other hand, the Madras sub-school expanded the scope by recognising additional female heirs, including the son's daughter, daughter's daughter, and sister, all explicitly listed in the Hindu Law of Inheritance Act, 1929. In Bombay, which was notably more progressive towards women, the school acknowledged a broader range of female heirs, including half-sisters, paternal aunts, and women who married into the family such as stepmothers, daughters-in-law, and sisters-in-law. This classification also included other female relatives designated as *bandhus* under their inheritance laws.

Hindu Law of Inheritance Act, 1929

This Act marked a significant milestone by including women in the inheritance framework, granting inheritance rights to three female heirs: the son's daughter, daughter's daughter, and sister.

Hindu Women's Right to Property Act (XVIII of), 1937

This landmark legislation granted ownership rights to women and ushered in sweeping changes across all schools of Hindu law. It revolutionised not only coparcenary laws but also provisions concerning property partition, alienation, inheritance, and adoption. The 1937 Act allowed widows to inherit property alongside sons, granting them an equal share. However, despite this significant step, widows did not attain coparcenary status, retaining only a limited estate in the deceased's property with the right to seek partition. Daughters, on the other hand, had minimal inheritance rights. Despite these reforms introducing new succession rights for some women, they were criticised for inconsistencies and shortcomings that perpetuated gender discrimination in many aspects of inheritance law.

The Hindu Succession Act, 1956

The Hindu Succession Act of 1956 represented a pivotal step in establishing a unified and comprehensive framework for inheritance among Hindus, addressing long-standing gender disparities in inheritance rights. It marked both a codification and reform initiative, being the first post-independence legislation governing property rights within Hindu communities. The Act was enacted to standardise laws governing intestate succession across India, applicable universally to Hindus, Buddhists, Jains, and Sikhs, except in Jammu and Kashmir.

The Hindu Succession Act of 1956 applied to both the *Mitakshara* and *Dayabhaga* systems. However, the *Mitakshara* system continued to exclude females from coparcenary ownership, preventing them from inheriting ancestral property on an equal basis with males. In cases of division within a joint family, each male coparcener received a share, while females received nothing initially. Only upon the death of a coparcener would a female inherit a portion of his share as a legal heir. This exclusion of daughters from coparcenary ownership, based solely on gender, perpetuated inequality and denied them fundamental rights guaranteed by the Constitution. Consequently, this situation necessitated further reform in women's property rights, which was addressed by the Hindu Succession (Amendment) Act of 2005.

The Hindu Succession (Amendment) Act, 2005

The Hindu Succession (Amendment) Act of 2005 introduced two significant changes to the Hindu Succession Act of 1956. Firstly, it eliminated gender discrimination present in Section 6 of the original law. This amendment ensured that both male and female heirs had equal rights to inherit ancestral property under *Mitakshara* coparcenary. Secondly, the amendment removed Section 23 of the original Act, which previously prevented female heirs from seeking partition of a joint family dwelling house unless male heirs chose to divide their shares.

Regarding the devolution of interest in *Mitakshara* coparcenary property, if a male Hindu dies after the commencement of this Act and leaves behind a female relative specified in Class I of the Schedule, or a male relative claiming through such a female relative, the deceased's interest in the coparcenary property will devolve according to testamentary or intestate succession rules, rather than by survivorship¹¹.

The Hindu Succession (Amendment) Act of 2005 marked a significant milestone, addressing long-standing gender inequalities within the 1956 Hindu Succession Act.

11. Law Finder !!: <https://lawfinderlive.com/bts4/hindulaw.htm?AspxAutoDetectCookieSupport=1>

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

The amendment tackled disparities across various aspects including agricultural land, Mitakshara joint family property, parental dwelling houses, and specific widow's rights. The following crucial changes were introduced by the Amendment

- » It granted daughters of coparceners in a Joint Hindu Family governed by Mitakshara law the status of coparceners by birth.
- » Daughters now enjoyed equal rights in coparcenary property as sons, including rights and liabilities.
- » The amendment clarified that any disposition or alienation of property before December 20, 2004, remained valid.
- » Property acquired by a female Hindu under this amendment was treated as coparcenary property, allowing her to dispose of it through testamentary disposition.
- » Upon the death of a Hindu male after this amendment, his interest in Joint Hindu Family property governed by the Mitakshara tradition devolved through testamentary or intestate succession, not survivorship.
- » The coparcenary property was deemed to be divided as if a partition had occurred, with daughters entitled to the same share as sons. Additionally, shares of pre-deceased sons or daughters were allotted to their surviving children.

This amendment represented a significant step towards gender equality in inheritance laws, ensuring daughters have equal rights in ancestral property under *Mitakshara* coparcenary.

Property Succession of Hindu Women

While the Hindu woman's limited estate has been abolished, granting her absolute authority over all forms of property during her lifetime—including the ability to dispose of it through a will—the source of the property remains crucial for intestate succession purposes. A Hindu female's property is categorised into three main types for succession:

1. Property inherited from her father or mother.
2. Property inherited from her husband or father-in-law.
3. Property acquired through any other means, whether by inheritance or otherwise.

Property Rights of Muslim Women

Islamic Law

Property rights of Muslim women in India are distinct and are governed by the Islamic Law of Succession derived from the teachings of the Holy Quran. Muslims in India adhere to either the Sunnite or Shiite schools of thought, with the Sunnite branch being further divided into Hanafi, Shafi, Maliki, and Hanbali sub-schools. Commonly referred to as 'Sunnī' or 'Shia' Law in the Indian subcontinent, these legal frameworks were reaffirmed by the Shariat Act of 1937, which reinstated Personal Law over customary practices for Muslims in personal and property matters.

Islamic inheritance principles differ significantly from Hindu Law in three main aspects: firstly, the Quran specifies shares for particular individuals; secondly, the remaining assets pass to agnatic (male lineage) heirs, then uterine heirs if agnatic heirs are absent; and thirdly, the owner can allocate a maximum of one-third of their estate through a will, with the rest distributed according to Islamic inheritance rules.

According to Paras Diwan (2001), Muslim Law of Succession remains non-codified and does not involve the partition of inherited property. Inheritance rights are activated only upon the death of the ancestor, at which point the property transfers to the heirs. This legal framework adheres strictly to the principles laid out in the Holy Quran. Notably, gender does not exclude any woman from inheritance; all women enjoy equal rights to inherit and share in the deceased's property.

Islamic Principles of Succession According to the Prophet

1. Husband and wives, being equal, are entitled to inherit to each other.
2. Some close female relatives and cognates are also recognised and enumerated as heirs.
3. Parents and certain other ascendants are made heirs even when there are descendants.
4. The newly created heirs are given specified shares along with customary heirs, who are residuary.

Inheritance According to Hanafi Law

Under the Hanafi Law of Inheritance, heirs are categorised into three groups:

1. Sharers
2. Residuary heirs
3. Distant kindred

1. Sharers

These individuals are entitled to receive a designated share as prescribed by the Quran, allocated to them based on a specific order of preference and method of succession.

2. Residuary

They are individuals who do not receive a specific allocated share but inherit the remaining estate after fulfilling the entitlements of the sharers. Once the sharers' claims have been settled, the residue is distributed among the residuary heirs.

3. Distant Kindred

They are the relatives by blood who do not fall under the categories of sharers or residuary heirs. This group comprises cognates of the deceased, who are related through a female lineage. They inherit only after the entitlements of sharers and residuary heirs have been fulfilled.

Inheritance According to Shia Law

According to Shia Law, heirs to property are divided into two groups, namely: heirs by consanguinity or asaba, i.e., by blood relations. They consist of;

1.1 Parents.

1.2 Children and other lineal descendants, however low.

2.1 Grandparents, however high.

2.2 Brother and sisters and their descendants, however low.

3.1 Paternal uncles and aunts of the deceased, and of his parents and grandparents, however high, and their descendants, however low.

3.2 Maternal uncles and aunts of the deceased, and his parents and grandparents, however high, and their descendants, however low.

Of these three groups of heirs, the first excludes the second from inheritance and the second excludes the third. Among the Shias, there is no separate class of heirs corresponding to the Distant Kindred of Sunni Law.

The sharers of property, according to Shia Law, are nine in number – (i) Husband; (ii) Wife; (iii) Father; (iv) Mother; (v) Daughter; (vi) Full sister; (vii) Consanguine sister; (viii) Uterine brother, and (ix) Uterine sister. The descendants of these sharers, regardless of how distant, are also considered sharers. Residuary heirs include all heirs who are not sharers. Their descendants, no matter how distant, are also residuary heirs. Sons, brother, uncles and aunts fall under the category of residuary heirs. Their descendants, therefore, are also residuary heirs.

Islamic inheritance laws differ significantly from Hindu succession laws, notably in their lack of distinction between ancestral and self-acquired property, as well as movable and immovable assets. Under Islamic law, no individual can inherit property from their ancestors while they are still alive. Inheritance rights only arise upon the death of the ancestor. Unlike Hindu law, there is no concept of a joint family, and no presumption of shared property among family members, even if they live, eat, and worship together. Rights are strictly individual, and marriage does not merge a wife's property with her husband's, unlike historical English law.

Islamic inheritance laws are often perceived as complex, but this complexity stems from their precision. There are three main categories of heirs: 'Sharers', who receive a fixed portion of the estate as prescribed by the Quran; 'Residuaries', who inherit the remaining estate after the Sharers' shares have been allocated; and 'Distant Kindred', who are blood relatives not qualifying as Sharers or Residuaries. One unique aspect of Islamic inheritance is that individuals who have been convicted of murder are barred from inheriting property.

Women receive inheritance shares under Islamic law, but their share is typically half that of their male counterparts in the same category. For instance, a daughter inherits half the amount that a son would. This rule, while seemingly unequal, was based on historical contexts where men were deemed the financial protectors of women and bore additional responsibilities like paying mehr (dowry) to their wives. This gender disparity in inheritance has been critiqued in modern times for not aligning with contemporary views on equality.

One important aspect of Muslim inheritance law is the restriction on the disposal of property through a will. According to Islamic inheritance law, only one-third of an estate can be bequeathed by will, with the remainder automatically passing to legal heirs. This prevents a Muslim man from disinheriting his wife or daughter thereby ensuring women receive their lawful share of the property. This restriction is often seen as a beneficial feature unique to Islamic law.

Gender Disparities in Muslim Personal Law

Muslim law in India remains uncoded, as the 1937 Shariat Act mandates the application of Muslim Personal Law to all disputes involving Muslim parties. Two primary legal frameworks exist for property matters among Indian Muslims: *Hanafi* law, which the Sunni Muslims adhere to, and *Ithna Ashari* law, governing Shia Muslims. Among the Sunnis, despite having four sub-sects, *Hanafi* law is predominantly followed as most Sunnis belong to this sect. The foundations of Islamic law include the Quran, Hadis, Ijmaa, and Qiyas.

When it comes to inheritance rights, Muslim Personal Law does not offer women equal shares compared to men. Both Sunni and Shia laws allocate women half the share given to men. For example, in the presence of both a son and a daughter, the daughter receives one share while the son gets two. This was reaffirmed in **Halima Bivi Ammal vs. S.A. Fatima Bivi and Ors. AIR 1987**, where it was observed that “The Koran declares that the male child is entitled to the share of two females. Therefore, when a man dies leaving a single child or several children, male or female, no other person is entitled to inherit, and the children take in accordance with the rule that the male takes the double share”. Unlike Hindus, Muslims cannot bequeath property to their heirs through a will, and any bequest to a non-heir is restricted to one-third of the estate. Additionally, the concept of ‘representation’ does not exist in Sunni Muslim law, as held and observed in **Abdul Subhan vs. Khyroonibi ILR, 1992 Kar 2823**, where it was stated that, “Under Muslim Law, no person has a right in the property by birth. It is known that there is no such thing as ‘joint family’ among the Muslims. So long as the father is alive, the children do not possess any right in the property. It is only on the death of the father, the children living at that time would inherit. However, if any son dies earlier to the father, then the son’s issues would not succeed to the father of the deceased son. The principle of ‘representation’ is entirely unknown to this Law governing the Muslims (Sunni Law). Right of inheritance arises on the death of the person owning the property and the question of devolution of inheritance rests entirely decided at that point of time when the person through whom the heirs claim dies – death being the sole guide”.

Hanafi law categorises legal heirs into three groups: *Quranic* heirs (primarily females), agnates (mostly males), and ‘distant kindred’ (either women or those related through a female). Fyze explains, “The Quranic heirs, mainly females, form the first class, with some exceptions. This is because most of the estate is intended to remain with the agnates, who are all males. For example, if a man passes away leaving behind a widow and a son, the widow, as a Quranic heir, receives one-eighth of the estate, while the son, an agnate, inherits the remaining seven-eighths. This example clearly demonstrates the influence of the Quran on Arabian customs.”

However, in reality, the agnatic heirs were the principal heirs before Islam; they continue to remain the principal heirs in Sunni law, provided that the claims of near relations mentioned in the Quran are satisfied by giving to each of them a specified portion. The son, father (in certain cases), brother, paternal uncle and nephew are all in this important class, and in a majority of cases, the residue forms the bulk of the estate.

Muslim Women’s Share in Inherited Property

The Quran establishes a principle regarding inheritance for males and females of the same degree and class, where females receive half the share of males. This means

a son inherits twice the portion of a daughter, and similarly, a son's son gets twice as much as a son's daughter. However, this principle does not apply universally; for instance, a uterine brother and sister, as well as their descendants, inherit equally.

Daughters are allocated a specific share by the Quran. When there are sons, a daughter's inheritance is half that of a son. If there is only one daughter, she receives one-half of the estate. If there are two or more daughters, they collectively receive two-thirds. A wife's share is one-quarter if there are no children or grandchildren, and this share is divided equally among two or more wives.

It was established in *Smt. Ashabi vs. Smt. Faziyabi and Ors.* AIR 2004, that Muslim heirs can only claim their inheritance from what remains of the estate after all statutory liabilities, debts, valid legacies, and deathbed gifts have been settled. According to Muslim law, an heir retains their rightful share and cannot be excluded by other heirs, survivors, or even by a specific direction left by the deceased.

Shia law differs slightly from Sunni law by aiming to grant equal rights to both male and female heirs. Under Shia law, cognates and agnates are treated equally, allowing males and females of the same blood relation and degree to inherit together.

In terms of inheritance customs and practices, there are significant variations from the strict interpretations of Shariat law. In Southwest India, particularly among the Mapilas of Kerala, matrilineal inheritance customs are observed. On the other hand, the rest of India predominantly follows patrilineal inheritance norms, which often restrict customary rights for women.

The Muslim Personal Law (Shariat) Application Act of 1937 replaced local customs with Muslim Personal Law, but notably excluded agricultural land from its scope. This exclusion had significant repercussions for Muslim women, particularly in terms of their inheritance rights. In certain regions, like Tamil Nadu, parts of Karnataka, and Andhra Pradesh, efforts were made in 1949 to grant women a share in agricultural land. However, in many northern states such as Delhi, Haryana, Punjab, Himachal Pradesh, and Uttar Pradesh, laws governing property inheritance remain unfair, perpetuating inequality between men and women, especially since agricultural land holds immense value.

Some scholars argue that under Quranic principles, wives have clear rights to maintenance and *mehr*, which they consider as compensation for unequal inheritance rights. Yet, receiving *mehr* does not balance the unequal share of inheritance from fathers or husbands.

Critics highlight that property laws, like other aspects of the Shariat, are subject to change and reinterpretation in light of evolving societal norms and the Quranic spirit. Despite these arguments, the reality on the ground often sees Indian Muslim women being deprived of their rightful inherited property.

As a result of entrenched patrilineal beliefs and traditional views on family roles, women often face deprivation of their inheritance rights. These beliefs, alongside discrimination against daughters, lead to various legal tactics that strip daughters of their rightful shares in parental property. This situation leaves daughters without security or assets in their own name. Ironically, daughters are often denied inheritance rights, contributing to their marginalisation within the family, especially as they may be expected to marry and move away, further exacerbating their sense of being unwanted.

Property Rights of Christian Women

The laws governing succession for Christians in India are outlined in the Indian Succession Act of 1925 (ISA), specifically in Sections 31 to 49. According to these provisions, a Christian widow's inheritance right is not absolute but diminishes as other heirs come forward. If the deceased leaves behind lineal descendants, one-third of the property goes to the widow, with the remaining two-thirds passing to the descendants. In cases where there are no lineal descendants but other kindred, half of the property goes to the widow and the other half to the kindred¹².

A notable anomaly is that the widow of a deceased son receives no share, but any children—whether born or unborn at the time of death—inherit equal shares. If there are no lineal descendants, after deducting the widow's share, the remaining property first devolves to the father of the deceased. If the father is deceased but the mother and siblings are alive, they share equally. In situations where the father has passed away and there are no surviving siblings, nieces, or nephews, the entire property belongs to the mother.

Christian Women's Rights to Succession

According to the Indian Succession Act of 1925, succession to immovable property in India of a deceased person who does not belong to the Hindu, Muslim, Buddhist, Sikh, or Jain faiths is governed by Indian law. Section 27 of the Act specifies that no distinctions are made in succession based on whether one is related through the

12. Why criticism against Arunachal Pradesh Draft Bill on Marriage and Inheritance of Property is misplaced – The Leaflet. <https://theleaflet.in/why-criticism-against-arunachal-pradesh-draft-bill-on-marriage-and-inheritance-of-property-is-misplaced/>

father or mother, through full blood or half-blood, or between individuals born and those conceived but subsequently born alive.

Intestate Succession under Christians

Under Section 32 of the Indian Succession Act, 1925, when a person dies intestate, their property passes to their spouse or relatives in accordance with specified rules and order. However, if a valid pre-marriage contract excludes a widow from her rightful share of her husband's estate, she forfeits the entitlement provided under this provision.¹³

Property Rights of Parsi Women

The Indian Succession Act of 1925 governs the laws of succession for Parsis, as detailed in Sections 50 to 56. Parsi property rights demonstrate gender equality, where both sons and daughters of a Parsi widow inherit equal shares in the intestate's property, regardless of their marital status. Each parent, whether father or mother, receives half of the share allotted to each child¹⁴.

Parsi Women's Right to Succession

As per Section 50 of the Indian Succession Act, 1925, concerning intestate succession among Parsis:

- a) No differentiation is made between individuals born and those conceived but not yet born.
- b) If an intestate passes away without a surviving spouse or children, the property shall be distributed accordingly.
- c) If a widow of the intestate remarries, she forfeits her right to receive any portion of the property.

Property Rights of Tribal Women

The property rights of tribal women in India are still governed by traditional customary laws that often deny them succession or partition rights, especially in relation to agricultural lands. Ironically, these limitations are justified in the name of preserving tribal culture.

13. Who are the heirs of a deceased person? – OrderWithMe. <https://www.orderwithme.com/who-are-the-heirs-of-a-deceased-person/>

14. Frequently Asked Questions On Will. <https://www.lawyersclubindia.com/articles/frequently-asked-questions-on-will-16739.asp>

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

The property rights of tribal women vary based on family structure and marital status. In monogamous families, their rights differ from those in polygamous or polyandrous setups. Similarly, the rights of widows differ from those of women with living husbands, and those of childless women may vary from those with children.

In India, the Scheduled Tribes are governed by customary laws concerning inheritance, marriage, and succession. Unlike other communities, tribal women's inheritance rights are not covered under the Hindu Succession Act, 1956, or the Indian Succession Act, 1925. Instead, they are regulated by local customary laws, which are protected by various provisions of the Indian Constitution. Unfortunately, these customary laws often discriminate against tribal women in matters of succession.

Customary laws are rooted in traditional rules and standards considered fundamental to tribal communities. These laws represent established patterns of behaviour that are often passed down through generations. The strength of customary laws comes from the consistent adherence of community members, unlike personal laws, which are generally specific to religion and are legally recognised.

The Supreme Court of India has established significant principles to safeguard the inheritance rights of tribal women, aligning with the foundational principles of the Indian Constitution. These principles, rooted in Articles 38, 39, 46, 15(1) & (3), and 14, advocate for social and economic democracy for women, as outlined in the Preamble of the Constitution. They aim to eliminate gender discrimination and ensure equal access to social, economic, political, and cultural rights.

In the case of *State of Bombay vs. Narasu Appa Mali*, the Court ruled that it could not interfere with the personal or customary laws of any community. Traditional justice systems, along with customs and practices, have historically favoured male-centric and patrilineal inheritance, putting women at a significant disadvantage, particularly in matters of land ownership. This form of discrimination can be seen as a form of violence against women (Saradamoni, 1986; Bunch, 2004; Chowdhry, 2005). Nevertheless, these rights, derived from customs and traditions, hold equal validity in the formulation of laws.

The principle that all sources of law hold equal validity can inadvertently contribute to gender discrimination, particularly by failing to uphold women's inheritance rights. Indian society is deeply rooted in patriarchal, patrilocal, and patrilineal structures, where patriarchy amplifies male dominance within cultural relationships. This widely accepted norm, especially in property inheritance, ensures male

governance and restricts women's rights (Gonsalves, 1993; Anita, 2007; Saxena, 2008; Rao, 2008b).

In many tribal societies, women are excluded from inheriting land (Kaushik, 2007), except in a few communities where matrilineal inheritance is practised or in specific circumstances. Customary law does not grant property rights to women, reflecting a male-centric society that denies them such rights (Anita, 2007, 199). The underlying reasons for withholding these rights include concerns over land fragmentation and the preservation of agricultural holdings (Owen, 1996; Saxena, 2008; Malik, 2009).

While legal statutes theoretically provide equal rights, in practice, granting daughters and sons equal inheritance rights could lead to land fragmentation (Anita, 2007; Mohsin, 2010). This dilemma reinforces a woman's subordinate status in tribal societies. The Indian Constitution offers contradictory provisions concerning tribal societies, as Article 14 guarantees equal rights but also allows the continuation of traditional norms and customs (Mehrotra, 2006, 65).

Customary laws are of paramount importance among tribal communities, and the Constitution even provides special provisions under the Fifth and Sixth Schedules, recognising their social, economic, and political disadvantages. However, tribal women do not benefit from these laws and remain governed by their tribe's archaic customary laws, preventing them from achieving gender equity (Bano, 2003; Banerjee, 2006; Malik, 2009). Many tribal women are untouched by the Constitution's provisions, and tribal societies often fail to address gender disparities in areas such as access to resources due to male bias, historical, cultural contexts, and discriminatory customary laws (Mehrotra, 2006, 66-68).

Tribal women face certain disadvantages, such as being barred from ploughing land on religious grounds because they are considered impure (Chauhan, 1990; Baghel, 2011). Among tribal communities, identity, culture, and norms are of utmost importance. Tribal women demand equal inheritance rights, but men reinterpret customary laws to suit their needs, creating obstacles to gender equity. The patriarchal ethos of customary law disregards gender justice, especially in managing and controlling natural resources, including land. Statutory laws offer some protection for women's rights, but community-based laws often uphold patriarchal ideologies that reinforce male supremacy (Owen, 1996; Agnes and Ghosh, 2012).

In conflicts between formal and personal laws, formal laws tend to be more uniform. Srimati Basu (2012) argues that laws alone are insufficient to secure women's rights.

Women who assert their legal rights to inherit family property are often labelled as “haklenewali” (a woman who takes her rights), perceived as greedy, selfish, and disruptive to family harmony (Basu, 2005a; 2012b). This reflects how patriarchal settings and traditional practices remain significant obstacles to women’s inheritance rights.

Tribal populations face significant challenges, including the migration of non-tribals to tribal areas and development activities like dam construction, which lead to land alienation (George and Sreekumar, 1994, 122). For tribal people, land plays a crucial role in agricultural activities, livelihood, and social status. Rao’s (2008b) study of Santhal women in Dumka district, Jharkhand, shows that land is not merely an economic resource but also secures social position and identity for these women. However, men hold distinct advantages, and the Adivasi community identity has contributed to denying women land rights.

After more than seven decades of independence, tribal women still struggle to achieve legal equality. In the landmark case of **Madhu Kishwar vs. State of Bihar**, Sections 7, 8 and 76 of the Chota Nagpur Tenancy Act of 1908 were challenged as unconstitutional and discriminatory against women. Under this Act, tribal women are not eligible for inheritance. Following the case, the Supreme Court directed the State Government to take necessary action. However, the Bihar Tribal Council, upon reviewing the situation, concluded that allowing tribal women to inherit property would elevate their husbands—who might belong to different tribes—to land ownership, perpetuating sex-based discrimination.

The Supreme Court’s majority opinion in this case, delivered by Justice Punchhi and Kuldeep Singh, was conservative and offered limited relief for women. They suggested that as long as livelihood rights and the rights of female offspring of the last male holder are recognised, male succession should remain exclusive under Sections 7 and 8.

While the judiciary has acknowledged the discriminatory nature of these laws, it has often failed to address this degrading practice effectively. For instance, in **Haradhan Murmu vs. State of Jharkhand**, the Jharkhand High Court emphasised that any significant changes to the personal or customary laws of the Santhal tribe must consider the local context and the consequences of such amendments.

Different courts have varied opinions regarding the inheritance rights of tribal women. In **Labishwar Manjhi vs. Pran Manjhi and Others**, the Supreme Court ruled that when evidence showed that parties belonging to the Santhals Tribe were practicing Hindu customs rather than those of the Santhals, the provisions of the

Hindu Succession Act would apply to property inheritance. Similarly, in **Budhu Majhi and Another vs. Dukhan Majhi and Others**, the Patna High Court held that it was not necessary for parties to be fully Hinduised for the Hindu Law of Succession to apply.

In contrast, the Himachal Pradesh High Court, in **Bahadur vs. Bratiya and Others**, ruled that gender discrimination violates fundamental rights and that daughters are entitled to equal shares in properties. The court concluded that daughters in tribal areas of Himachal Pradesh should inherit property according to the Hindu Succession Act, 1956, rather than customary laws and practices.

In October 2017, the Madras High Court supported the struggle for equal succession rights of tribal women, clarifying that they are not excluded from the provisions of the Hindu Succession Act and cannot be denied the right to inherit family properties. Justice S.M. Subramaniam emphasised that the legislature did not intend for inequality or unconstitutionality concerning Scheduled Tribe women¹⁵.

Recently, a Supreme Court Bench led by Justices M.R. Shah and Krishna Murari ruled that there was no justification for denying a woman from a Scheduled Tribe community the “right of survivorship” under the Hindu Succession Act. They argued that if a daughter from a non-tribal community is entitled to an equal share of her father’s property, there is no reason to deny this right to a daughter from a tribal community. The court noted the absurdity that 70 years after the Constitution’s enactment, tribal women are still denied equal rights to their fathers’ property¹⁶.

Section 2(2) of the Hindu Succession Act, which guarantees equal shares for male and female heirs, does not apply to Scheduled Tribe members. While the court acknowledged its inability to change the current law, it urged the Central Government to review the provisions of the Hindu Succession Act and, if necessary, amend the statute to extend its application to Scheduled Tribes. The court expressed hope that the government would consider the Right to Equality guaranteed under Article 14 and take appropriate action¹⁷.

15. Tribal women - Latest tribal women , Information & Updates - Legal -ET LegalWorld. <https://legal.economictimes.indiatimes.com/tag/tribal+women>

16. SC bats for law tweak to give tribal women property rights - Times of India. <https://timesofindia.indiatimes.com/india/sc-bats-for-law-tweak-to-give-tribal-women-property-rights/articleshowprint/96119450.cms>

17. Supreme Court asks government to consider amending law denying tribal women equal rights to family property - The Hindu. <https://www.thehindu.com/news/national/sc-asks-govt-to-consider-amending-law-denying-tribal-women-equal-rights-to-family-property/article66244565.ece>

Gender Disparities in Property Law and Custom

The Hindu Law of Inheritance

Throughout history, gender-based disparities in property rights have deep roots. For example, in ancient Hindu law, the *Mitakshara* Joint Hindu Family system was prevalent. This concept revolved around a common male ancestor and his male descendants. Sons had recognised rights and shared equal interest in ancestral property as coparceners with their father. The joint family structure originated from the ancient patriarchal system, and the inheritance law was closely tied to the belief that, “he who inherits the property also offers the pinda.” According to the Smritis, the nearest heirs were the son, grandson, and the great-grandson. The Vedas also emphasised the importance of having a son for property partition and generally excluded women from inheritance. Under *Shastric* Hindu Law, women had very limited property rights, though they were entitled to maintenance and could sometimes receive property in exchange for this right.

The Indian Constitution asserts that all citizens are equal before the law and are entitled to equal protection without discrimination based on sex. However, these constitutional guarantees have not successfully ensured equal property rights for women in India. Legal challenges based on claims of unconstitutionality and violation of Fundamental Rights have often been dismissed by the courts, including the Supreme Court.

In the case of **Madhu Kishwar vs. State of Bihar**, the petitioner challenged Sections 7 and 8 of the Chota Nagpur Tenancy Act, 1908, which recognised only male descendants and heirs. However, the Supreme Court did not declare these sections unconstitutional. The Court stated that the term “male descendants” could not be interpreted to include both genders. It reasoned that the rules of succession could treat men and women differently without necessarily violating Article 14 of the Constitution, which guarantees equality. The Court also emphasised that it should avoid making judicial amendments that go beyond the scope of the existing legislation.

This Supreme Court decision contrasted with an earlier judgment by the Rajasthan High Court in the **Jani Bai case**, where it was ruled that the State could not limit land allotment under the Rajasthan Colonisation Act, 1954, solely to male descendants, excluding equally eligible females. The High Court held that the term “son” should be interpreted to include both male and female children.

In another case, **Ahmedabad Women’s Action Groups & Others vs. Union of India**, challenges were made to various personal laws, including Muslim inheritance law

and a provision in the Hindu Succession Act (HSA) that allowed Hindus unrestricted power to dispose of property by will. The Supreme Court declined to hear the case on its merits, stating that it involved issues of state policy beyond the Court's usual purview. The Court also noted that similar challenges had previously been directed towards legislative remedies rather than judicial intervention. Thus, the courts have been hesitant to invalidate personal laws, urging the Government instead to enact equality legislation.

Following India's independence, the Hindu Succession Act of 1956 was established to grant women certain inheritance rights in both self-acquired and *Mitakshara* joint family property. However, daughters and wives were not designated as coparceners within the joint family, thus they did not enjoy the same treatment as sons. These and other provisions of the HSA limited the property rights of daughters and wives, placing them on unequal footing with brothers and sons.

In 2005, the HSA was amended to extend to daughters the same rights that sons had in *Mitakshara* joint family property. Before this nationwide amendment, some states had already revised their laws to include daughters as coparceners. Despite these changes, the joint family system remained intact, and wives were still not recognised as coparceners. However, a progressive Supreme Court ruling granted widows the same share in joint family property as other members upon their husband's death. Traditionally, under *Mitakshara* law, while a wife could not demand a partition, she was entitled to a share when a partition occurred between her husband and his sons.

A persistent issue with the Hindu Succession Act of 1956, even after the 2005 amendments, is the discriminatory way in which a woman's property is inherited compared to a man's. For men, Class-I heirs include the wife, mother, and children or their representatives. In contrast, if a woman dies without children or a husband, her property is distributed in a highly biased manner.

First, if a woman inherits property from her parents, it goes to her father's heirs. Second, if the property came from her husband or father-in-law, it passes to her husband's heirs. Third, even her self-acquired property, in the absence of a husband and children, devolves first to her husband's heirs and only then to her own parents.

The ruling of Supreme Court in **Omprakash vs. Radhacharan (2009)** upheld this method of inheritance, despite recognising its inherent unfairness. In the case, a widow who had been mistreated and abandoned by her in-laws, and who later lived with her parents and built her career, passed away. The Court ruled that her estate should be inherited by her in-laws, in accordance with Section 15 of the HSA.

A significant issue arising from the Hindu Succession Act of 1956 is the introduction of the right to will property. Previously, Hindus governed by *Mitakshara* law did not have this right. The right to will property, rooted in the Indian Succession Act of 1925 introduced by the British, has been part of common law. Over the years, this right has reportedly been used to disinherit daughters and wives, prompting women's groups to call for restrictions on its use to prevent such exclusions.

Until 1956, women who inherited property or received it as maintenance were not full owners and could not sell or alienate it except for legal necessities or religious purposes. The only exception was a woman's *stridhana* property, which she could freely dispose of or sell as she wished. However, even *stridhana* could be alienated by her husband in times of distress, leaving women with what was termed a "limited estate." Daughters had only the right to maintenance and could not inherit property. The Hindu Succession Act of 1956 changed this by stating that any property owned by a Hindu woman, whether acquired before or after the Act's commencement, would be held by her as a full owner, not a limited one.

The aim of this section was to eliminate the restrictions on women from acquiring and holding property as absolute owners, and to transform any estate held by a woman as a limited owner into an absolute estate from the Act's commencement.

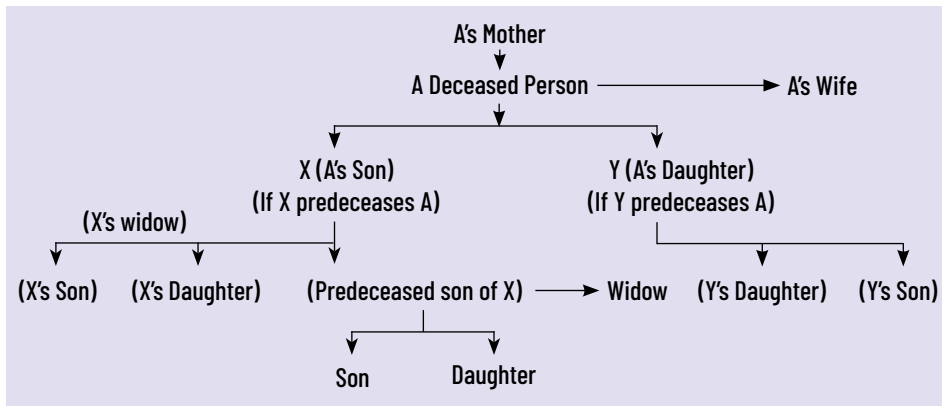
The explanation provided a broad definition of "property," including both movable and immovable assets acquired by a Hindu woman through inheritance, partition, in lieu of maintenance or arrears of maintenance, or as a gift from any person, whether related or not, before, during, or after her marriage. It also encompassed property obtained through her own skill or effort, purchase, prescription, or any other means, as well as any *stridhana* held by her immediately before the Act's commencement.

This provision was retrospective, as it transformed a Hindu woman's limited estate into an absolute estate, even for property inherited or held before the Act took effect. Courts have interpreted this provision broadly to fully support the legislature's intent to grant women full ownership rights. They have ruled that if a woman possesses property, either actually or constructively, she becomes the absolute owner, even if the property was acquired before the Act. Any subsequent alienation of such property after the Act's commencement cannot be challenged by reversioners¹⁸, regardless of whether the alienation was for religious purposes or legal necessity.

18. A person who is entitled to an estate in reversion. By an extension of its meaning, one who is entitled to any future estate or any property in expectancy.

The Hindu Succession Act of 1956 was ground-breaking as it granted daughters, wives, and mothers equal rights to a male Hindu's self-acquired property, alongside sons, in cases where he died intestate. All of these relatives were classified as Class-I heirs. The figure¹⁹ illustrates and lists all the relatives included in Class-I heirs before the 2005 Amendments to the HSA.

Fig 2.1: Class-I Heirs According to Hindu Succession Act of 1965



The **174th Report of the Law Commission** pointed out that the Schedule of Class-I heirs was discriminatory, as in the schedule “the principle of representation²⁰ goes up to two degrees in the male line of descent; but in the female line it only goes up to one degree and that though the widows of a predeceased son and grandson are Class-I heirs, the husbands of a deceased daughter and granddaughter are not heirs.”

However, the 1956 Act maintained the traditional system of inheritance within a joint Hindu family governed by *Mitakshara* law. It specified that if a male Hindu died after the Act's commencement, his interest in *Mitakshara* coparcenary property would pass by survivorship to the surviving coparceners, rather than according to the Act. Nevertheless, an exception was made for situations where a daughter, wife, or mother was alive at the time of death. In such cases, the deceased's interest in the *Mitakshara* coparcenary property would be inherited through testamentary or intestate succession under the Act, rather than by survivorship.

As a result, daughters received an equal share alongside their mother and paternal grandmother, but when it came to ancestral joint family property, they could only

19. This figure is based on the figure depicting Class-I heirs in 'Family Law Lectures: Family law II', LexisNexis-Butterworths, New Delhi, 2004, p. 355.

20. By representative heirs, it is meant the heirs who would inherit if the heir in the earlier generation was not alive, like son of a predeceased son.

inherit a portion of their father's share. In contrast, sons inherited an equal share with their father from birth, which reduced the father's overall share. Under the *Mitakshara* system, joint family property was distributed based on births within the coparcenary, meaning that with each birth or death of a male family member, the shares of the surviving male heirs would either increase or decrease.

After the father's death, sons inherited from their father's remaining share along with the daughter. The Act further specified that the deceased's share should be calculated through a notional partition among the coparceners. Since a widow is entitled to a share equal to her husband's portion when a partition occurs, questions arose in several cases about whether her share should be determined at the time of the notional partition. Some judgements such as the one in the **Shiramabai Bhimgonda vs. Kalgonda (1963)**, ruled that the widow's share should indeed be equivalent to that of the other coparceners, while other judgements disagreed with this.

The 1956 Act, however, placed limitations on a woman's ability to claim her share of inherited house property if other family members were living there. It stipulated that a female heir could only receive her share if the male heirs partitioned the property to claim their portions. The only right granted to the female heir was the right to reside in the dwelling house if she was unmarried, deserted, separated, or widowed. The Supreme Court upheld Section 23 of the HSA in **Narashimha Murthy vs. Sushilabai. AIR 1996**. Additionally, while the Act permitted inheritance for a son's widow, it discriminated against her by disqualifying her from inheritance if she remarried.

When the Hindu Succession Act was amended in 2005, following a sustained effort by women's groups and advocates, it marked a significant step toward gender equality and the dismantling of the ancient patrilineal inheritance system. While the *Mitakshara* joint family system remained in place, the amendment established that daughters of coparceners would be considered coparceners in their own right from birth, granting them equal rights and responsibilities in coparcenary property, just like sons. Additionally, the amendment removed Sections 23 and 24 from the 1956 Act, which had previously limited a female heir's rights to reside in the family home and a widow's rights. The 2005 changes also revised Schedule 1 regarding Class-I heirs, ensuring that the heirs of a predeceased daughter's daughter would have the same rights as those of a predeceased son's son.

The 174th report of the Law Commission of India while commenting on the HSA of 1956 had pointed out that since the *Mitakshara* coparcenary consists of a father, son, son's son and son's son's son, etc., it is "a wholly patrilineal regime, wherein

property descends only through the male line as only the male members of a joint Hindu family have an interest by birth in the joint or the coparcenary property. Since a woman could not be a coparcener, she was not entitled to a share in the ancestral property by birth. A son's share in the property in case the father dies intestate would be in addition to the share he has on birth."

The Law Commission emphasised that "social justice demands that a woman be treated equally in both the economic and social realms." It noted that states like Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka had already amended their laws to include women as coparceners in the *Mitakshara* Joint Family. The Commission recommended extending this change to the Hindu Succession Act of 1956. While acknowledging that Kerala had gone further by completely abolishing the Hindu joint family system, the Commission did not suggest adopting this approach.

It also pointed out that making daughters coparceners would increase the total number of coparceners, which could indirectly reduce a widow's share in succession. However, the amendments fell short of achieving full equality, as the *Mitakshara* Joint Family System itself is hierarchical, creating disparities among widows, daughters, and sons—both elder and younger. For women in some southern Indian states such as Christian women in Kerala²¹ wives still do not receive an equal share of ancestral property, even upon partition.

Discrepancy Between Law and Reality

Under Hindu Law, women inherit property as daughters, widows, mothers, and sisters. Despite the rights provided by the Hindu Succession Act, these rights are often not enforced effectively due to social and cultural influences. Some of these social and cultural influences include:

1. **Voluntary Relinquishment of Claims:** Women frequently forgo their property rights for various social and cultural reasons, aiming to maintain family harmony and their connection to their birth family for ritual purposes. Their relocation to different villages also hinders their ability to claim property rights. The following is an instance narrated by a woman in the Gandhi Nagar East district of Rajasthan. "In my family, after our father's death, during the third-day mourning ceremony (tiye ki baithak), the sisters were asked to sign a document labelled 'Becharnama.' Unaware of its implications, they signed it. Later, after discussing it within their family, they realized they had unknowingly signed away their rights

21. Haritha John, & Haritha John. (2022, January 13). *Christian women in Kerala still denied the right to inherit property, here's why*. The News Minute. <https://www.thenewsminute.com/kerala/christian-women-kerala-still-denied-right-inherit-property-here-s-why-159812>

to the property. They then went to court and obtained a stay order to prevent the sale of the property.”

2. **Influence of Village Bodies and Officials:** Local dispute resolution mechanisms in villages is often handled by male-dominated and patriarchal bodies like panchayats, which tend to overlook the property rights of daughters and widows. Additionally, government officials sometimes refuse to register land in the name of a woman.
3. **Violence and Intimidation:** Male family members often resort to violence to keep control of property and discourage women from asserting their rights. In some areas, religious and cultural practices are manipulated to suppress women's rights. For instance, in Bihar, there have been incidents of brothers accusing sisters of witchcraft²² to eliminate them.

Regional Variations in Property Rights for Women

Tamil Nadu

According to the provisional Census of India 2011, the female population in Tamil Nadu is 35,980,087. A woman's property rights in Tamil Nadu depends on various factors, such as her religion, marital status, region, and whether she is tribal or non-tribal.

Historical evidence from South India, particularly Tamil Nadu, shows that women had stronger property rights than what legal texts suggested. Even jurists knew about the difference between the prescribed legal rights and actual customary practices. Women owned property and could give it away or sell it. For example, two inscriptions from the tenth century mention land given to women as their property (*stridhanam*), proving that a woman's right to own land was recognised.

Stridhanam and Dowry – Reality

Women received jewels and cash as wedding gifts, often given to the groom. In Indian society, the “*varadakshina*” (groom fee) was part of “*kanyadanam*” (giving the girl away), and the bride received land, jewellery, and other items as “*stridhanam*” (her property). Srinivas (1996) distinguished between modern dowry, which often goes to the husband, and traditional dowry, which remained the bride's property. This shift from property rights to cash gifts to the husband is seen in many communities.

22. ActionAid Association (2022). *Witch Branding in India: A Study of Indigenous and Rural Societies*. In ActionAid Association. <https://www.actionaidindia.org/wp-content/uploads/2022/04/WitchBrandingInIndia-A-StudyOfIndigenousAndRuralSocieties-GPN-ActionAid-Feb2022.pdf>

There is a common belief that rising dowry demands put pressure on a girl's family, leading parents to sacrifice their own security for advantageous marriages for their daughters. Despite the Hindu Succession Act of 1956, many families see dowry as the woman's share of the family property. However, some women do accept dowry as their patrimony (Chowdhry, 1997). The size of the dowry varies based on the family's wealth, the woman's beauty, and other factors (de Bruijn, 1997).

The practice of giving *stridhanam* also extends to non-land-based castes. Nishimura states that *stridhanam* is kept in the woman's name and remains her property until death, often saved for her daughters' dowries (Nishimura 1994). However, Nishimura's study shows that women do not really control this *stridhanam*, which is managed by their fathers (Nishimura 1998).

In Tamil Nadu, women maintain close ties with their natal families after marriage. They continue to receive gifts, especially in the first year of marriage and during significant events like pregnancy and childbirth, extending until their daughters' marriages. These gifts, while sometimes not very valuable, constitute a recognised right to call family property (Kanakalatha Mukund, 1992).

The State Government has made provisions to facilitate women's access to property, such as amendments to the Hindu Succession Act, Tamil Nadu Amendment, 1989, and establishing 568 Registrars and Joint Registrar offices, the highest number in India, costing the State Rs. 13 lakhs initially, and Rs. 15 lakhs per year (The Hindu, April 12, 2012).

Women have upheld family and societal values and have been rulers, scholars, and scientists throughout history. However, the current degraded status of women indicates a decline in their societal position. Women are often dependent and subordinate to men, with their rights given little importance. Feminist movements have highlighted the need for women's rights²³ such as the right to education, universal suffrage, reproductive rights, etc., but inheritance rights need more attention.

Inheritance laws are influenced by religious and social norms, creating barriers against the property rights of women. Women are also often unaware of equal inheritance laws, and societal factors negate their purpose. Women feel more confident and independent with property in their name but often forgo their rights to maintain family support. Marriage expenses are a significant barrier, leading

23. https://en.wikipedia.org/wiki/Feminism_in_India#:~:text=Like%20their%20feminist%20counterparts%20all,education%2C%20and%20equal%20political%20rights.

male family members to deny women property inheritance. As a result, it is crucial to study this complex issue that has been neglected for a long time.

Tamil Nadu Amendment Act

29 a. Equal rights to daughter in coparcenary property: Notwithstanding anything contained in section 6 of this Act,

- (i) In a joint Hindu family governed by *Mitakshara* law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son.
- (ii) At partition, the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son. Provided further that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of partition shall be allotted to the surviving child of such predeceased son or predeceased daughter. Provided that the allottable share to the predeceased child of a predeceased son or of a predeceased daughter, if the child had been alive at the time of partition, shall be allotted to the child of such predeceased child of the predeceased son or the predeceased daughter as the case may be.
- (iii) Any property to which a Hindu woman becomes entitled by virtue of the provisions of cl(i) shall be held by her with the incidents of coparcenary ownership and shall be regarded not withstanding anything contained in this act or any other law for the time being in force, as property capable of being disposed of by her will or other testamentary disposition:
 - a. Nothing in this chapter shall apply to a daughter married before the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989.
 - b. Nothing in cl(ii) shall apply to a partition which had been affected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989.

It has been held that the section confers upon the unmarried daughter, the status of a coparcener from her birth, and not after the insertion of Section 98 of the Act.

29 b. Interest to Devolve by Survivorship on Death:

When a Hindu woman dies after the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989, having at the time of her death an interest in a *Mitakshara* coparcenary property by virtue of the provisions of Section 29-A, her

interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. Provided that if the deceased had left any child or child of a predeceased child, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by the testamentary or intestate succession, as the case may be, under this Act and not by survivorship. For the purpose of this section, the interest of a female Hindu *Mitakshara* coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not. Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself from the coparcenary or any of her heirs to claim on intestacy a share in the interest referred to therein.

29c. Preferential Right to Acquire Property in Certain Cases:

(1) Where, after the commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989, an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under Section 29A or Section 29B upon two or more heirs and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, on the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs incidental to the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

In this section "court" means the court within the limits of whose jurisdiction the immovable property is situated, or the business is carried on, and includes any other court which the State government may, by notification in the Tamil Nadu Government Gazette, specify in this behalf.

Property of a Female to be her Absolute Property

This section explicitly declares that a female holds all property in her possession

whether acquired by her before or after the commencement of the Act, as an absolute owner. The rule applies to all property movable and immovable howsoever and whenever acquire by her, but subject to the qualification mentioned in sub-s(2).

Widow as Sole Heir

When a Hindu male dies possessed of property after the coming into force of the Act, leaving his widow as his sole heir, she inherits the property as a class 1 heir. In the circumstances, the question of applicability of Section 14 does not arise on succession after the Act came into force. The widow inherits an absolute estate, even without calling in aid this section.

Uttar Pradesh

Nearly 17% of India's population lives in Uttar Pradesh. Geographically, it is the fourth largest state after Rajasthan, Madhya Pradesh and Maharashtra and covers 7.3% of the Indian land mass. Area wise, it covers 240.928 square kilo meters. For administrative convenience, it has 18 divisions, 75 districts, 915 urban bodies, 8135 Nyaya Panchayats. 17 Municipal corporations, 200 municipal boards, 59163 gram sabhas, 822 development blocks, 97941 populated villages, 180000 post offices and 2885 telephone exchanges.

The Hindu Succession Act (HSA) of 2005 primarily governs the inheritance and succession of property for Hindu women in Uttar Pradesh. However, since land is a state subject, Uttar Pradesh has its own laws for the devolution of land to women. The state's revenue code, which mainly applies to land inheritance, is discriminatory against women.

In 2020, the Uttar Pradesh State Legislature passed the U.P. Revenue Code (Amendment) Act, 2020, which received the Governor's assent on August 28, 2020. This amendment, which was seen as progressive and inclusive, granted property ownership, inheritance, and succession rights to the third gender, rights which were previously restricted to male and female members of society. However, the amendment did not address the preferential treatment given to male relatives and unmarried female relatives in Sections 108, 109, 110, and 112 of the U.P. Revenue Code, 2006. As a result, married female relatives remain at a disadvantage, being placed lower in the order of succession²⁴.

Section 108(1) outlines the principles for the devolution of holdings of a male

24. Succession law in Uttar Pradesh: Rights of married women in ancestral property | SCC Times.
<https://www.scconline.com/blog/post/2021/06/05/succession-law-in-uttar-pradesh/>

bhumidhar, asami, or government lessee. It establishes a preferential treatment for the heirs listed in any prior clause of Section 108(2), indicating that the heirs in earlier clauses inherit exclusively, without regard to the rights of heirs in subsequent clauses. This means heirs in clause (a) take precedence over those in clause (b), and so forth. When applied, these principles result in discrimination against married females due to the arrangement of heirs specified in Section 108(2), as shown below:

(2) The following relatives of the male third gender *bhumidhar, asami* or government lessee are heirs subject to the provisions of sub-section (1), namely–

(a) Widow, or third gender spouse, unmarried daughters, third gender issue and the male lineal descendants in the male line of descent per stirpes:

Provided that widows, unmarried daughters, third gender issue and sons howsoever distant shall inherit per stripes the share which would have devolved upon the predeceased son had he been alive.

(b) Mother and father.

(c) Married daughter.

(d) Brother, unmarried sister, third gender sibling being respectively the son and daughter, third gender issue of the same father as the deceased, and son, unmarried daughter, third gender issue of a predeceased brother, the predeceased brother, having been the son of the same father as the deceased.

(e) Son's daughter and third gender issue.

(f) Father's mother and father's father.

(g) Daughter's son, third gender issue and unmarried daughter.

(h) Married sister.

(i) Half-sister, being the daughter of the same father as the deceased.

(j) Sister's son, third gender issue and unmarried daughter.

(k) Half-sister's son, third gender issue and unmarried daughter the sister having been the daughter of the same father as the deceased.

(l) Brother's son's son, third gender issue and unmarried daughter.

(m) Father's father's son, third gender issue and unmarried daughter.

(n) Father's father's son's son, third gender issue and unmarried daughter.

(o) Mother's mother's son, third gender issue and unmarried daughter.

The aforementioned arrangement is intentionally designed to prevent married female relatives of the *bhumidhar*, *asami*, or government lessee from inheriting holdings equally with other relatives, aiming to protect and safeguard the holdings from being alienated.

Section 109 of the 2006 Code outlines the rules for succession concerning women who inherit an interest as a female heir. According to this section, if a woman inherits the interest of a male *bhumidhar*, *asami*, or government lessee in any holding before or after the commencement of the Code and subsequently dies, marries, or remarries, her interest in the holding shall, in accordance with Sections 107 and 112, pass to the nearest surviving heir of the last male *bhumidhar*, *asami*, or government lessee. The term 'nearest surviving heir' is defined according to Section 108. If a woman inherits as a daughter and has a surviving heir listed in clause (a) of Section 110, her interest will pass to those heirs, giving preference to the closer heir within the same branch and excluding a widow who has remarried.

In this setup, it is apparent that a woman must choose between her inheritance rights and her right to marry or remarry. Additionally, if she dies without any surviving heirs, her interest in the holding will be transferred to the nearest surviving heir of the last male *bhumidhar*, *asami*, or government lessee.

Section 110 of the 2006 Code categorises heirs based on their gender and marital status. For female heirs, their marital status is crucial in determining their eligibility for inheritance, unlike male heirs whose marital status does not affect their succession rights. This approach is intended to prevent the alienation of holdings.

Under Section 112, if multiple co-widows inherit from a male tenure-holder and one of them dies or remarries without leaving any heirs entitled to inherit under Section 108, her share will pass to the remaining co-widows. If more than one co-widow remains, the share is divided equally among them. Consequently, if a widow remarries, she loses her claim to the holding. To keep her interest in the property, she must remain unmarried and continue in her widowhood.

Rajasthan

Although the Hindu Succession (Amendment) Act of 2005 provides for equal devolution of property between male and female heirs, customary laws like *Haq Tyag* prevalent in the Hindu society in Rajasthan deprives Hindu women the right to acquire property.

The practice of *Haq Tyag* in Rajasthan involves women relinquishing their inheritance rights to ancestral property, a tradition deeply rooted in the region's

historical and cultural context. Despite the progressive amendment to the Hindu Succession Act in 2005, which legally ensures equal inheritance rights for women, *Haq Tyag* continues to be a prevalent practice due to entrenched patriarchal norms and societal pressures. Historically, Rajasthan has been a feudal society with rigid patriarchal structures, where land ownership was synonymous with power and wealth, predominantly held by men. The practice of women relinquishing their property rights can be traced back to the feudal era, perpetuated by the belief that once women are married, they become a part of their husband's family and hence have no claim over their natal family's property. This notion is deeply ingrained, reinforced by the substantial financial burden associated with a daughter's marriage, including dowry and wedding expenses, which are seen as compensating for their share of the family property.

The ceremonial aspect of *Haq Tyag* further entrenches the practice into the social fabric, where the act is often formalised in a public setting, witnessed by family members and community elders. This ceremonial pressure makes it difficult for women to assert their rights, even if they are aware of the legal provisions that protect them. The legal landscape concerning the inheritance rights of women has seen significant changes, yet the implementation and enforcement of these laws remain challenging. The Hindu Succession Act of 2005 was a landmark amendment aimed at ensuring gender equality in inheritance. However, in states like Rajasthan, local laws and societal norms often contradict national laws. While the Hindu Succession Act mandates equal rights, state laws permit voluntary relinquishment of these rights, creating a legal grey area that undermines the inheritance rights of women.

The societal pressure on women to comply with *Haq Tyag* is immense. Women who refuse to relinquish their property rights risk social ostracism and damaged family relationships. The practice is presented as voluntary, but the coercive nature of societal and familial pressure makes true voluntariness questionable. Women face significant economic disempowerment due to *Haq Tyag*. Without property rights, they lack economic security and often depend on their husbands or male relatives for financial stability. This dependence reinforces the patriarchal structure and limits women's financial independence. Moreover, without property in their name, women struggle to access loans and government subsidies, hindering their ability to start businesses or invest in income-generating activities.

The risk of destitution is another critical issue. In cases of marital breakdown or the husband's death, women without property rights are vulnerable to being left destitute, as property is typically inherited by male heirs or male relatives of the husband. Despite legal provisions protecting the inheritance rights of women,

social stigma and familial pressure often deter women from seeking legal recourse. Efforts to combat *Haq Tyag* involve raising awareness and improving legal literacy among women. Activists and Non-Governmental Organisations (NGOs) are at the forefront of this, organising educational campaigns and community meetings to inform women about their legal rights. These initiatives aim to empower women with the knowledge and confidence to assert their inheritance rights. NGOs also play a crucial role in providing legal aid and support to women who wish to challenge *Haq Tyag*, offering counselling, legal advice, and assistance in navigating the legal system.

Various financial incentives and government policies have been introduced to encourage property ownership among women. Some states, including Rajasthan, offer lower-rate mortgages and reduced registration fees for properties registered in the name of women. These financial incentives aim to make property ownership more accessible for women and promote a more equitable distribution of property. Microfinance initiatives and self-help groups are instrumental in empowering women economically. Financial literacy programs help women manage their finances effectively and make informed decisions about property ownership. Access to microfinance loans enables women to start small businesses and generate income, reducing their economic dependence on male relatives and empowering them to assert their property rights.

Efforts to combat *Haq Tyag* are gradually leading to shifts in societal attitudes. Increasing awareness about the legal rights of women is encouraging more families to support female inheritance. Educational campaigns and community dialogues are challenging traditional norms and promoting gender equality. Media coverage and advocacy by women's rights organisations have brought attention to the issue of *Haq Tyag*, helping to change societal perceptions and promote a more equitable distribution of property. Stories of women who have successfully challenged *Haq Tyag* and asserted their inheritance rights serve as powerful role models. Documenting and sharing these experiences inspire others to do the same and highlight the importance of legal literacy and the potential for change. Women who become community leaders and advocates for inheritance rights play a crucial role in driving cultural change, encouraging others to challenge traditional practices and seek their rightful inheritance.

The practice of *Haq Tyag* in Rajasthan exemplifies the enduring clash between traditional customs and modern legal frameworks aimed at promoting gender equality. While legal reforms provide women with equal inheritance rights, societal norms and pressures continue to impede the practical realisation of these rights. Efforts to empower women through education, financial independence, and legal

awareness are crucial in challenging and ultimately transforming these deep-seated patriarchal practices.

Tribal Women in Rajasthan

Very little secondary literature is available on the property rights of tribal women in Rajasthan. ActionAid conducted a ground study based on focus group discussions (FGDs) to try and understand the situation. This study aimed to provide an analysis of the property rights of tribal women in Rajasthan, with a specific focus on the Bhil tribes in the southern region of the state. The report is based on the information gathered from FGDs held on December 21 and 22, 2023, in Bagidaura and Tripura Sundari, located in Banswara District, Rajasthan. These discussions were instrumental in understanding the multifaceted legal and social landscape that governs the inheritance and property rights of tribal women in these communities.

Historically, land ownership and inheritance practices in Rajasthan have been heavily skewed in favour of men, resulting in the systemic exclusion of women from property rights. The situation is particularly dire among the Bhil tribes, where customary practices have entrenched patriarchal norms that disadvantage women. In these communities, proprietary titles are exclusively granted to men, while women are marginalised and made dependent on male family members for their livelihoods and sustenance.

The discussions revealed that tribal women have limited participation in household decision-making processes. While they may have a say in certain aspects such as children's education and household chores, their input is disregarded in crucial matters like property transactions and marriage settlements. This exclusion from key decisions underscores the entrenched gender biases that permeate these tribal societies.

Despite being aware of certain constitutional protections, such as the Forest Rights Act (FRA) of 2006, which aims to rectify historical injustices by recognising the land rights of forest-dwelling tribal communities, the effectiveness of these laws remains questionable. Although the Act mandates joint titles for married couples and even caters to single women, however, single women²⁵ are denied titles in practice. Furthermore, many tribal women have reported discrepancies in the allocation of land under the FRA, with claims being arbitrarily rejected or pending, and a general lack of transparency in the implementation process.

25. Forest Rights Act 2006, Section 4 (4)

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

The participants also highlighted the lack of awareness and access to legal documents and offices that could help them assert their property rights. This ignorance is partly due to the customary view of land as a male domain, where men control all information related to land ownership. Additionally, tribal customs among the Bhil tribes exclusively recognise male heirs, systematically excluding daughters from inheritance rights. Widows are often granted only a life interest in a portion of the land, with the stipulation that it reverts to male heirs upon their death or remarriage.

The discussions also touched on the broader societal implications of land ownership or the lack thereof. Economic vulnerability, exacerbated by landlessness, exposes tribal women to various risks, including trafficking and domestic violence. Many women recounted instances of abuse by their husbands, particularly under the influence of alcohol, and the societal stigma attached to demanding their rightful share of land.

Despite these challenges, there are isolated instances where access to land has positively impacted the lives of tribal women. Those who have successfully acquired land under the FRA reported improvements in food security and a sense of dignity and self-reliance. Recognition by their spouses and the community as equal landowners has also contributed to a more respectful and supportive household environment.

Muslim Women in Rajasthan

Since very little secondary literature is available regarding property rights of Muslim women in Rajasthan, ActionAid conducted an on-ground study of the aforesaid target group through focus group discussions to understand the situation. The report examined the influence of customary, personal, and constitutional laws on the inheritance of land and property among various communities in India, focusing specifically on the experiences of Muslim women in Jaipur. The insights presented in the report were drawn from two focus group discussions conducted on December 20, 2023, at Moti Singh Bhoomiyo ka Rasta and Jal Mahal, JP Colony in Old City, Jaipur.

The first area of exploration was property ownership among these women and the reasons underlying their ownership status. The discussions revealed diverse scenarios. Some women owned property, either independently acquired or with their husbands' assistance. In contrast, others did not own property due to a lack of inheritance rights or generational poverty. In the first FGD, women who inherited property often received a fraction of their parental estate. In the second FGD, where participants mostly resided in economically disadvantaged slums, there

was a common anticipation of patta distribution that was expected to favour male members, reflecting deep-rooted patriarchal norms influencing property allocation, even in the context of government schemes.

Inheritance rights emerged as a complex issue, with participants sharing a wide range of experiences. Some women willingly forwent their inheritance rights, often influenced by familial customs and societal pressures. In families with more progressive attitudes, property was divided equally among all siblings, irrespective of gender. There were also accounts of women being coerced into signing away their inheritance rights through familial pressure or deception. These narratives highlight the intricate dynamics where societal norms, individual agency, and legal rights intersect.

The discussions on decision-making within households also revealed a gendered hierarchy. While some women were consulted on household matters, men generally held the final decision-making power. This dynamic extended to broader life decisions, where the role of women were often limited to operational tasks and child-rearing. Even in these areas, women's autonomy was contingent on the approval of male family members.

The participants' awareness of constitutional laws concerning women's property rights varied. Those affiliated with NGOs demonstrated greater understanding of their legal rights compared to the majority, who lacked detailed knowledge. This highlighted a tension between constitutional provisions and customary laws. Some women viewed constitutional rights as both advantageous and potentially disruptive to familial harmony, reflecting the delicate balance between legal entitlements and social cohesion.

Religious and tribal customs also significantly influenced property rights of women. Participants noted that adherence to Quranic teachings could potentially protect women's property rights, but the lack of formal codification in religious texts often posed challenges for legal claims. While religious teachings theoretically advocate for women's rights, practical applications are frequently hindered by societal norms and interpretations.

Opinions on the effectiveness of constitutional provisions in ensuring women's property rights were mixed. Some women expressed confidence in the legal framework, while others pointed out the societal and familial obstacles that undermine these rights. The discussions highlighted various challenges women face when asserting their property rights, including familial resistance, societal backlash, procedural delays, and financial constraints within the legal system.

Finally, the FGDs touched upon the broader implications of land ownership for the socio-economic development of women. Participants acknowledged that property ownership could enhance respect within their communities and boost their confidence, which could, in turn, influence their participation in decision-making processes. However, the discussions underscored that ownership alone was insufficient; control over property and decision-making autonomy are essential for women's empowerment.

Gujarat

The Koli Patel Community

The Koli Patel community in Gujarat, like many other traditional and agrarian societies in India, has been governed by customary laws and practices that significantly disadvantage women, particularly in matters of inheritance. Despite legal frameworks aimed at ensuring gender equality, these customary laws continue to create substantial barriers for women in claiming their rightful share of family property.

The Hindu Succession Act of 2005 was amended to grant equal inheritance rights to daughters, both married and unmarried, over paternal joint family property. However, in practice, the implementation of these legal rights is obstructed by entrenched patriarchal norms and customs. Fathers and brothers frequently exclude daughters and sisters from family land titles, and it is uncommon for women to assert their legal rights due to societal pressures and fear of familial discord.

Customary laws within the Koli Patel community dictate that widows only gain formal recognition of their land rights upon the death of their husbands. Even then, these rights are often contested or denied by male family members. Widows are recognised as first-order heirs under the Hindu Succession Act, but this legal recognition does not translate into practice. Male relatives often harass or intimidate widows to prevent them from claiming their share of the family property. In many cases, widows are excluded from key documents such as the *pedhinama*, which lists all legal heirs, unless they produce male offspring. This practice ensures that widows without sons face even greater difficulty in claiming their inheritance.

The disparity in land ownership between men and women is stark. Although 78.6% of rural women in Gujarat work in agriculture, only 16% of the state's agricultural land is operated by women. Nationally, while the participation of rural women in agriculture is 80%, only 13.9% of agricultural land holdings are controlled by women. This wide gender gap underscores the systemic barriers women face in owning and controlling land.

The exclusion of women from land ownership has profound social and economic implications. Land ownership is not only a crucial economic resource but also a source of social status and security. Women without land ownership are economically vulnerable and often dependent on male relatives for their livelihood. This dependency perpetuates a cycle of poverty and disempowerment. Furthermore, without land, women have limited access to credit and financial services, which further restricts their economic opportunities.

Women who attempt to assert their inheritance rights often face harassment and violence from male family members. This violence serves as a deterrent to other women who might consider claiming their legal rights. The lack of effective legal recourse exacerbates the problem, as women are often reluctant to seek help from law enforcement due to fear of retaliation and further violence.

The persistence of customary laws that favour male inheritance over legally enshrined gender equality highlights the need for a concerted effort to bridge the gap between law and practice. While legal reforms are crucial, they must be accompanied by social and cultural change to challenge and dismantle patriarchal norms that perpetuate gender discrimination in inheritance practices.

Muslim Women in Gujarat

Since there is very little secondary literature available regarding property rights of Muslim women in Gujarat, ActionAid conducted a ground study through focus grouped discussions to understand the situation. The study analysed property rights among Muslim women in Gujarat, focusing on the Miyana Muslim community and upper-caste Muslim women (Sayyed and Pathan) in the Maliya region of the Morbi district of the state. Drawing from two insightful FGDs conducted on December 30, 2023, the report explored the multifaceted challenges posed by religious, cultural, and customary practices affecting property rights. The narratives and perspectives of Miyana Muslim women from New Hanjyasar village and upper-caste Muslim women from Maliya highlights the complexities of property inheritance, the role of religious leaders, socio-economic impacts, and the effectiveness of government interventions.

The FGDs revealed significant challenges in property inheritance among both groups of Muslim women, rooted in conflicts between customary and personal laws and reinforced by gender norms. Miyana Muslim women shared instances of prolonged disputes over inherited property, often favouring male heirs and resulting in gender-based disparities. For instance, women in the Miyana community face difficulties asserting their rights to inherit property equally with male siblings, which underscores the need for addressing gender-based disparities within legal frameworks.

Similarly, upper-caste Muslim women highlighted specific conflicts arising from opposing interpretations of customary norms, particularly within agricultural land inheritance. These disputes emphasised the complexities of property inheritance within the upper-caste Muslim community, necessitating nuanced interventions to address the intricacies of such disputes.

Both groups of Muslim women emphasised the profound impact of cultural and religious norms on property inheritance. Miyana Muslim women narrated experiences where traditional practices prioritised male heirs, while upper-caste Muslim women, particularly from the Sayyed community, grappled with cultural expectations favouring male siblings. These shared experiences reveal the nuanced interplay between cultural and religious factors, shaping and complicating property distribution.

Moreover, discussions among upper-caste Muslim women shed light on the influence of religious and cultural norms on decision-making, especially regarding reproductive health choices. This intersection of tradition and personal autonomy illustrates the need for sensitive approaches that respect cultural and religious values while promoting individual agency.

The focus group discussions showcased a spectrum of views among religious and community leaders regarding property rights. Some leaders advocated for equitable rights, emphasising justice and equality within the framework of Islamic teachings. Conversely, others adhered to traditional interpretations of religious texts, upholding the precedence of male heirs. This divergence in opinions within the community's leadership reflects the challenges in reconciling modern principles of gender equality with deep-rooted cultural norms.

Miyana and upper-caste Muslim women both face formidable obstacles in asserting their property rights, attributed to deeply ingrained societal norms, limited legal awareness, and instances of discrimination. A lack of awareness leaves these women potentially uninformed about their legal entitlements, creating disparities in the distribution of inherited property. The difficulty in accessing legal recourse further compounds these challenges, emphasising the urgent need for initiatives addressing legal awareness gaps.

Despite the challenges, participants shared inspiring examples of women successfully navigating the legal landscape to secure their property rights. These success stories highlighted the transformative potential of constitutional laws in safeguarding inheritance for Muslim women. Participants expressed diverse opinions regarding the role of the government and legal system, with some

advocating for more accessible and community-centric legal avenues. Tailored interventions addressing the unique challenges faced by Muslim women in asserting their property rights are crucial for fostering more equitable solutions.

The discussions underscored the significant impact of land ownership on the socio-economic development of Muslim women. Owning land emerged as a key factor contributing to economic autonomy and improved well-being. Participants shared compelling examples of women utilising their land for agricultural activities, fostering economic independence, and contributing meaningfully to their family's income. These narratives illuminated how access to land positively influenced the economic well-being of women, leading to a broader spectrum of opportunities and a higher quality of life.

Participants delved into existing programs and initiatives designed to tackle landlessness among women. While some shared success stories where women accessed land through government initiatives, others expressed concerns about the limitations and challenges faced by these programs. The nuanced perspective indicated the importance of considering the diverse circumstances and requirements of women when formulating interventions.

Throughout the discussions, participants acknowledged the existence of discrimination within inheritance practices, particularly favouring male heirs over female counterparts. The recognition of such practices emphasised the need for nuanced discussions and potential interventions to address these challenges. Acknowledging these practices is crucial for fostering awareness and understanding among community members, paving the way for more equitable solutions.

Haryana

In the region of Mewat, which includes the districts of Mewat, Rewari, Faridabad, and Old Gurgaon in Haryana, an archaic customary law, known as *Riwaz-e-Kanoon*, continues to discriminate against women, particularly in matters of property inheritance. This law, a vestige of the British colonial era, overrides both the Indian Constitution and Muslim Personal Law, leading to significant disadvantages for women in the region.

Riwaz-e-Kanoon, codified by Sir W.H. Rattigan in his work *A Digest of Customary Law In The Punjab* originates from the Hindu-Rajput customs of the region's past inhabitants. According to this customary law, women in the Meo Muslim community, which predominantly inhabits Mewat, are deprived of their rights to inherit ancestral property. Paragraph 22 of Rattigan's compilation states that individuals with an

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

interest in property, including widows, daughters, and mothers, can only sell or mortgage property for necessary purposes, akin to the rights of a karta in a joint Hindu family, who manages property without inheritance rights.

Under *Riwaz-e-Kanoon*, women in Mewat are effectively barred from inheriting property, even when they are the sole offspring. The property of a man without sons automatically transfers to his male relatives upon his death, bypassing daughters entirely. Widows can reside on the property but cannot sell it, further perpetuating their economic dependency and vulnerability. This has resulted in widespread deprivation and contributed to the region's acute socio-economic backwardness.

Many women in Mewat have resorted to lengthy legal battles to claim their inheritance rights, but customary law often takes precedence over both Muslim Personal Law and modern succession laws. These legal struggles are protracted, with cases dragging on for decades, often without resolution. For instance, women who adopt male heirs to retain property within the family face legal challenges from other male relatives, who often dispute such adoptions in court.

Despite the entrenched nature of *Riwaz-e-Kanoon*, there is growing recognition of its detrimental effects on women. Intellectuals and community leaders in Mewat, along with the Islamic clergy (Ulema), have been advocating for the repeal of the customary law and the implementation of Muslim Personal Law, which provides for inheritance rights for daughters, albeit in unequal measures compared to sons. The clergy argues that customary law is not only unconstitutional but also contrary to Islamic principles, which mandate a share for daughters in ancestral property.

CASE STUDY

Sumitraben Patel

Sumitraben Patel, a resident of Dholka town in Ahmedabad district, has been an active member of the Bavla Mahila Vikas Sangathan since 2002. Initially, she focused on addressing domestic violence issues. Her dedication and passion for helping women led her to take charge of five villages struggling with this concern. She received training on domestic violence from the Center for Social Justice (CSJ) in Ahmedabad, an NGO that incubated the sangathan and is a member of the WGWLO and the Ekal Nari Adhikar Manch network. Sumitraben's growth was facilitated by her work with the sangathan and the capacity-building inputs provided by the WGWLO network.

Between 2008 and 2011, Janvikas, an NGO associated with CSJ, awarded Sumitraben a fellowship that allowed her to continue her work on domestic violence for three years. Sumitraben Patel's advocacy for women's land ownership began in 2013, sparked by her mother's struggle for land

rights after becoming a widow in 1985. The journey was marked by relentless efforts, legal battles, social ostracization, and false accusations. Sumitraben's mother, entitled to 7 vighas of land and a home, faced constant harassment from her brother-in-law (Jeth) and in-laws, who strongly opposed granting her any share through *varsai* (inheritance). At the age of 22, Sumitraben took charge by filing a court case to reclaim ownership for her mother. In response, her family faced ex-communication, and when Sumitra's sister got married, none of her father's relatives attended the ceremony. Despite intense pressure to withdraw the case, Sumitraben persevered. Facing a false accusation, she spent two days in police custody while her family continued to cultivate the land that was rightfully theirs.

From 1992 to 2002, the battle unfolded in the judicial arena. Sumitraben fought court cases and appeals from her mother's Jeth, emerging victorious in all. In 2002, after a decade of legal struggles, she obtained clearances allowing the transfer of land and building ownership to her mother and other family members. Today, her four brothers and sisters are co-owners.

Sumitraben's journey illustrates resilience, determination, and legal acumen in overcoming adversities to secure her family's rightful property. Her success serves as inspiration and motivation for her advocacy, assisting numerous women in claiming their land rights through *varsai*. Sumitraben's triumph over adversity transformed her into a strong leader, equipped with in-depth knowledge about legal procedures necessary for securing land. Motivated by her success, she became a source of support for other women facing similar crises and mental torture.

In her early career, dissatisfied with her job at a government hospital, Sumitraben sought opportunities to make a meaningful impact on women's lives. Through her efforts with Bavla Sangathan, Sumitraben has assisted around 700 women in claiming land ownership through *varsai* and helped nearly 250 women acquire houses or housing plots. Recognised for her capacities as a para-legal worker and sangthan leader, she serves as a resource person in various trainings and legal camps. Sumitraben's commitment extends beyond Gujarat, participating in exposure visits and training programs. Her direct contacts with local authorities, including Bavla mamlatdar and talatis, enable her to efficiently navigate bureaucratic processes.

Her future aspirations include continuing to assist women, advocating for their independence at all levels, and promoting a life of dignity for rural women. Her improved economic status, reflected in building a two-story home, underscores the positive impact of her efforts.

CASE STUDY

Najmaben

Najmaben, a resilient woman, faced significant challenges asserting her property rights following her husband's death. Her brother, who initially registered her husband's death, withheld the certificate, fearing she might lose it. Societal apprehensions made Najmaben reluctant to step out for the *varsai* (inheritance) process, delaying it for years.

The turning point came during a village sangathan meeting, where Najmaben, armed with old handwritten land documents, expressed her confusion and desire to complete the *varsai* process. The Sangathan aagevan advised her to visit the Taluka office, but Najmaben felt shy about going out in the village. Sensitively, they assured her she could go directly to the Taluka Panchayat without engaging with anyone in the village.

As a mother of five, Najmaben faced educational disruptions for her children after her husband's death. Her daughter, who had studied until the 7th standard, had to discontinue her education due to financial constraints. Seeking assistance from the sangathan aagevan, Najmaben discovered her brother possessed her husband's death certificate. The aagevan facilitated its retrieval and enlisted the support of the Sarpanch for Najmaben's *varsai*.

Despite challenges, including difficulties meeting the Talati and societal comments, the *aagevan*, along with the Sarpanch, completed the *varsai* procedures at the Taluka office. Najmaben's brother-in-law opposed her inclusion in the land, questioning the need since her husband was no more. However, as the land was registered in her husband's name, Najmaben rightfully secured her *varsai* as the direct heir.

The entire process incurred a cost of Rs. 1500. Currently cultivating jeera, Najmaben faces challenges protecting the crops from peacocks and investing Rs. 1500 to hire someone for ploughing, as societal beliefs restrict women from this task. Her three daughters engage in labour work, contributing to agricultural investments and food expenses. Managing her household and agricultural responsibilities alone, Najmaben endures derogatory comments from neighbours, highlighting the gendered expectations placed on her.

Najmaben received "taarpatri" under an agricultural scheme, and discussions with the Sarpanch are underway to secure water access through a government scheme. Her story reflects the complexities and resilience required for rural women like her to navigate societal norms and secure their property rights.

Himachal Pradesh

Gender discrimination is a prominent issue in tribal societies, where traditional customs dictate daily life, especially in terms of property inheritance. In Himachal, tribal families adhere to patriarchal customs that prevent women from inheriting property. This patriarchal system and customary laws perpetuate structural violence in society. Many tribes in Himachal, such as the Bhot, Lahuala, Kinnauras, Gaddi, and Pangwal, provide property to their daughters as gifts, yet women in these communities lack legal rights to inheritance. Customary laws define the social structure of these tribal communities, which inherently discriminate based on gender.

The social fabric of the tribal communities in Lahaul Spiti, Kinnaur, Pangi-Bharmour in Chamba District, and among the Gaddis in Himachal Pradesh, is deeply woven with customs and traditions. These communities are known for their honesty, innocence, and deep appreciation of nature and maintaining strong ties to their traditional lifestyles. They have established unique rituals and rules to resolve conflicts, with village and family deities guiding daily activities and community matters resolved by consensus. Village panchayats handle disputes related to marriage, adoption, inheritance, and divorce.

The harsh climate and isolation have helped preserve these customs, including the local resolution of conflicts. In Lahaul and Spiti and Kinnaur, the joint family structure remains strong, partly due to the enduring practice of polyandry, which helps keep families together. In Udaipur, with its predominantly Hindu population and more productive landholdings, there is a noticeable shift towards monogamous marriages. However, in some areas, polyandry persists, with brothers sharing their homes, cattle, and rarely dividing their land.

The Gaddis follow two distinct inheritance methods: *Mundaband* and *Chundaband*. "Munda" translates to "boy," and under the *Mundaband* system, if a father has only one wife, the property is divided equally among his male children. On the other hand, the *Chundaband* system applies when a father has multiple wives; here, the property is split equally among the wives. If there are no male children in the family, the widow inherits the property for her lifetime. However, daughters are not granted inheritance rights in this traditional setup.

In Spiti Tehsil, the custom of primogeniture prevails, where the eldest son inherits the father's property, and the younger brother often becomes a monk (lama). If the younger brother opts out, he receives some property for sustenance. There are no restrictions if the younger brother owns property and lives separately.

Succession in these tribal societies is dictated by customary laws, such as *Wajib-ul-arz* (village-specific customs) and *Riwaz-e-am* (district-wide customs). These laws typically favour male descendants in inheritance matters. A common customary rule across these tribes is that women cannot inherit land. Instead, property is passed down through male heirs. The Scheduled Tribes and Scheduled Castes in these areas are exempt from the Hindu Succession Act, 1956, meaning inheritance is governed by customary laws. Disputes over these laws can be taken to court, with the older generation clinging to traditions while the better-educated younger generation is more inclined to seek legal remedies.

The Battle for Property Rights for Tribal Women in Himachal Pradesh

The legal battle for property rights for tribal women in Himachal Pradesh began with a landmark case in October 2002. A district judge in Chamba granted property rights to the daughters of a man from the Gaddi tribe. In 2003, one of the man's sons appealed this decision to the Himachal Pradesh High Court. Justice Rajiv Sharma upheld the district judge's decision in 2015, setting a precedent that aligned the inheritance rights of tribal women with the Hindu Succession Act of 1956.

Manjari, from Kinnaur district, despite not knowing the women involved in the case, ardently supported the ruling. As president of the Mahila Kalyan Parishad (MKP) in Kinnaur, she has long advocated for the property rights of tribal women. In February 2016, two petitioners from Lahaul Spiti challenged the ruling in the Supreme Court. In 2017, Manjari and the MKP filed a public interest petition, arguing that under Article 32, tribal women in Himachal Pradesh should have the right to own property. However, the petition was withdrawn after a hearing in 2018.

A source, who chose to remain anonymous, explained that many locals opposed granting women property rights due to the growing value of land for apple orchards. Apple producers and traders feared that giving women land would fragment the orchards and reduce family incomes. This author conducted personal interviews with locals and Manjari, who faced resistance from the Shimla legal community and struggled to find legal representation for MKP. Finally, in April 2019, MKP was able to file its petition under Article 226 before the high court. "Apple cultivation is dominated by men, though women perform over 50% of the labour, including planting, tilling, weeding, and watering," Manjari ji noted. "Men sell the produce and handle the money, while women must ask for it. If women owned land, they could start small businesses, rent out land, or use the Kisan Credit Card Scheme for financing."

Though Manjari now feels the weariness of her efforts, she remains determined. "I have much to do, but I wish to retire. Yet, people want me to continue, and I will

not stop until I run out of energy," she said. She is committed to seeing the PIL through and is prepared to petition the Supreme Court if the high court ruling is unfavourable. "We are even considering meeting with Prime Minister Modi in Delhi," she added.

Jharkhand

Santhal Community in Jharkhand

The following are the inheritance rights of women from the Santhal tribe under Santhal customary law:

1. Unmarried daughter

An unmarried daughter usually has no rights to her family's land. Land is typically divided equally among brothers, with daughters receiving small portions as dowry. She cannot demand a share of the land, but her father or brothers may set aside some land for her marriage and maintenance. This is done out of duty, not as a right. When her father's property is divided, she only has the right to maintenance, not ownership. She can, however, acquire her own land, which she fully owns. In some cases, unmarried daughters may inherit land, but it goes to their brothers once they marry. If her father or brothers fail to support her, she can claim enough land for her sustenance until marriage. If her father dies without other heirs, she inherits his land until she marries. If she has married sisters, they share the land with her; if not, the land goes to the village community.

2. Married daughter

When married, daughters receive two to three bighas of land from their parents, called Taben Jom, for their maintenance. This land is completely theirs, and their father, brothers, or other male relatives have no claim to it. When a married daughter dies, her sons inherit this land. If she has no sons, the land goes to her father, brothers, or other male relatives, but never to her husband. If a married daughter has no brothers, her father may adopt her husband as a live-in son-in-law (*Gharjamai*), giving him all the rights of a son.

3. Widow

A widow has the right to maintenance, similar to a widow in the Hindu community. If her husband died while owning property with his brothers, she stays with the family, and her situation remains the same as when her husband was alive. Her right to maintenance continues, and if her husband's family neglects her, she can ask for enough land for her sustenance. If the family property is fully divided, she and her children receive her husband's share, but she only gets a life estate, which is similar to a Hindu widow's estate.

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

If a widow has no sons, her husband's father or brothers inherit all the property. She receives a calf, some paddy, a bati²⁶, and a cloth, and must return to her parents' house. Some men allow their brother's widow to stay in her husband's house, which is considered admirable. However, the brother only gets his own share of the property, not the entire share.

If a widow has daughters, her husband's father and brothers take care of them and manage the property. They marry off the daughters and give them the presents their father would have given. After all the daughters are married, the widow is treated like a childless widow and must live with her parents or daughters.

If a widow has a son, she keeps all the property, and the grandfather and uncles only ensure she does not waste it. If she remarries before her sons marry, the grandfather and uncles take the property, and she loses her rights to it. Sometimes, she receives a calf out of kindness, called *bhandkar*.

Tribal Custom in Comparison with Hindu Succession Act 1956

1. Right of Women Over Property

Under the Hindu Succession Act, 1956 (amended in 2005), a daughter in a joint Hindu family governed by *Mitakshara* law has the same rights as a son from birth. She can seek partition of the family property and become the head (*Karta*) of the family. Any property she inherits as a coparcener can be managed and disposed of by her as she sees fit. Additionally, the wife of a deceased coparcener is entitled to a share of his property.

On the other hand, under Santhal customary laws, daughters usually have no rights to family property. Land is divided among brothers, with small portions given to daughters as dowry. A daughter cannot demand partition of the property. If her brothers divide the property, some land may be set aside for her marriage and maintenance, but this does not give her ownership rights. If her father or brothers refuse to support her, she can claim enough land for her sustenance until marriage. In some cases, unmarried daughters may inherit land, but this land goes to their brothers once they marry.

If a woman becomes a widow without sons, her husband's father or brothers inherit the property. She receives minimal support and must return to her parents' house. If the widow has daughters, her husband's family takes care of them and manage

26. Ghosh, G. (2014). *Deconstructing Inheritance Rights of Women Under Santhal Customary Laws vis-à-vis Hindu Succession Act, 1956*. International Journal of Legal Studies and Research (IJLSR), 1, 58–60. <https://www.researchgate.net/publication/328476561>: Page 68

the property until the daughters marry. Once all daughters are married, the widow must live with her daughters or her own parents. If a widow has a son, she keeps the property, but her husband's family oversees to ensure she does not waste it. If she remarries before her sons are married, the property goes to her husband's family, and she loses her rights to it, though she may receive a small gift out of kindness.

2. Right to Full Ownership of Property

Section 14 of the Hindu Succession Act, 1956, gave Hindu women full ownership of property they possessed, allowing them to manage and dispose of it as they wish. Before this Act, widows only had limited ownership, but after the Act, they became full owners of their property.

This section states that any property a Hindu woman has, whether she got it before or after the Act started, is fully hers. This includes both movable and immovable property acquired through inheritance, gifts, partition, maintenance, or her own efforts, among other means. Even property held as *stridhana* (women's property) before the Act is included.

In contrast, under Santhal customary laws, a widow has only the right to maintenance. If her husband died while sharing property with his brothers, she continues living in the family as before. Her right to maintenance remains, and if neglected, she can claim enough land for her sustenance. If the family property is divided, the widow and her children receive her husband's share, but she only gets a life estate, similar to a Hindu widow's estate.

3. Right of Disposal of Property

Section 30 of the Hindu Succession Act, 1956, gives a Hindu woman the right to dispose of her property through a will or other testamentary means. In contrast, under Santhal customary laws, women usually do not have rights to property. If they do, as daughters or widows, they only have a limited estate, meaning they have the right to maintenance but cannot dispose of the property.

Meghalaya

Garó Community in Meghalaya

The Garó community is one of matrilineal²⁷ tribes of Meghalaya. Under this system, women inherit both movable and immovable assets. Any property her husband inherits or acquires post-marriage automatically belongs to the wife. Typically, inheritance rights are transmitted from mother to daughter, and men do not

27. Matrilineal: Tracing kinship through female line.

acquire property by inheritance. Despite earning it through their labour, men are not entitled to any part of it. Lineage is consistently traced back to the mother, and it is customary for children to take their mother's surname.

Though the Garo community is matrilineal, it is not matriarchal. Unlike matriarchal societies where women lead family and tribal administration, in Garo society, men typically hold administrative and custodial roles. Men bear responsibility for the family, and male family members generally wield more influence in familial and societal matters. Women are expected to rely on male relatives for decision-making, governance, property transactions, and other significant activities.

The Garo tribe traces lineage solely through the mother. All possessions of a woman belong to her, stay within her clan (*mahari*), and are passed from mother to a daughter. Sons do not have the right to claim any part of the property, even if they earned it through their efforts. Upon marriage, the wife inherits property rights from her mother, becoming the new matriarch of her household. The husband, after marriage, leaves his mother's home to live with his wife and build a new family. The wife's clan influences the new household, and the children inherit their mother's surname. The husband's role is to contribute his love, effort, and entire income towards the welfare of his new family, though he retains his own *mahari* surname.

Marriage creates a bond between two different *maharis*, with each ensuring that the other's rights are respected. The wife's *mahari* holds the right to retain household belongings, while the husband's *mahari* has the right to ensure the heiress's husband is chosen from among their members. The rule that lineage and property inheritance must begin and continue through the maternal line ensures that the woman's *mahari* remains predominant.

In the Garo community, inheritance regulations specify that communal properties cannot be inherited and that all personal assets belong to the mother, to be passed exclusively to her daughters. Among their daughters, parents designate one as the primary heir, known as *nokna* which translates to "woman is the heiress." In cases where the couple has no children, they may adopt a girl as the heir, often choosing a niece from the wife's clan, typically her sister's daughter. For the *nokna* to take ownership of her family's assets, she is expected to marry her father's sister's son. Her responsibilities extend to caring for her parents, unmarried siblings, and brothers who are either widowed or divorced.

While the *nokna* is a central figure in property inheritance, she does not hold absolute ownership of the land. Instead, her husband, known as *nokni skotong* or *nokma*, assumes the role of head of the household, overseeing inheritance and

property distribution decisions. He collaborates with the *Chra*, the wife's maternal uncle or other male relatives, to manage their shared resources. If she fails to fulfil her duties, the *Chra*, with the consent of her children, may disown her, passing the inheritance to the next female offspring.

Jaintia Community in Meghalaya

The Jaintia tribe of Meghalaya is frequently highlighted as an example of a matrilineal culture, where inheritance and property rights are passed down through the female line. In theory, this system should empower women, granting them control over ancestral property and a significant role in family affairs. However, the reality is far more complex. Despite the matrilineal structure, Jaintia women do not fully control property and instead face significant discrimination rooted in patriarchal customs and societal norms. Despite appearing to empower women, the matrilineal structure in Jaintia society ultimately perpetuates gender-based discrimination by limiting women's control over property and reinforcing male authority.

Matrilineal Inheritance: A System of Custodianship, Not Ownership

In Jaintia society, inheritance of ancestral property follows the principle of female ultimogeniture²⁸, where property is passed from the mother to the youngest daughter, known as the *Khadduh*, or to the 'only daughter' in the absence of other daughters. This system ensures that property remains within the clan, and the youngest daughter is expected to stay in the ancestral home, *Yung Bei*, to take care of her aging parents. At first glance, this arrangement seems to place women in a position of power within the family, granting them control over valuable assets.

However, the reality is that the *Khadduh* does not truly own the ancestral property. She is regarded as a stewardess or custodian, with the maternal uncle acting as the chief executor of the property. This means that while the property may be in the *Khadduh's* name, she cannot make decisions about it independently. The maternal uncle, a male authority figure within the family, holds significant decision-making power, particularly concerning the allocation and use of the property. This arrangement effectively diminishes the woman's control over her inheritance, as her rights are subordinated to the authority of male relatives.

The responsibilities of the *Khadduh* extend beyond mere custodianship. She is tasked with assisting the uncles during rites and ceremonies held in *Yung Bei*, the ancestral home, and is responsible for covering the expenses associated with these events. Additionally, she is expected to care for any family member who may fall

28. in which the right of succession a principle of inheritance belongs to the youngest child.

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

into misfortune, such as those who are disabled, widowed, or divorced. These heavy responsibilities further complicate the notion of female empowerment in Jaintia society, as the *Khadduh*'s role is more about serving the family and maintaining the property than exercising autonomy or authority over it.

Moreover, the ancestral property that the *Khadduh* inherits is not unencumbered. Every family member has a say in its use and distribution. Attempts to sell the property often lead to disputes and court cases. The property is treated as corporate property, belonging to the clan as a whole, rather than to the individual *Khadduh*. This communal aspect of property ownership further restricts the *Khadduh*'s ability to exercise control over her inheritance, as she must navigate the demands and expectations of the entire family. Despite being the nominal custodian, the *Khadduh*'s control over the property is significantly curtailed by the influence of male relatives.

Self-Acquired Property: Limited Autonomy and Societal Pressure

While ancestral property in Jaintia society is heavily regulated by matrilineal customs, self-acquired property presents a different dynamic. Unlike ancestral property, self-acquired property can be disposed of according to the owner's wishes. However, even in this context, the rights of women are not fully recognised. A woman may inherit or control self-acquired property, particularly in the absence of a male heir, but societal expectations and customs often pressure her to pass it on to her male relatives.

The legal and social complexities surrounding self-acquired property further undermine women's control. The rights of women to such property are often contested, and they may face significant pressure from male relatives or community members to relinquish their claims. This pressure, combined with the broader patriarchal norms of Jaintia society, means that even in cases where women theoretically have more control, their autonomy is limited by external influences.

Property Rights of Jaintia Men: A Contradiction in a Matrilineal Society

While the matrilineal system ostensibly favours women in matters of inheritance, Jaintia men also have significant rights and influence over property. Men cannot inherit ancestral property if there are female heirs, but they can acquire it in the absence of such heirs. Moreover, men can own self-acquired property, and upon their death, this property typically passes to their mother or sister, not to their wife. The wife may receive a portion of her husband's income through a ceremony called *I Kit-Khih*, but she does not inherit the property itself.

This dynamic creates a situation where the male relatives of a married man have a strong claim to his earnings and property, further diminishing the rights and status of women within the family. The maternal uncle and brothers hold significant power over the family's property and resources, and women are often excluded from decision-making processes. This exclusion extends beyond the family to the broader social and political sphere, where women are not allowed to participate in village councils or other political affairs.

The Illusion of Empowerment: A Feminist Critique

The position of women in Jaintia society is often romanticised as being empowered due to the matrilineal structure. However, a closer examination reveals that this empowerment is more apparent than real. While women may be the nominal custodians of property, their rights are heavily constrained by the authority of male relatives and the communal nature of property ownership. The matrilineal system, rather than challenging patriarchal norms, often reinforces them by placing women in roles that emphasise their responsibilities to the family and clan, rather than their autonomy and control.

Feminist scholars argue that the status of women in Jaintia society, like in many other matrilineal societies, needs to be re-evaluated. The higher status that women appear to enjoy is often limited to specific roles and responsibilities that do not translate into real power or influence. The exclusion of women from decision-making processes, both within the family and in the broader community, highlights the persistence of patriarchal structures even within a matrilineal framework.

Khasi Community in Meghalaya

It is often debated among scholars whether the Khasi community in Meghalaya is truly matrilineal or matriarchal. To clarify, a matrilineal society is one where lineage is traced through the mother, with children inheriting the mother's family name. In such societies, after marriage, couples typically live in the wife's household, and daughters inherit the family property. Matriarchy, however, goes beyond this and refers to a system where women hold power in various domains, including resource management, production, and socio-political roles²⁹.

While the Khasi community follows matrilineal traditions, it is not matriarchal. Khasi women are excluded from traditional councils known as *Durbur Shnong* and are not eligible to be elected as the headman, or *Rangbah Shnong*, due to the

29. https://www.researchgate.net/publication/349588802_Gender_Preference_in_Customary_Inheritance_Laws_of_the_Khasi_Tribe_in_India_-_Myth_or_Fact

male-dominated nature of the term '*Rangbah*.' Gender involves the rules, customs, and practices that transform biological differences between males and females into socially constructed inequalities, leading to different opportunities and life outcomes for men and women³⁰.

In the Khasi community, women, particularly the youngest daughter or *ka-khadduh*, play a crucial role in the family as caretakers and guardians of both material and spiritual well-being, known as the *kur*. This youngest daughter typically inherits the family's ancestral property. If she has passed away, the next youngest daughter inherits the property. In the absence of any daughters, the responsibility shifts to the elder sister. Husbands do not inherit ancestral property; they may only temporarily possess it during their lifetime, after which it returns to the wife's family clan.

In a traditional Khasi family, sons are seen as belonging to their mother's family, while the mother belongs to her own mother's family. Khasi men have dual roles as providers and protectors in their families. Before marriage, a Khasi man is responsible for supporting and protecting his mother, sisters, and younger brothers. After marriage, he becomes part of his wife's mother's family, where he assumes the role of the family head alongside his wife. His responsibilities include ensuring the well-being, property, and religious practices of his new family.

In his wife's household, when children are born, the husband becomes the executive head, responsible for earning a livelihood. Meanwhile, in his mother's household, he remains an important figure as a maternal uncle or *Kni*, providing crucial advice in family decisions during both good and challenging times. Therefore, within a Khasi family, the maternal uncle holds a symbolic leadership role, while the father is the executive head of the household.

The Khasi social system, although matrilineal, incorporates elements of patriarchy, with the maternal uncle wielding significant authority within the family. The maternal uncle plays various crucial roles, including that of an adviser, mediator, disciplinarian, and supporter during challenging times. Traditionally, he is the central figure of authority and economic stability, acting as the backbone of the family or clan. His responsibilities include overseeing his sisters' children and safeguarding the clan's welfare and integrity. However, in recent years, the Khasi social system has seen shifts, with fathers increasingly taking on the patriarchal roles that were once the domain of the maternal uncle.

30. Tombing, T., & Sun, S. (2020). Redefining the Narratives of Inheritance of Property Among the Mizo, Khasi and Paite Tribes of North East. ResearchGate. https://www.researchgate.net/publication/352736537_Redefining_the_Narratives_of_Inheritance_of_Property_Among_the_Mizo_Khasi_and_Paite_Tribes_of_North_East_India_A_Critical_Legal_Analysis

Khasi inheritance laws, which remain uncoded, often lead to the misconception that the youngest daughter, or "*Ka Khadduh*," automatically inherits and controls all the family property. However, her inheritance rights are not absolute as in other legal systems. Instead, she serves as a limited heir and custodian of the ancestral property, known as "*Ka Nongjri Ka Nong Sumar*." The actual management of the property is the responsibility of the maternal uncle and later passes to the eldest nephew. The youngest daughter cannot dispose of the ancestral property without the unanimous agreement of her sisters and the counsel of the maternal uncle.

Inheriting property comes with significant responsibilities for the *Ka Khadduh*. She must perform religious ceremonies, holding the family's spiritual traditions (*Kabatiakaniam*). Her home, called '*Kaingseng*,' becomes a gathering place for family members to participate in these rituals. She is also responsible for conducting the death rites for her parents and other relatives, carefully placing their bones under the clan's stone (*Mawbah*) as their final resting place. Additionally, the *Ka Khadduh* must care for her parents during their lifetime, as well as look after any unmarried or disabled siblings, widowed or divorced sisters, and the children of her deceased siblings. Those family members unable to support themselves, with no children to care for them, have the right to live in *Ka Khadduh*'s house, known as '*iing khadduh*.'

The matrilineal inheritance practices of the Khasi people have partly evolved because men were often away for long periods, engaged in battles with neighbouring communities.

The Case of Agricultural Land in India

The table mentioned below shows the comparative status of women land rights indicators³¹.

According to agricultural census data, women in India manage fewer land holdings, covering smaller areas and sizes compared to men. Women operate around 12.8% of the total operational holdings, which accounts for 10.34% of the total land area. The average size of land holdings managed by women is 0.93 hectares, in contrast to 1.18 hectares for men and 1.15 hectares overall. Regional disparities in the land rights of women are evident, with southern states showing a relatively higher number and area of land holdings managed by women, while the northern and eastern states lag behind.

31. Brulé, R. E. (2021). Women, Power, and Property. In Cambridge Studies in Gender and Politics. Cambridge University Press. Page:14

Table 2.1: Comparative Status of Women Land Rights Indicators

State	Status of women land rights indicators		
	Agriculture Census	IHDS and Population Census	SECC
Andhra Pradesh	25.39	7.97	13.22
Bihar	14.06	2.01	8.02
Chhattisgarh	12.61	3.11	10.08
Gujarat	14.13	4.98	8.10
Haryana	12.06	1.86	11.36
Himachal Pradesh	7.05	4.84	19.42
J&K	7.34	2.65	9.58
Jharkhand	10.98	4.68	10.00
Karnataka	18.98	3.55	15.32
Kerala	19.61	14.14	18.76
Madhya Pradesh	9.63	4.38	6.75
Maharashtra	14.98	5.96	8.87
Odisha	3.29	1.79	8.79
Punjab	0.92	5.03	14.54
Rajasthan	7.92	2.14	6.85
Tamil Nadu	19.11	6.17	12.74
Uttar Pradesh	6.95	3.60	9.77
Uttarakhand	9.82	10.64	25.06
West Bengal	3.50	2.42	7.87
All India	12.79	4.01	10.18

Over the past decade (2001-2011), the number (36.12%) and area (23.45%) of land holdings owned by women have grown at a pace exceeding the rate of population growth. States and union territories such as Sikkim, Rajasthan, Bihar, Madhya Pradesh, and Daman & Diu have seen a significant increase in land holdings of women. Conversely, states and union territories like Chandigarh, Delhi, Jammu & Kashmir, Puducherry, and Kerala have reported a decline in the percentage of land holdings held by women.

In an economic system based on individual ownership, inheritance is a primary method of acquiring land, property, and resources. Nonetheless, the inheritance rights of women are frequently influenced by a complex interplay of legal, structural, socio-economic, and cultural elements.

Although the 1956 law granted Hindu women equal inheritance rights to a decedent's property, it preserved the concept of coparcenary within Hindu Undivided Families, thereby excluding women from becoming coparceners. As a result, four generations of male coparceners held joint ownership, had birth rights to the coparcenary property, and could request its partition, whereas women had no birth right in such property. Another significant limitation pertained to the inheritance of tenurial land (agricultural lands regulated by various state acts), as Section 4(2) of the HSA 1956 specifically exempted these rights, leaving them to be governed by local tenancy and land reform laws.

It took India half a century to eliminate the discriminatory provisions of the 1956 law. The Hindu Succession (Amendment) Act of 2005 introduced significant changes to enhance inheritance rights of Hindu women. First, it amended Section 6 of the 1956 law, granting women equal coparcenary rights by birth in joint family property. Second, it removed Section 4(2) of the 1956 law, which had prioritised certain local laws concerning the devolution of tenancy rights in agricultural holdings.

These amendments aimed to strengthen a woman's inheritance rights, but the second change has sparked considerable debate and confusion. Section 4(2) of the original HSA 1956 was a clear source of gender inequality, as it allowed state tenurial laws to dictate the devolution of tenancy rights in agricultural land, leading to variations by state. The 2005 amendment's removal of Section 4(2) was intended to simplify inheritance laws, but its practical implications are complex. Some argue that state laws now govern the inheritance of agricultural land, while others believe it falls under the HSA of 1956. This confusion has created ongoing disputes over the applicable laws.

Muslim communities are unaffected by these changes, as Sharia law specifically excludes agricultural land from its scope, according to the Muslim Personal Law (Shariat) Application Act of 1937, Section 2.

Three Tier Legislative Powers and Land Governance

The Indian Constitution establishes a three-tiered distribution of legislative powers between the central government and the states. This distribution is outlined in the Seventh Schedule of the Constitution of India (1950: Articles 245 & 246), which

includes three lists:

- » **The Union List:** Subjects over which only the central government (Parliament) has the authority to legislate.
- » **The State List:** Subjects of local and regional importance that fall under the legislative power of the states.
- » **The Concurrent List:** Subjects where both the central government and the states share legislative jurisdiction.

In terms of land governance, both the central government and the states have authority over different matters. For instance, agricultural land is governed by the State List, while issues such as wills, intestacy, succession, partition, and transfer of land (excluding agricultural land) are part of the Concurrent List.

As a result, while both the central government and the states have jurisdiction over succession (Concurrent List: Entry 5), the transfer of agricultural land is solely under state control (State List: Entry 18). This division allows states to amend personal laws like the HSA 1956 at the state level and to create independent inheritance laws for agricultural land.

Inheritance of Agricultural Land in Different States

Inheritance of property in India is primarily dictated by the personal laws of each religion. While these personal laws govern the inheritance of various types of property, the 28 Indian states can be broadly categorised into four distinct groups based on the succession schemes applied to agricultural land held under tenancy.

Category I: States like Madhya Pradesh, Rajasthan, and Telangana have tenurial laws that explicitly state the application of personal laws for inheriting agricultural land held under tenancy. For instance, Rajasthan allows tenancy devolution “in accordance with personal law” (The Rajasthan Tenancy Act 1955: Sec. 40), and Madhya Pradesh’s laws specify that tenancy will pass “subject to his personal law” (Madhya Pradesh Land Revenue Code 1959: Sec. 164). Telangana’s laws also indicate that personal laws will govern the inheritance of agricultural land for Hindus (Andhra Pradesh (Telangana area) Tenancy Act 1950: Sec. 40). These states clearly incorporate personal laws, establishing well-defined succession schemes for agricultural land.

Category II: In many states in southern, central, and north-eastern India, state laws do not specifically address the inheritance of agricultural land. Scholars assume that, by default, personal laws govern the succession of agricultural land in these

states. This category includes Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Goa, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu, and West Bengal.

Category III: Some states have tenurial laws that specify separate succession rules for the devolution of agricultural land. This category includes states in the north-western region: Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Uttarakhand, and the union territory of Delhi. In these states, the inheritance rights of women are generally inferior to those of male heirs, compared to states in Categories I and II.

Category IV: This category encompasses tribal areas and regions, primarily in the north-eastern states. States like Assam, Meghalaya, Mizoram, and Tripura fall under the Sixth Schedule, which permits these states to adopt local rules based on customary practices. Union and state laws are not enforceable in these regions without the approval of the district councils. Tribal regions in other states fall under the Fifth Schedule of the Indian Constitution, which, along with the Sixth Schedule, regulates the governance of tribal areas (Constitution of India 1950, Article 244). In states like Arunachal Pradesh, Manipur, Nagaland, and Sikkim, a large part of the population is tribal and follows customary laws, most of which remain uncoded.

Inheritance of Agricultural Land for Women

In Category I states, the inheritance rights of women reflect those guaranteed by their personal laws. For Hindu, Buddhist, Jain, and Sikh women, the rights to inherit agricultural land are consistent with the Hindu Succession Act of 1956 (as amended in 2005). The rights of Muslim women are derived from the Shariat Act of 1937, while the inheritance rights of Christian and Parsi women are governed by the Indian Succession Act of 1925.

Category II states, which do not explicitly address inheritance of agricultural land, are open to interpretation. This ambiguity can either perpetuate or fail to prevent existing discriminatory practices. In states such as Bihar, Jharkhand, and Odisha, tenancy laws specify that the occupancy rights of agricultural land will devolve "subject to any custom to the contrary." This means that any prevailing customary inheritance practices can override personal law provisions (Bihar Tenancy Act 1885: Sec. 26; The Chota Nagpur Tenancy Act 1908: Sec. 23; The Orissa Tenancy Act 1913: Sec. 30). These states prioritise customary practices in the inheritance of agricultural land, allowing significant discretion to uphold non-egalitarian customs.

In the north-eastern states and tribal regions governed by the Fifth and Sixth Schedules, there are diverse customs, most of which are less favourable to women

compared to other regions. Only a few tribes follow traditions that are comparatively more equitable to women than those of caste-based societies.

Inheritance takes place in Category III states according to the laws listed in Table 2.2.

Table 2.2: Law Deciding Inheritance in Category III States

State	Legislation
Uttar Pradesh	Uttar Pradesh Revenue Code, 2016: Secs. 108-110
Uttarakhand	Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation and Modification Order, 2001) (Amendment) Act, 2003 (as amended up to 2016): Secs. 169-173
Himachal Pradesh	Himachal Pradesh Tenancy and Land Reforms Act, 1972: Sec. 45
Punjab	The Punjab Tenancy Act, 1887 (as amended up to 1977): Sec. 59
Haryana	The Punjab Tenancy Act, 1887 (as amended up to 1977): Sec. 59
Delhi	The Delhi Land Reforms Act, 1950 (as amended up to 1966): Secs. 50-54

An analysis of the provisions in these states reveals systematic patriarchal biases that exclude women from inheriting agricultural land. While inheritance laws generally discriminate against women, the discrimination in these states' tenurial laws is particularly severe. The key types of discrimination include:

1. **Primacy of Male Lineal Descendants:** In most Category III states, male lineal descendants are given priority as successors to agricultural land in a patrilineal system. Women are placed low in the order of succession, with male heirs preferred over female heirs, including daughters, regardless of their closeness to the deceased.
2. **Limited Interest for Women:** In these states, women hold only a limited interest in the land, which reverts to the last male owner or his heirs upon the woman's death, rather than to her own heirs. Additionally, women lose their land rights if they remarry or fail to cultivate the land for a specific period (usually one to two years).
3. **Non-Recognition of Women as Primary Heirs:** States like Punjab, Haryana, Himachal Pradesh, and Delhi do not recognise women as primary heirs. Even the rights of widows are secondary to those of direct male descendants. However, Uttarakhand and Uttar Pradesh have relatively equitable provisions. Uttarakhand recognises widows as primary heirs, and Uttar Pradesh recognises both daughters and widows as primary heirs.

4. Differentiation Between Married and Unmarried Daughters: While Uttar Pradesh acknowledges daughters as primary heirs and Uttarakhand as secondary heirs, both states grant superior rights to unmarried daughters compared to married ones. This forces daughters to choose between retaining land rights and getting married.

Legal Plurality and Divergent Court Judgments

In the context of legal plurality and unclear application, numerous high court judgments have sought to clarify the relationship between union law and state law. However, divergent opinions have emerged over time regarding the repeal of the limiting scope of Hindu Succession Law.

In **Nirmala vs. Government of NCT (2010)**, the Delhi High Court declared that the removal of Section 4(2) from the Hindu Succession Act (HSA) 1956 allows the HSA to override any other pre-existing law that is inconsistent with it. The judges argued that excluding females as primary heirs to agricultural land under the Delhi Land Reforms Act, 1950 contradicts the coparcenary status of daughters and the order of succession outlined in HSA 1956. The court held that “the provisions of the HSA would, after the amendment of 2005, have overriding effect over the provisions of Section 50 of the DLR Act, and the latter provisions would have to yield to the provisions of the HSA in case of any inconsistency.” It also emphasised that the omission of Section 4(2) by the 2005 amendment was a deliberate act of Parliament, signalling the intention to discontinue the protection given to the Delhi Land Reforms Act, 1950 and similar laws.

In **Roshan Lal vs. Pritam Singh (2012)**, the Himachal Pradesh High Court highlighted the ongoing social struggle for a more gender-equitable Hindu law. The court noted that the removal of Section 4(2) aimed to grant absolute rights to women, regardless of the property type. The judges argued that a broad interpretation of state power to legislate on “transfer and alienation of agricultural land” (State List: Entry 18) would undermine the concurrent power to legislate on “succession” (Concurrent List: Entry 5). The decision clarified that “transfer of property other than agricultural land” is specified in Entry 6 of the Concurrent List, implying that both union and state governments can legislate on succession, intestacy, or testamentary matters for all types of land and property, including agricultural land.

On the other hand, the Allahabad High Court in **Archna vs. DoC, Amroha (2015)** had a different perspective. The court asserted that the three lists in the Indian Constitution represent “fields of legislation” rather than the power to legislate. It emphasised that in case of overlapping laws, the true nature of the legislation should be scrutinised, disregarding any incidental encroachment on another legislative

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

field. The court stated that “HSA 1956 was applied to joint Hindu *Mitakshara* property only and not to agricultural land, which is the exclusive domain of State legislature, and Parliament has no power to enact any law in this respect.” It also held that Section 4(2) was merely a clarification, and thus, its deletion did not mean that the HSA 1956 automatically applied to agricultural land.

Amidst this confusion, the Supreme Court of India provided further clarification in **Babu Ram vs. Santokh Singh (2019)**. The court distinguished between transfer and succession of land, explaining that succession occurs by operation of law while transfer occurs through an instrument. It affirmed that states are competent to legislate on the transfer of agricultural land, while both the Centre and states share jurisdiction over succession. The Supreme Court upheld that HSA 1956 applies to agricultural land but did not rule on whether a pre-existing state law governing agricultural succession would be superseded by HSA 1956 in the future.

The varying judgments only add to the confusion rather than offering clarity. The impact of repealing Section 4(2) of the HSA 1956, which limited its application to agricultural land, remains uncertain. These decisions allow for extensive legal interpretation and discretion, particularly in third-category states, perpetuating ambiguity, inconsistency, and inequality for women in these regions.

Chapter 3

Experience and Stories: Women's Perceptions of Property Rights Regimes

The previous chapter sought to provide a comprehensive and nuanced understanding of the complex landscape of intestate inheritance laws in India, with a particular focus on the property rights of women. This involved a detailed examination and comparative analysis of relevant laws guiding intestate inheritance, including both codified constitutional provisions and uncoded personal and customary laws. In analysing these diverse legal frameworks, the aim was to highlight the variations and overlaps in inheritance laws that apply to different religious and ethnic communities, and how these laws impact women's access to property.

In addition to the legal analysis, the study also sought to explore the struggles women face in securing their property rights. This is crucial in understanding the real-world challenges that women encounter, including legal, social, and cultural barriers. To achieve this objective, we conducted 50 focus group discussions (FGDs) with women across various communities and regions. Each FGD was held with 15 to 20 women participants. The table indicates the communities, states and districts where FGDs were held.

In addition, women participating in the FGDs volunteered to provide case studies that were generated through in depth interviews. The FGDs and case studies have provided valuable insights into the lived experiences of women, revealing the obstacles they face in claiming their rightful inheritance and the strategies they employ to overcome these challenges.

Ideology: Negating Women's Inheritance

Since birth, women have been ideologically and culturally conditioned to accept their exclusion from property matters. This study reveals that a woman's best chance of survival lies in adhering to these cultural and societal norms rather than challenging them. Consequently, women often accept and acknowledge the 'ideal

Table 3.1: Locations of FGDs by Community, State and District

Target Groups				
Sr. No.	Community	State	No. of FGDs	Districts
1	Muslim women	Haryana	5	Mewat
2	Hindu Women and Tribal women	Himachal Pradesh	5	Sirmaur
3	Jaintia, Khasi, Garo	Meghalaya	5	Garo Hills and Jaintia Hills
4	Tribal Women - Rongmai, Kuki	Nagaland	5	Dimapur - Jalukie, Ngwalwa, Athibung
5	Hindu Women Christian Women	Tamil Nadu	5	Perumbakkam, Semmanchery and Broadway and Teynampet
6	Muslim, Nat (denotified tribes), Musahar women and Hindu women	Uttar Pradesh	5	Jaunpur and Varanasi
7	Tribal women	Jharkhand	5	East Singbaum, Khunti and Ranchi
8	Hindu women, Muslim women	Kerala	5	Wayanad
9	Hindu women (Kori Patel), Muslim women (Bohra Muslim)	Gujarat	5	Morbi, Ahmedabad and Bavla
10	Muslim, tribal and Hindu women	Rajasthan	5	Jaipur and Banswara

pattern' of property and land being inherited by males. Despite legal advancements such as the 1956 Act, which theoretically abolished patrilineal inheritance, women do not assert their equal rights to inheritance. The patrilineal ideology continues to dominate, and women rarely voice or embrace their equality in inheritance rights with other claimants.

From childhood, women are raised with the notion of being 'paraya dhan' (property belonging to someone else, typically the in-laws). Often married off at a young age, they never see their natal home as their own, nor do they view their father's property

as anything but their brother's. Their descent group shifts from their father's to their husband's. In northern India, a girl marries into a different descent group after avoiding several degrees of prohibited kinship. She sees herself, and is seen, as part of her husband's descent group, leading to a lack of recognised rights in her natal family.

The cultural ideology shaping women from birth has significant socio-economic repercussions. Women, not viewing themselves as part of their natal family, cannot envision having a share in its property. Consequently, not only do men reserve property rights for themselves, but women are also not conditioned to claim these rights. Culturally, they are accustomed to being part of their husband's family and expect to have a share only in his property.

Valorising Tradition: Brother-Sister Bond

A daughter's claim to her natal family's property is often seen as a sister's challenge against her brother. This perception directly confronts the deeply rooted cultural tradition of strong love and solidarity between siblings, especially prevalent in rural areas. This came out across all our FGDs wherein women cited instances of brothers not attending weddings, not offering "*chakk*". In Rajasthan particularly, many women said the relationship between brothers and sisters gets ruined, brothers emotionally blackmail, etc.

A woman values her brother's goodwill, even though she is considered a part of her husband's descent group, which can take a long time to accept her fully. If she distances herself from her brothers and has strained relationships with them, she loses respect in her sasural (conjugal home).

In such a cultural context, a sister's inheritance claim against her brother would be seen as an 'unnatural act.' As a study from Punjab illustrates, rural public opinion strongly opposes this, to the extent that a girl may feel too ashamed to ever return to her father's house after such a claim. A woman needs to maintain good relations with her brothers because marital issues are likely to arise, if not from her husband, then certainly from his family.

Though both husband and brother are morally seen as a woman's protectors, folk and oral traditions highlight the husband as the lover and the brother as the protector. In reality, only the brother can safeguard a woman against her husband, making him the 'real protector.' He is crucial in defending her interests against her husband's, as well as preserving both her and her husband's interests against others.

The brother's most significant role in his sister's life is in her marital affairs. When problems arise in her marriage, a woman typically seeks moral and financial support from her brother.

Losing her brother's goodwill is seen as a significant psychological and moral blow, with little to gain in return. One woman in Haryana candidly noted, "Claiming inheritance would only deprive my brother and benefit my husband." Essentially, it would mean that both she and her brother would lose out.

When asked about the inheritance claims of male relatives other than their own brothers, women showed noticeable ambivalence. Many expressed, "Are they not our brothers?" indicating they viewed these classificatory brothers similarly to their blood brothers. However, real-life cases where women claimed their inheritance due to having no brothers contradict this sentiment.

Inheritance Rights vs Dowry

In rural areas, there is a near-universal belief that girls receive their share of inheritance through dowry at marriage, which is seen as a form of patrimony. Some even argue that this movable property given at marriage serves as a pre-mortem substitute for the immovable property that brothers inherit. The key issue is that dowry, unlike land, does not generate income in the same way. In regions like Punjab, Haryana, and Uttar Pradesh, it is unthinkable for a daughter to receive land as dowry. The only way land might indirectly factor into dowry is if a guardian sells land to raise money for the dowry or cover marriage expenses.

The prevailing belief, shared by most of the women, is that a woman's primary entitlement is dowry. Traditionally, daughters have been seen as deserving only maintenance and a proper marriage arrangement. This traditional view, coupled with concerns about rising marriage costs and escalating dowry demands, is often used to argue against female inheritance rights. The trend of increasing dowry demands spans across castes and classes, reflecting a broader cultural shift seen throughout northern India.

Women themselves have largely endorsed the custom of dowry, especially in rural areas where they view it as a replacement for property they might otherwise be entitled to. For these women, the primary goal is to integrate into their new family and secure their position within it. In this context, dowry is seen as an essential part of achieving that goal.

The tension between viewing inheritance as a rightful claim and dowry as a matter of familial goodwill often goes unspoken. However, it is clear that the growing demands and attitudes reveal an important connection between dowry and inheritance rights. Women are increasingly recognising their entitlement to material assets rather than relying on the goodwill of their brothers. In response, brothers are becoming more diligent about meeting their traditional responsibilities, whether it is for specific festivals or dowry payments.

Jamai vs Ghar Jamai

The rise in dowry transactions among land-owning classes is closely tied to the inheritance rights of women and the practical challenges married women face in managing inherited land. This issue is particularly acute due to the widespread customs of village exogamy and patrilocal residence in northern India. If a married daughter remains in her natal village, it threatens the patrilineal inheritance system, as she could potentially take control of her inherited land. Consequently, maintaining strict marriage practices that enforce village exogamy and caste endogamy among these communities is crucial, even leading to violence in some cases, to protect male inheritance lines. This situation sheds light on why state efforts to enable female inheritance have largely failed. Essentially, land inheritance of women often translates to their husbands inheriting the land because, unless the woman relocates back to her natal home with her husband and family, she cannot manage her inheritance. In rural north India, this would result in a '*ghar jamai*' (resident son-in-law) scenario. Which ultimately leads to the transfer of property to a different clan.

In Haryana and Uttar Pradesh, a son-in-law is commonly referred to as *bateu* or *mehman*, both meaning "guest," and his respect is maintained by remaining as such, not becoming a *ghar jamai*. Relatives are reluctant to see an outsider claiming a share of their property. Thus, if a son-in-law were to move to his wife's village and become a *ghar jamai*, he would face significant dishonour and shame. The term *ghar jamai* has almost become an insult. However, in tribal societies the concept of *ghar jamai* is permissible. A person can even inherit properties once he gets converted to becoming a *ghar jamai* thorough customary rituals with the consent of village council and headmen.

Men Deciding Women's Share

Women are often discouraged from claiming their rightful share of inheritance in their natal families. Even when they do assert their rights, the amount and manner of property distribution are typically determined by men—whether it is the eldest male in the family, the village headmen, religious leaders, or a predominantly male

village council. This situation highlights the stark power imbalance between men and women in these communities. For instance, Miyana Muslim women never get an equal share of property. They face cultural and customary challenges which favour men. They are allowed to inherit only one-third of the property and the remaining two-thirds is divided among sons. One example from the focus group discussion shows how, when a Miyana Muslim woman vehemently asserted her property right, she faced challenges in bargaining and negotiating as she was financially dependent on her male counterpart, and hence, the power dynamics of negotiation were tilted towards him. Thus, it can be inferred that there exists a sequence of bargaining rights, although the property rights once acquired by women gives them bargaining and negotiating power. However, the financial dependence of female counterparts tilts the bargaining power towards men.

Another example from our focus group discussion shows how a Patel (a term used for a Bhil tribal leader) divides the share of property for a widow. An excerpt from our FGD:

Participants shared that when a deceased tribal man leaves behind a widow and adult sons and daughters, custom dictates that the Patel (traditional leader) must first set apart some land, generally equal to a younger son's share, for the maintenance of the widow. The widow can only have a life interest – in land allotted to her. If, for the rest of her life, she decides to live separate from her sons and independent of any pecuniary benefits from any of the sons, then on her death, the maintenance land is divided equally among the sons. But if, as usually happens, the widow chooses to live with one of the sons, then in that case her maintenance land is cultivated and enjoyed by that son. If the son meets all her funeral expenses, he then becomes entitled to those lands. If there are no such sons, then the paternal uncles and their sons inherit. A widow with minor sons keeps all the property in her own possession, the grandfather and uncles oversee that she does not waste it. If the widow remarries before the sons are married, the grandfather and uncles take possession of all the property; the widow has no right to get anything.

Challenges to Accessing Inheritance: Women's Access to Property Information

Many women are unaware of the details or value of family property, as this information is often kept exclusively by male family members, who are reluctant to share it with the women. In rural areas, the challenges are even greater due to the lack of proper property documentation and registration. When even the men in the family are unsure about the exact extent of the property, women are left completely in the dark. Additionally, many land and property transactions are passed down verbally over generations without any formal documentation, further complicating the issue.

CASE STUDY

A Woman from Agra

This case study examines the experiences of a woman who, after a divorce, faced significant challenges in asserting her property rights within her family. Originally from Agra, she moved to Jaipur after her marriage, but her life took a difficult turn following her divorce 25 years ago. This case highlights the struggles faced by women in securing their rightful inheritance and the complexities of navigating family dynamics and legal processes.

After her divorce, the woman's mother encouraged her to return to Agra for familial support, as her father had passed away. Upon returning to Agra, she applied for jobs and successfully secured a position as a principal at a reputable school. Her family owned a large ancestral home near the bus stand in Agra, which boasted 40 rooms. However, upon her return, she discovered that her brother had converted the house into a hotel, effectively leaving no space for her in her own home.

For the next five years, she lived in a rented house in Agra, during which time her relationship with her brothers deteriorated. They cut off all contact with her, preventing her from visiting the parental house. Whenever she attempted to visit, her brothers behaved coldly and distantly, clearly anxious that she might demand her share of the property. Feeling increasingly isolated and unsupported, she eventually decided to move back to Jaipur, realizing that living alone in Agra was becoming untenable.

During her time in Agra, her brother amassed considerable wealth from the hotel business, expanding his ventures by building resorts in various towns and purchasing plots in metropolitan areas. She later learned that a year ago, her brother sold the parental property for 10 crores and relocated to Australia, a development of which she was entirely unaware.

Reflecting on her situation, she recalled that after her father's death, she was made to sign a document in court. She now believes that this document may have formalized her brother's claim to the entire property, though at the time, she was too naive to question the legality or fairness of the situation. Her lack of awareness of the relevant laws and her trust in her brother ultimately left her without a claim to her rightful inheritance.

This case study sheds light on the challenges women can face in securing their property rights, particularly in the context of complex family dynamics and a lack of legal awareness. Despite being a well-educated and employed woman, she found herself marginalised within her own family, ultimately losing her share of the ancestral property. This case underscores the importance of legal literacy and the need for women to assert their rights in order to protect their interests, especially in situations involving inheritance and family property.

Inheritance Challenges for Single and Separated Women

A key finding from the FGDs is that women who are single or separated face greater obstacles in securing an equal share of inheritance. These women have less bargaining power compared to widows from the maternal side, and for widows, claiming property from the spouse's side is even more challenging. If a woman is childless, her family is even more reluctant to acknowledge her property rights.

Women are often subjected to emotional pressure by their family members to forgo their property rights, with other women in the family also discouraging them from asserting these rights. When it comes to movable assets like fishing boats (for instance in South India), ownership is typically transferred to a male family member after the death of the household head, as these assets are traditionally associated with men.

Joint property titles with spouses add another layer of complexity. In cases of separation, determining ownership can become difficult and, at times, even violent.

Levels of Involvement in the Decision-Making Process of the Family

The level of women's involvement in decision-making varies across different communities and depends on the issue at hand. Women in tribal areas and South India, particularly Hindu women, generally have a greater degree of participation compared to their counterparts in North India and Muslim women across the country. For instance, these women often have more freedom in making decisions about their reproductive rights. However, in some regions, such as the Mewat area of Haryana and among the Koli community in Gujarat, Muslim women are still subject to family decisions even regarding pregnancy as was shared during the FGDs.

When it comes to property rights, women from matrilineal tribes enjoy a higher level of involvement in decision-making compared to other groups. In contrast, women of other communities are excluded from these decisions and are often forced to endorse the choices made by the male members of their families.

Property-Related Violence Against Women

When women across various regions of India demand equal inheritance rights, they often face significant resistance, including verbal abuse, emotional trauma, and even physical violence. In many cases, they lack support from their spouses,

CASE STUDY

A Woman from Rajasthan

This case study examines the experiences of Kavita (name changed), a woman who endured domestic violence and coercion from her husband, particularly in relation to her property rights and her desire for further education. Kavita's story illustrates the challenges of navigating abuse, familial pressure, and the pursuit of personal growth.

Kavita faced various forms of violence from her husband, but the most persistent issue revolved around his demands that she asserts her rights to her father's property. Her husband physically abused her and pressured her to claim her share of the inheritance. Despite the abuse, Kavita refused to make such demands on her father, valuing her family relationships over her husband's coercion.

Eventually, Kavita's father learned of her situation and, in an effort to protect her, transferred her share of the property into her name. Although this action was intended to safeguard her, Kavita chose not to inform her husband, anticipating his reaction. However, her husband somehow discovered that she now held her share of the property. While he frequently questioned her about it, the physical abuse related to this issue ceased.

Beyond the issue of property rights, Kavita's husband was strongly opposed to her continuing education and working. He subjected her to severe psychological and physical torture for pursuing these goals. Nonetheless, Kavita's passion for learning remained undeterred. She secretly enrolled in distance learning courses, studying while her husband was at work and hiding her books when he was home. Her education became a critical outlet, providing her with strength and a sense of independence.

Over time, Kavita managed to persuade her husband to allow her to take exams, despite his initial resistance. Education became her refuge, allowing her to assert her independence and build her self-worth. Driven by the challenges she faced and her determination to overcome them, Kavita's desire to earn more degrees grew stronger.

Kavita's story highlights the resilience of a woman who, despite facing domestic violence and coercion, pursued her education and maintained control over her property rights. This case underscores the importance of education as a means of empowerment, particularly for women in abusive relationships. It also illustrates the complex dynamics of power, control, and resistance within the context of domestic violence, showing how access to education and property rights can be crucial tools for women seeking to reclaim their autonomy and protect their well-being.

making it even more difficult to assert their rights. For instance, in some parts of North India, women are pressured by family members and subjected to violence when they seek a fair share of property. Similarly, in rural areas of South India, women often encounter hostility and are forced to abandon their claims due to the lack of family support and the threat of violence. This pattern of resistance, unfortunately, extends across different communities, highlighting the pervasive challenges women face when trying to secure their rightful inheritance.

Tradition, Stigma and Superstitious Beliefs

Our findings indicate that most of the women prefer to adhere to existing traditions. They wish to maintain the status quo and continue following the long-standing cultural practices of succession and inheritance established by their ancestors. For example, during a conversation with the Mushahar community in Uttar Pradesh, one woman stated, *“jo purwah k dwara niyam kaanon banaya gaya usi ko palan karenge”* (i.e. “We will uphold the traditions and customs established by our ancestors”). Another woman remarked, “No one has ever defied these traditions.”

Women who demand their property rights often face severe social stigma and ostracization. When they take legal action against male family members, they get excluded from family gatherings and are subjected to discrimination. The lack of family support becomes a significant barrier, as women are frequently discouraged from pursuing their cases and pressured into settling out of court for a lesser share.

Superstitious beliefs further hinder women’s access to property rights. In some communities, women are led to believe that attempting to claim their inheritance will bring misfortune, such as illness, deterring them from pursuing their rightful claims. Cases of women being accused of witchcraft for claiming their inheritance rights have been seen in north and east India.

Women suffering from multiple forms of discrimination—e.g., older women, women with disabilities, women living with HIV/AIDS, or women belonging to minority communities or indigenous groups—face additional obstacles in accessing land and property. For instance, in some places, widows, often older women, are blamed for killing their husbands by infecting them with HIV, and in-laws use this as a justification to dispossess and evict them. Women then lose access to productive resources which they badly need to pay for their medical care³².

32. <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf>: Page-43

Access to Legal Redress

Although free legal aid is available at district and state levels, many women hesitate to seek legal recourse due to limited awareness of these services. They fear that legal battles are financially draining, time-consuming, and lack family support. Even when women do seek legal assistance, they often settle disputes out of court, compromising on their rightful claims due to the challenges involved. Several women have to undergo a tedious process for accessing the case. In light of this, Aisha's case is an example:

Aisha, a Miyana Muslim woman, found herself entangled in a lengthy legal battle while seeking justice within the legal framework. Like many women in her community, Aisha faced significant challenges in accessing her legal rights due to the complexities and inefficiencies of the legal system. The financial and emotional toll of these prolonged proceedings highlighted the broader issues women face when navigating the justice system.

Aisha's case exemplifies the difficulties encountered by Miyana Muslim women who pursue legal recourse. The lengthy nature of her legal battle resulted in significant financial burdens, depleting her resources over time. Additionally, the emotional strain of prolonged court proceedings affected her well-being, creating further obstacles in her pursuit of justice. This experience reflects a common issue where the legal system, as it currently operates, can be inaccessible and overwhelming for women, especially those from marginalised communities

CASE STUDY

Forged Signatures and the Denial of Inheritance Rights

This case study examines the experience of Meera (name changed) from Rajasthan, one of four sisters in a family where inheritance rights were contested following the death of their parents. The story sheds light on the exploitation of the property rights of women and the challenges faced by those who seek to assert their rightful inheritance.

After the death of their parents, Meera and her three sisters were approached by their brother, who requested that they sign a document renouncing their rights to the family property. While three of the sisters reluctantly agreed, Meera refused, insisting on her share of the inheritance. Unlike her siblings, Meera believed that she deserved an equal portion of the family property and was determined to claim it.

In response to her defiance, Meera's brother resorted to underhanded tactics. He bribed officials to forge the signatures of all four sisters on a legal document that falsely indicated their consent to transfer the entire property into his name. Confident in his illegal scheme, the brother openly

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

challenged Meera, boasting that he had already secured the property and no longer needed her or her sisters' signatures.

Despite being uneducated, Meera made efforts to challenge the fraudulent transfer. She approached the authorities in an attempt to have her case registered and to contest the forgery. However, due to her lack of legal knowledge and the corruption within the system, she faced insurmountable obstacles. Meera's attempts to address the injustice were met with resistance, and she ultimately found herself unable to make any legal headway. Overwhelmed by the complexity of the situation and the lack of support, she eventually stopped pursuing the matter.

Meera's case highlights the vulnerability of women in inheritance disputes, particularly when faced with family members who are willing to use unethical means to secure property. Her experience underscores the difficulties uneducated women face in navigating legal systems, especially when corruption and forgery are involved. This case also illustrates the broader issue of gender inequality in property rights, where women's legal claims are often undermined by societal and familial pressures, leaving them without the resources or support to fight for their rightful inheritance.

Awareness of Constitutional, Customary, or Personal Laws Related to Property Rights

Many women, even those who are educated, have only a vague understanding of the property rights outlined in customary laws. While most women are aware of basic constitutional principles like equality, they strongly believe that the Constitution guarantees them equal rights, regardless of gender. However, their knowledge of the specific legal provisions regarding property rights remains limited. In light of this, an example of a Miyana Mulsim woman is notable.

CASE STUDY

A Woman from the Miyana Community

Fatima, a woman from the Miyana community, found herself at a crossroads when it came to claiming her rightful share of inherited property. In a society where traditional norms often dictate inheritance rights, women like Fatima frequently face obstacles in securing their legal entitlements. However, Fatima's awareness of her constitutional rights empowered her to challenge the status quo.

The Miyana community, like many others, follows customary practices that often marginalise women when it comes to inheritance. Despite being entitled to a share of her family's property,

Fatima was initially denied her inheritance due to prevailing patriarchal norms. This denial reflected the broader issue of gender inequality in inheritance rights, where women are often deprived of their lawful claims.

Determined to assert her rights, Fatima sought legal recourse. Armed with the knowledge of constitutional laws that guarantee equal rights to property, she approached the legal system to challenge the denial of her inheritance. Fatima's case was built on the premise that constitutional protections must override customary practices that discriminate against women.

Fatima's case highlights the transformative potential of legal protection for women, particularly in communities where customary laws often prevail over constitutional rights. By successfully claiming her inheritance through legal means, Fatima's experience underscores the importance of legal awareness and the role of the judiciary in upholding the rights of women. Her case serves as an empowering example for other Miyana women and reinforces the critical impact of constitutional laws in safeguarding women's inheritance rights.

Perspective of Religious Leaders

Religious leaders exhibited a spectrum of views on the property rights of women, illustrating the diversity within the community. Some advocated for equitable rights, emphasising fairness and equality. For instance, there were leaders who supported the idea that women should have an equal share in inherited property, aligning with modern principles of gender equality.

On the other hand, a section of religious leaders adhered to more traditional interpretations of religious texts. They espoused views that aligned with deep-rooted cultural norms, which often prioritise male heirs over female heirs. An example of this mindset can be seen in instances where male relatives are favoured in property inheritance, leaving Miyana Muslim women with limited or no share of the property. This adherence to traditional norms can exert significant pressure on women, compelling them to relinquish their rightful share of inherited property in deference to male relatives. This cultural expectation perpetuates gender disparities within the community, creating challenges for women seeking fair and equal property rights.

For instance, in Tamil Nadu, one participant highlighted a common practice where religious leaders become involved in the mediation process when women assert their property rights. In some homogenous villages in rural Tamil Nadu, particularly within Church communities, the role of the religious leader in these mediations can be influenced by the level of 'donation' and 'membership' provided to the church.

This financial involvement often determines the extent and nature of the leader's influence in the mediation process, as determined by the parish committee members.

Uncodified personal and customary laws also pose a significant challenge. Since customary laws are not codified, there exists several interpretations. For example, Muslim women in Jaipur expressed that there are various interpretations of Islam. An excerpt from our FGD:

Some women stated that any Muslim who religiously abides by the Quran's teachings will never cheat women or try to grab property by deceit. This is because the Quran tells us that all our wrongdoings will be accounted for after death, and we will have to answer for our follies in the court of Allah. So, a real Muslim would think, "My sister will question me in the court of Allah after death, and how will I repay for the sin?" This is largely not abided by, as very few people have read and understood the Quran.

A woman also stated that the Quran has always been progressive and can be used as a reference and argument for securing women's right to property. However, it is not a codified scripture and hence cannot be used to claim property. If someone does not wish to abide by the Quran teachings, we would not know whom to approach for securing the entitlement. Therefore, it has to be as per the constitution and law of our country.

Success Stories

There are several success stories where women, once they obtained property rights, ventured into several livelihood activities, paving the path for their economic and social well-being.

1. Fatimaben, a Miyana Muslim woman, inherited a piece of land that became the cornerstone of her journey towards economic independence. In a community where women often face limited opportunities, the ownership of land presented Fatimaben with a unique chance to break free from traditional constraints and establish herself as an entrepreneur.

Initially, Fatimaben faced challenges common among women in her community, such as limited access to financial resources and support systems. However, land ownership provided her with a critical asset that she could leverage to improve her economic situation. The challenge was to effectively utilize this land to generate a sustainable income.

Empowered by her inheritance, Fatimaben decided to cultivate her land, focusing on agricultural production as a means of income generation. She took proactive steps to learn about efficient farming practices and market opportunities. Through determination and hard work, Fatimaben transformed her land into a productive asset, growing crops that were in demand locally.

Fatimaben's entrepreneurial venture proved to be a success. The income generated from her land not only secured her financial independence, but also allowed her to contribute to her community's economic development. Her success story quickly spread, making her a role model for other Miyana Muslim women. Fatimaben's experience highlighted the profound impact that land ownership can have on women's economic empowerment, inspiring others to explore similar opportunities.

2. Hajaraben, another Miyana Muslim woman, also inherited land that she strategically used to enhance her family's financial well-being. In a community where land ownership is often associated with male privilege, Hajaraben's ability to control and utilize her land set her on a path to economic autonomy.

Like many women in her community, Hajaraben initially faced societal expectations that discouraged women from actively managing and profiting from land ownership. The challenge for Hajaraben was not only to overcome these cultural barriers, but also to identify the most profitable way to use her land to maximize its economic potential.

Hajaraben made a strategic decision to cultivate high-value crops on her inherited land. She researched market trends and identified crops that could yield higher returns, such as spices and specialty vegetables. By focusing on these high-demand crops, she was able to significantly increase her family's income. Hajaraben's approach required careful planning, investment in quality seeds, and efficient land management practices.

Hajaraben's efforts paid off as her high-value crops generated substantial profits. The income from her land not only improved her family's financial situation, but also elevated her status within the community. Her success demonstrated the economic benefits of empowering women with land ownership and control over agricultural decisions.

CASE STUDY

Experiences of Women in Bagidaura

The recognition and allocation of land rights under the Forest Rights Act (FRA) have had a profound impact on the lives of women in various rural communities. For many women, receiving land titles has not only improved their economic status but also enhanced their social standing within their families and communities. This case study focuses on the experiences of women in Bagidaura in Rajasthan, who have gained both tangible and intangible benefits from acquiring land under the FRA.

Women in Bagidaura have shared that obtaining land under the FRA has significantly improved their food security, as they now have the opportunity to cultivate their own land. Shakuntala, one of the women from Bagidaura, expressed her satisfaction, stating, "I finally did get my plot. I am very happy today, I am earning from my own field. I am able to feed my family for all twelve months of the year." This sentiment is echoed by other women in the community who have similarly benefited from cultivating their own land.

Beyond the material benefits of food security and income, the women have also experienced a boost in self-confidence and dignity as a result of receiving land titles. In Bagidaura, there is a noticeable sense of pride among the women, as their husbands now acknowledge and appreciate their role as equal owners of the land. This recognition by their partners and families is crucial for the women, as it validates their contributions and reinforces their status within the household.

The positive changes extend to family dynamics as well. Women have reported that their husbands and in-laws exhibit better behaviour towards them now that they are recognised as landowners. Ramila, another woman from the community, highlighted the emotional satisfaction she derives from this new role, stating that there is additional happiness in "cultivating my own land."

This case study illustrates the transformative impact that land ownership under the FRA can have on women's lives. The women of Bagidaura have not only improved their food security and income, but have also gained self-confidence, dignity, and recognition as equal partners in their households. The positive shift in family dynamics further underscores the importance of land rights in empowering women and fostering gender equality in rural communities.

Chapter 3

Conclusion and Policy Implications

Based on the literature survey, the focus group discussions and the in-depth interviews presented as case studies presented in this report, it becomes evident that women's limited access to inheritance rights in India is intricately connected to a complex web of cultural, social, cultural and legal factors. The findings of this study consistently point to a recurring theme: social dynamics—encompassing deeply ingrained cultural norms, patriarchal traditions, and socio-legal barriers—play a significant role in restricting women's inheritance rights across diverse communities and contexts.

Secondary research sheds light on the longstanding influence of religion, custom, and law in shaping women's inheritance rights. Although legal reforms, such as the Hindu Succession (Amendment) Act of 2005, were introduced to promote gender equality in inheritance, these progressive amendments often struggle to translate into real change on the ground due to societal attitudes and traditional norms. The report shows that religiously influenced laws across Hindu, Muslim, Christian, and customary practices within tribal communities impose structural restrictions that limit women's access to property, particularly in areas like agricultural land, which is an essential economic asset in rural India. Each religious tradition approaches property succession differently, yet all demonstrate a shared tendency to favour male heirs, reinforcing societal biases and upholding patriarchal inheritance structures. Hindu women, for example, face significant obstacles due to social factors that view male heirs as primary property custodians. Muslim personal laws offer inheritance rights to women, but they often allocate shares smaller than those given to male relatives. Christian and Parsi laws similarly impose conditions that favour men, while tribal communities typically adhere to customary laws that entirely exclude women from inheriting land. These religious and customary frameworks collectively contribute to a significant disparity in women's inheritance rights.

These findings align with feminist economic theories, which critique property ownership structures as tools of patriarchy, designed to maintain male privilege over inheritance. According to scholars like Bina Agarwal, women's lack of access to

land and property ownership is not only a result of legal barriers but also of economic structures and patriarchal norms that reinforce women's subordination. By excluding women from property ownership, these structures deny them economic independence, decision-making power, and social mobility. Furthermore, feminist political theories argue that securing property rights for women is essential for their political agency, as it empowers them to participate more fully in civil society and advocate for their interests. The denial of property rights thus becomes both an economic and a political issue, perpetuating gender inequality and limiting women's roles in family and community life.

The focus group discussions and in-depth interviews in the field provide a nuanced view of the everyday challenges women face in claiming inheritance rights. Participants from diverse backgrounds shared stories of how family and community pressures often prevent them from asserting their rightful claims to property. For many, the expectation to prioritize family harmony or uphold familial loyalty outweighs the assertion of their legal rights. Social expectations can compel women to relinquish their inheritance voluntarily, as they fear damaging relationships with male relatives, especially brothers or undermining the family's unity. Women in the study often expressed reluctance to challenge these norms, citing not only familial pressure but also fears of social ostracism, community backlash, and even violence. On the contrary, women expressed a desire for bolstered access to marital property rather than inherited property from parents. Some women reported being tricked or coerced into relinquishing their inheritance, often through legal manoeuvres that they did not fully understand. Additionally, the findings revealed that many women lack basic awareness of their legal rights, a gap that unscrupulous family members can exploit to prevent them from accessing their inheritance. This limited legal awareness compounds the challenges women face, as they may not even realize that they have a right to claim property.

The report also highlights the role of regional variations in inheritance practices, showing that local customs can be even more restrictive than codified laws. In states like Tamil Nadu, Uttar Pradesh, and Haryana, traditional practices impose additional barriers that exacerbate the challenges faced by women in inheriting property. While some states have amended their laws to align more closely with constitutional principles of equality, societal attitudes remain deeply resistant to these changes. For instance, in regions where dowry is still seen as an alternative to inheritance, families often treat a daughter's dowry as her "share" of the family wealth, effectively barring her from claiming an inheritance. This practice further marginalizes women by associating their financial worth with marriage rather than personal economic autonomy. The report's exploration of regional practices underscores the need to address not only legal reforms but also the social

perceptions and cultural practices that undermine women's inheritance rights. Without addressing these regional and local dynamics, legal reforms will continue to fall short of achieving their intended impact.

Moreover, the insights gathered through focus groups and interviews reveal an alarming trend of violence and coercion used against women who attempt to claim their inheritance. Some participants shared accounts of physical and psychological abuse by family members, intended to dissuade them from pursuing their inheritance claims. Women who resist traditional norms and assert their property rights are often stigmatized as “troublemakers” or labelled as greedy, selfish, or disruptive to family harmony. This social stigma, combined with threats of violence, serves as a powerful deterrent, pushing women to abandon their inheritance claims. For single, widowed, or divorced women, the challenges are even more pronounced, as they lack the support structures available to married women and are often entirely dependent on their male relatives for economic security.

In conclusion, this report illustrates that women's limited access to inheritance rights is not merely a legal issue but a deeply rooted socio-cultural challenge. The alignment between the findings from secondary literature and primary insights from field research underscores the profound impact of socio-cultural norms in perpetuating gender disparities in property rights. Women's inheritance rights are undermined by an interlocking system of cultural expectations, traditional customs, and societal biases, which collectively reinforce a gendered hierarchy in property ownership. This analysis highlights the urgent need for policy frameworks that extend beyond legislative reforms. Effective strategies must incorporate awareness-raising efforts, legal aid, and community-based initiatives aimed at transforming cultural perceptions surrounding women's rights to inheritance. Only by addressing these multifaceted social dynamics can policymakers hope to make meaningful progress in promoting gender justice and securing equitable inheritance rights for women.

Ultimately, the findings advocate for a holistic approach to tackling the gendered challenges associated with inheritance. This includes prioritizing legal awareness among women, challenging entrenched cultural biases, and fostering environments that support women's agency in claiming inheritance. The report calls for collaborative action from policymakers, civil society, and community leaders to implement policies and practices that genuinely empower women and dismantle the patriarchal structures that impede their access to property rights. Achieving gender justice in property ownership is critical not only for women's empowerment but also for broader societal progress, as equitable property rights enable women to contribute fully to their families and communities. Through sustained efforts and

a commitment to challenging systemic inequality, pathways to gender justice in inheritance rights can be created, paving the way for a more inclusive and equitable society.

Drawing from this analysis we would like to place the following as points to consider for policy:

1. Implementing supportive legislation faces significant challenges, not only in India but globally. One major obstacle is that many women are unaware of their legal rights and lack the resources to take action. This highlights the urgent need for widespread legal education and assistance. While the state plays a crucial role, civil society organisations, particularly women's groups, and local governance bodies such as village councils and municipalities, can also make a significant impact. In countries like India, where these local governance bodies now include a substantial number of women due to reserved seats, their influence is even more critical. Additionally, the media can be instrumental in raising awareness and informing the public about these issues.
2. Women's access to land ownership and control is crucial for their financial stability, housing, income generation, and livelihood opportunities. However, despite its importance, there is a significant lack of investment and structured initiatives focused on women's land rights (WLR) in India.

Through the Womanity Foundation's³³ efforts in this field, it has become evident that women in rural India often turn to community-based organisations for help with various issues, such as domestic violence, accessing government schemes, and skill development. Consequently, these organisations are often the first place women seek help when facing land rights issues. Unfortunately, many of these organisations are ill-equipped to provide the necessary support. The challenges they face include:

- » A lack of technical expertise and understanding of land laws, claims processes, and effective intervention strategies.
- » The rapidly changing landscape of land laws and processes, especially with the government's push towards digitisation. Many community organisations struggle with the knowledge, confidence, and internet access needed to navigate these new online systems.

33. Gupta, L. S. a. S. (2023, September 13). *Strengthening women's access to land rights*. Times of India Blog. <https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/strengthening-womens-access-to-land-rights/>

CASE STUDY

Women's Land Rights

Early on, it became clear that in order to accelerate and expand the impact within the ecosystem of women's land rights (WLR) in India, there was a pressing need to provide capacity-building support to a broader group of non-profits. This was especially crucial for organisations that engaged with land rights issues in an informal capacity but lacked the necessary skills, confidence, or resources to delve deeper into the issue.

To address this need, a formal course on Women's Land Rights in India was developed in partnership with the Working Group for Women and Land Ownership (WGWLO)—a network of 45 organisations that has been championing women's access to and ownership of land since 2002. The course aimed to create a foundational understanding of WLR and to systematically share the knowledge and experiences of WGWLO's member organisations with a larger set of stakeholders.

The course, spanning 90 hours, was launched in 2022 and was attended by 50 nonprofit practitioners who sought to deepen their understanding of WLR and integrate it more deliberately into their programs. The participants represented a diverse mix of roles, including middle managers, program managers, field officers, researchers, and academicians. Many of them had previously engaged in some capacity with land rights issues and were eager to formalize and enhance their approach.

The curriculum covered various aspects of WLR, including optimal strategies for engaging communities in discussions about land rights, as well as providing detailed information on the relevant laws and processes. A key component of the course was its practical element, where participants were tasked with designing a WLR project specific to their intervention area. Over an eight-week period, WGWLO provided guidance and support as participants developed and began to implement their projects.

The course garnered positive engagement and feedback from participants, who appreciated the structured approach to learning and the practical application of their knowledge. The program successfully equipped a new cohort of practitioners with the skills and confidence needed to address WLR more effectively within their respective communities.

Despite the success of the course, it became evident that a single training program could not reach all stakeholders or achieve the broader impact needed across the ecosystem. Therefore, it was recognised that this initiative must be complemented by additional capacity-building efforts to ensure a more widespread and sustained impact on WLR in India.

Source: Strengthening women's access to land rights, Times of India

- » Social and cultural challenges within communities, including the complex interplay of caste, class, gender, and political relationships, which complicate and prolong the resolution of land rights issues.
- » In addition to these challenges, the WLR ecosystem needs comprehensive data, action-oriented research, open-source resources, and collaborative platforms that unite various stakeholders, including practitioners, academics, researchers, experts in land and gender issues, and government officials.

Thus, there is an urgent need for capacity building of women so that they can know their legal rights. Government, civil society, and NGOs can play a crucial role in this.

3. A group-based approach could be a game-changer, offering a new model of protective security for marginalised women. While many women may lack the financial resources to buy property on their own, they might afford to purchase a room within a house if done collectively with other women. Similarly, when the government distributes land for housing or economic purposes, it could consider granting joint ownership to groups of women instead of individuals. This strategy could be more financially accessible for many women and foster social empowerment by enabling them to build supportive networks through shared ownership.
4. The Digital India Land Record Modernisation Program needs to be expedited, as it is crucial for maintaining accurate land records. Any allocation of property rights, especially for land, requires evidence-based decision-making. Delays in implementing this program could hinder women's access to land rights. While the government asserts that 94%³⁴ of the digitisation process is complete, challenges³⁵ on the ground are causing significant delays in the program's full implementation.
5. The operational land holding data which is gathered from the agricultural census shall be used to complement ownership data. This will give an idea about who is actually operating the land and who is merely a custodian and a tiller of the land. Such a data comparison will not only help in effective entitlements of land ownership rights between men and women but will also be effective in formulating effective land reform policies.

34. Babar, K. (2024, January 28). ET Explainer: Land records digitisation to aid effective policy making. The Economic Times. <https://economictimes.indiatimes.com/news/et-explains/et-explainer-land-records-digitisation-to-aid-effective-policy-making/articleshow/107209881.cms?from=mdr>

35. Sengupta, S. a. S. (2023, April 23). Our land records modernization initiative has a major gap to plug. Mint. <https://www.livemint.com/opinion/columns/india-needs-to-overhaul-its-outdated-land-registration-process-to-leverage-technological-advancements-and-facilitate-ease-of-doing-business-11682271128281.html>

6. A dedicated CSR spending can be allocated to this task, i.e., for the digitisation of land records, making women aware of their property rights through various courses. This can be a win-win situation for corporates as it can help them comply with their ESG norms as mandated by SEBI under BRSR report. Currently, no dedicated³⁶ CSR spending is allocated specifically for achieving target 5a of the Sustainable Development Goal 5, i.e., equal rights to economic resources and property ownership.
7. The diversity among women must be taken into account. Laws related to land, housing, and property must acknowledge that women are not a uniform group. Thus, legislation should be designed to promote and protect the rights of all women—whether single, married, in common-law relationships, or widowed—to own and inherit land, housing, and property. This includes ensuring that women in marriages or common-law relationships (de facto marriages) can co-own land and housing with either independent titles or shared titles with their partners. Single women should have the right to own land and housing independently, and all women, regardless of marital status, must have equal inheritance rights³⁷.
8. The NITI Aayog's Multidimensional Poverty Index (MPI) does not consider land ownership rights in its assessment of the 'ownership of assets' indicator. Similarly, in the 'housing' indicator, it only accounts for the type of material used in house construction, such as natural or rudimentary materials, without considering ownership rights. Since the goal of the MPI is to track non-income dimensions of poverty, including an indicator for land and housing ownership rights with a gender focus could have a cascading and virtuous impact on other Sustainable Development Goals.

In addition, it would have a significant impact on other MPI indicators such as nutrition, maternal health, drinking water, and sanitation, and hence, in turn, will be helpful in decreasing the MPI.

36. https://www.niti.gov.in/sites/default/files/2024-07/SDA_INDIA.pdf: Page:39

37. https://www.globalprotectioncluster.org/sites/default/files/2023/Women%27s_Rights_to_Housing_Global_Overview_1999_EN.pdf: Page:52

Property Rights for Women

A Study of Laws & Customs Related to Property
and Inheritance in India to Promote Pathways to Gender Justice

Dimension	Indicator	Uncensored Headcount	Censored Headcount (CH)	Weight (W)	Contribution = (CH x W) ÷ MO
Health	Nutrition	31.52%	11.90%	1/6	29.86%
	Child-Adolescent Mortality	2.06%	1.18%	1/12	1.48%
	Maternal Health	19.17%	9.35%	1/12	11.73%
Education	School Attendance	5.27%	3.63%	1/6	9.10%
	Years of Schooling	11.40%	6.63%	1/6	16.65%
Standard of Living	Electricity	3.27%	1.84%	1/21	1.32%
	Drinking Water	7.32%	2.23%	1/21	1.60%
	Sanitation	30.13%	9.25%	1/21	6.63%
	Housing	41.37%	12.07%	1/21	8.65%
	Cooking Fuel	43.90%	12.30%	1/21	8.82%
	Assets	10.16%	4.72%	1/21	3.39%
	Bank Account	3.69%	1.09%	1/21	0.78%
MPI (MO) = Sum of (CH x W) = 0.066					

Source: NITI Aayog MPI report

References

- ActionAid Association (2022). *Witch Branding in India: A Study of Indigenous and Rural Societies*. In ActionAid Association. <https://www.actionaidindia.org/wp-content/uploads/2022/04/WitchBrandingInIndia-A-StudyOfIndigenousAndRuralSocieties-GPN-ActionAid-Feb2022.pdf>
- Agarwal, B. (2010). *Gender and Green Governance: The Political Economy of Women's Presence Within and Beyond Community Forestry*. Oxford University Press.
- Aggarwal, B. (1999). *Gender and Legal Rights in Landed Property in India*. Kali for Women (pp. 22–25). New Delhi.
- Ananda vs. Haribandu, A.I.R. 1967 Orissa 194 (1967).
- Benschop, M. (2004). Women's rights to land and property. Commission on Sustainable Development.
- Bruns, B. R., Ringler, C., & Meinzen-Dick, R. S. (Eds.). (2005). Water rights reform: Lessons for institutional design. Intl Food Policy Res Inst.
- Chandran, R. (2016). *Forced by Tradition to Give up Inheritance, Indian Women Embrace Property Ownership*. Mint. <https://www.livemint.com/Politics/IblyPUxBjkNJAlpYrdhSgK/Forcedby-tradition-to-give-up-inheritance-Indian-women-cou.html>.
- Chhodan, N., & Kashyap, S. 2024. *Inheritance, gender equality and customary tribal laws: Women's perspective*. International Journal of Novel Research and Development. Retrieved from <https://www.ijnrd.org/papers/IJNRD2404420.pdf>
- Chowdhry, Prem (2009): *Gender Discrimination in Land Ownership*. XI. New Delhi: Sage Publications India Pvt. Ltd
- Crenshaw, K. (2019). 'Difference' through intersectionality 1. In *Dalit Feminist Theory* (pp. 139-149). Routledge India.
- De Soto, H., & Diaz, H. P. (2002). The mystery of capital. Why capitalism triumphs in the West and fails everywhere else. *Canadian Journal of Latin American & Caribbean Studies*, 27(53), 172.
- Deo, S., & Dubey, A. (2021). *Gender Inequality in Inheritance Laws: The Case of Agricultural Land in India*. In Landesa. <https://cdn.landesa.org/wp-content/>

uploads/Gender-Inequality-in-Inheritance-Laws-The-case-of-agricultural-land-in-India-1.pdf

- Engels, F. (2001). *The origin of the family, private property and the state*. Wellred Books.
- Fazalbhoy, N. (2005). *Muslim women and inheritance*. In Z. Hasan & R. Menon (Eds.), *In a Minority: Essays on Muslim Women in India* (pp. 69-70). New Delhi: Oxford University Press.
- Fyze, A. A. A. (2008). *Outlines of Muhammadan Law* (T. Mehmood, Ed.). Oxford University Press.
- Ghosh, Arindam. (2020, May 31). Hindu Women's Right to property under customary law. Retrieved 15 July 2024, from Pdfcoffee.com website: <https://pdfcoffee.com/hindu-womens-right-to-property-under-customary-law-pdf-free.html>
- Gonsalves, L. (1993). *Women and the Law*. Lancer Paperbacks.
- Gray, L. (1993). The effect of drought and economic decline on rural women in Western Sudan. *Geoforum*, 24(1), 89-98.
- Gupta, P. (2016, December 10). "Haq Tyag" Tradition Still Prevails in India. SheThePeople. <https://www.shethepeople.tv/news/haq-tyag-tradition-still-prevails-in-india/>
- Hidayatullah, M., & Hidayatullah, A. (2004). *Mulla's principles of Muslim law* (p. 20). New Delhi: LexisNexis Butterworths.
- Johari, A. (2021, September 3). In their fight for land rights, Gujarat's women face long battles. Scroll.in. <https://scroll.in/article/1004167/in-their-fight-for-land-rights-gujarats-women-face-long-battles>
- Miangky N Marak, & Dr. V. Thirumurugan. (2024). *The Law of Property Inheritance Among The Garo Women In Meghalaya As A Matrilineal Society*. Educational Administration: Theory and Practice, 30(3), 850-852. <https://doi.org/10.53555/kuey.v30i3.1384>
- Mulla, A. (2010). *Principles of Hindu Law* (S. A. Desai, Ed.). Butterworths India.
- Newsclick. (n.d.). Women who own property face lower risk of domestic violence. Newsclick. Retrieved July 18, 2024, from <https://www.newsclick.in/Women-Who-Own-Property-Face-Lower-Risk-Domestic-Violence?page=9>
- Nigam S. (2020). *A Hindu Daughter's Right to Property: Is the retrospective amendment of Section 6 of the Hindu Succession Act a step towards women's economic empowerment?*. Legal News and Views, Volume 34 No.9 September Issue page 2-8
- Omprakash vs. Radhacharan, (2009) 15 SCC 66.
- Pateman, C. (2016). Sexual contract. *The Wiley Blackwell encyclopedia of gender and sexuality studies*, 1-3.

- Rahummuth Ammat vs. Mohammed Mydeen Rowther, (1978) 2 MLJ 499, referred in Narunnisa vs. Shek Abdul Hamid, AIR 1987 Kant 222.
- Ramaswamy, V. (2006). "Reclaiming Equality: Women's Property Rights under the Hindu Succession Act." *Economic and Political Weekly*, 41(17), 1701-1708.
- S.A. Halima Bivi Ammal vs. S.A. Fatima Bivi and Ors., AIR 19.
- Saradamoni, K. (1987). Labour, land and rice production: women's involvement in three states. *Economic and Political weekly*, WS2-WS6.
- Sen A. (1993) Capability and Well-Being. In: Nussbaum, Sen The Quality of Life. Oxford: Clarendon Press.
- Sen, K., & Stivens, M. (Eds.). (1998). Gender and power in affluent Asia (p. 35). London: Routledge.
- Shodhganga: a reservoir of Indian theses @ INFLIBNET. (n.d.). https://shodhganga.inflibnet.ac.in/bitstream/10603/406332/8/08_chapter2.pdf
- Singh, K. (2006, May 1). *About Matters of Inheritance*. Women's Equality.
- Smt. Ashabi vs. Smt. Faziyabi and Ors., AIR 2004 Kant 476
- Sushilabai Ramachandra Kulkarni vs. Narayanarao Gopalrao Deshpande and Ors., A.I.R. 1975 Bom. 257 (1975).
- United Nations (2000): The World's Women Trends and Statistics, New York.
- Vidyaben vs. Jagadishchandra N. Bhatt, A.I.R. 1974 Guj. 23 (1974).



ActionAid Karnataka Projects

Project Office: 5/B Block F
Kailash Colony, New Delhi – 110048
Phone: +91 11 40640553

Regd. Office:

139/B, Richmond Road
Bengaluru, Karnataka – 560025
Phone: +91 80 25586682