

## A Feminist Approach of Hindu Women's Right to Agricultural Property

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### ABSTRACT

This research explores the right of Hindu women to the agricultural property from a feminist perspective, with respect to the historical exclusion, legal reforms and contemporary issues. Traditionally, patriarchal Hindu society has limited women's inheritance rights, especially over agricultural land, to 'stridhan' and excluded them from coparcenary property. The enactment of Hindu Succession Act, 1956 and its landmark amendment by way of Hindu Succession (Amendment) Act, 2005 was to establish gender equality by granting equal coparcenary rights to daughters. However, despite these legal gains, socio-cultural norms, state-specific land laws and implementation gaps continue to impede women's actual ownership and control of agricultural land. The paper uses a feminist legal approach and secondary data analysis to critically assess the effectiveness of legal reforms. The study concludes that despite de jure legal equality, there are still major de facto disparities and that structural reforms, awareness and policy interventions are needed.

**Keywords:** Feminism, Hindu Women, Agricultural Property, Inheritance Rights, Gender Equality, Hindu Succession Act

### I. INTRODUCTION

India is seen as a nation of villages, with its economy predominantly reliant on agriculture and rural sectors. Agricultural land constitutes the fundamental asset of any rural economy. Theorists contend that land is the sole kind of wealth that cannot be generated, with fertile land possessing the greatest economic worth. Consequently, land ownership is a crucial determinant of economic equality within society. An analysis of agricultural land ownership in India reveals that the majority of land is possessed by the male population. More than 70 percent of the rural women population undertake the agricultural job although they possess the inadequate 12.8% of agricultural land. The laws of succession play a crucial role in economic redistribution and the establishment of property rights. Generally, the principles of testamentary succession let an individual to create a Will that becomes effective upon their death. A will is a mechanism for distributing one's property during one's lifetime to any individual. The property title transfers at the testator's death to the individual designated in the Will. The Will provides the testator with the option to allocate their property according to their preferences in favor of designated individuals. In addition to testamentary succession, the law addresses situations where an individual has not allocated their property in accordance with the regulations governing testamentary succession. In India, in addition to the general succession law outlined in the Indian Succession Act of 1925, succession law predominantly resides within personal laws, exhibiting variety according to religious affiliation. The succession laws of one religious denomination markedly differ from those of another faith. This paper seeks to analyze the Hindu rule of succession concerning agricultural land. The second section of the article examines the fundamental concepts of Hindu succession law, together with significant legislative milestones and their effects on the rights of Hindu women regarding agricultural land. The final section of the study examines the effects of the 2005 modification to the Hindu Succession Act and the legal void that has emerged. The fourth section examines the several causes and arguments pertinent to the debate, and proposes recommendations for legal enhancement.

### II. SUCCESSION UNDER HINDU LAW: CORE PRINCIPLES

As previously stated, personal laws also encompass regulations pertaining to intestate succession. If an individual fails to create a Will before to death, the property belonging to the decedent may be distributed according to applicable laws. An examination of the personal laws regulating succession reveals that the provisions concerning intestate succession, across all religions, predominantly benefit male family members. An examination of ancient Hindu law reveals considerable variety. There exist two philosophical doctrines: Mitakshara and Dayabhaga. The former has multiple sub-schools and is widespread throughout most regions of Indian Territory, while the latter is predominant in the eastern section of the country, specifically Bengal and Assam. These institutions are

established based on various interpretations of the Smritis and Srutis. The current statutory law concerning succession cannot be comprehended without a thorough understanding of ancient Hindu law, as numerous aspects addressed by the statutory provisions are directly linked to ancient institutions and practices. The Hindu succession law, applicable to Sikhs, Jains, and Buddhists, is founded upon and acknowledges the ancient and unique institution of the joint family. Historically, the initial inquiry to ascertain inheritance rights was whether an individual belonged to a Joint Hindu Family (JHF). JHF remains a significant determinant influencing the rights and obligations of individuals concerning succession. The JHF is a statutory entity, and it is presumed that an individual of Hindu faith is a member of the JHF. Membership in JHF can be acquired solely through three means: birth, marriage, and adoption. No alternative pathways exist for participation in this distinctive institution. [7].

The JHF comprises all descendants of the common male ancestor, their spouses, and any children adopted by members of the joint family. A JHF may comprise an arbitrary number of members. A family is assumed to be a high-functioning unit until demonstrated differently.

Another essential institution of the JHF was the system of coparcenary. The coparcenary was an institution including solely male descendants of a single ancestor, extending up to five generations, including the common ancestor itself. JHF is an institution comprising an unlimited number of individuals descended from a common male ancestor, along with relations through marriage and adoption. Within the broader institution of JHF, there was a subordinate institution of coparcenary, with membership restricted to five generations. If all members of the oldest generations perish, the coparcenary would transition to the subsequent generation, namely the sixth generation. The institution of coparcenary restricted the inheritance of property to a specific number of male family members based on the principle of consanguinity. The proximity of blood link to the male relative increases his likelihood of succeeding as the inheritor under the rule of survivorship. If the intestate was a coparcener in the JHF, then his stake in the JHF property passed by the rule of survivorship in antiquity.<sup>10</sup> The principle of survivorship is applicable in succession. Consequently, upon the demise of any coparcener in the joint Hindu household, the property is transferred to the surviving coparcener. The survivorship resulted in the inheritance share of the family property being variable and it remained unfixed unless a coparcener requested a partition of the JHF. Consequently, with the death of a coparcener, the provisional share of the remaining coparceners increases, whereas the birth of a new coparcener results in a decrease of the provisional share. The share is determined at the time the coparcener initiates the partition claim. The Shastric law assigned the responsibility of Karta of the family to the common ancestor or the eldest male member of the JHF. He was tasked with managing both the internal and exterior affairs of the family, bearing the obligation of addressing the needs and requirements of all members of the JHF. He served as the family's representative in all things, whether religious, social, financial, or political. He was the coparcener, being the senior-most male member of the family, which is evident. According to the current legal framework, upon the demise of a coparcener, a presumed partition of the Joint Hindu Family (JHF) occurs, following which the share of the intestate coparcener will be distributed in accordance with the relevant succession laws. Moreover, if any property of an intestate is self-acquired, it shall be distributed according to the succession laws applicable. The coparcenary has been infringed upon. Under the previous legislation, membership in the coparcenary was exclusively granted to men. Statutory law now recognizes daughters of coparceners as coparceners, so extending all rights and liabilities associated with coparcener status to them. Consequently, inside the JHF, not all members possessed same rights and responsibilities. Hindu law acknowledged the right to inherit for those capable of conducting the funeral rites for the deceased. Ancient Hindu legal writings indicate that religious obligations and spiritual advantages for ancestors are mostly conferred upon male offspring based on consanguinity. The characteristics of the property also influenced its devolution. If the property was JHF property, it was governed by the principles of coparcenary and survivorship. However, if the coparcener had secured a partition and his position at the time of death was one of separation, then the property became his exclusive asset and devolved according to the rules of succession to his heirs. If the individual who acquired the division had a son or any male descendants, the property received post-partition would be classified as JHF property for the smaller joint family of father and son.

### **III. HINDU WOMEN'S RIGHTS UNDER HINDU SUCCESSION LAW**

The ancient Hindu legal framework regarding women's succession rights reveals a complex interplay of contradictory regulations, mandates, and customs. Women were not regarded as individuals deserving of autonomy. Unmarried women possessed no rights to property. The Karta was accountable for addressing the requirements of all JHF members and was also tasked with organizing the finances for his daughter's marriage. Typically, daughters were bestowed specific presents upon marriage, which could encompass immovable property. These presents were referred to as Stridhan (women's property). It is important to highlight that, due to the lack of freedom afforded to women, control over both the women and their property generally resided with their husbands. The restricted property ownership granted to women is posited as a mechanism employed by men to inhibit the transfer of property to other groups, rather than a recognition of women's rights to property ownership. This practice is also linked to numerous socio-economic offenses perpetrated against women. The 1956 Act conferred succession rights to women in many roles, including mother, daughter, wife, and other related. However, the practical impact was minimal. Consequently, the 1956 Act was revised in 2005 to enhance its efficacy. The modification included several female relatives in the classification of Class I heirs and other categories. One of the most intriguing revisions was a modification in the stance on agricultural property. The aforementioned alteration is addressed in the subsequent section of the paper [17].

### **IV. SUCCESSION LAWS AND AGRICULTURAL PROPERTY**

The transfer of rights in acquired and inherited property has been a matter of personal laws across various civilizations. The Hindu Succession Act, 1956 (hence referred to as HSA, 1956) was enacted on June 17, 1956. The purpose of the Act was to define and revise the legislation concerning intestate succession among Hindus. Despite the aim of codification, agricultural property was intentionally excluded from the applicability of the HSA, 1956 [18]. This exclusion was based on legislative competence for 'agricultural land,' which is solely listed in the State List. Consequently, although Section 4(1) (a) and (b) conferred precedence to the HSA over all other prevailing statutes, agricultural land was explicitly exempted by Section 4(2). Consequently, the HSA of 1956 was inapplicable not instances of inherited agricultural land. The land regulations of each State were to be enforced. This created an odd scenario wherein land law addressed the inheritance of agricultural land, but inheritance was governed by the State law pertaining to agricultural land. In the other States where land laws were ambiguous about inheritance rules, HSA was implemented by default. The inquiry emerged over the convenience of distinct inheritance rules for effective administration, leading to their removal by the 2005 Amendment that abrogated Section 4(2). To arrive at a conclusion, we must examine the State tenancy laws, which indicate that land ownership is predominantly held by males within the patriarchal framework of Indian society.

The tenorial laws of the State were markedly gendered and inequitable. In states such as Delhi, Punjab, Uttar Pradesh, Haryana, Himachal Pradesh, and Jammu and Kashmir, male lineal descendants were prioritized, while women ranked far lower in the hierarchy of heirs. In certain states, women were entirely deprived of ownership rights. India is an agrarian nation, and the significance of women as laborers and farm administrators is undeniable. The feminization of agriculture has risen in the past two decades as a greater number of males have transitioned to non-agricultural employment. Female agriculturalists encountered a significant challenge since discriminatory legislation deprived them of land rights. The absence of titles prevented women from obtaining finance or accessing irrigation and other resources, particularly technology. The law and customs must evolve in accordance with the progression of time. The rule of law establishes a consistent framework for happy societal coexistence. Gender does not impede the exercise of social, economic, political, and cultural rights. The Law Commission expressed this concern in its 174th Report on "Property Rights of Women - Proposed Reform under Hindu Law." The primary objective was to eliminate the gender disparity seen in the current HSA of 1956. Following the recommendations of the 174th Report, the Hindu Succession (Amendment) Act was enacted in 2005 and became effective on September 9, 2005. The principal accomplishment of the Amendment Act was the equalization of coparcenary rights for females with those of males. The second pertains to the repeal of Section 4(2) of the 1956 Act, which encompasses the gender-discriminatory implicit safeguard on the inequitable State land laws on inheritance.

The exclusion of Section 4(2) has resulted in the withdrawal of the protection that the Section provided against obliteration. All property, including agricultural land, is regarded uniformly under the Act. Consequently, there is no differentiation between agricultural land and other types of property. Agricultural land must not get any preferential treatment and will be regarded equally with other properties for succession purposes. This facilitates women's assertion of equal inheritance rights to agricultural land, comparable to those of men, across several States. All other laws are abrogated due to their inconsistency with an Act of Parliament. Consequently, the Hindu Succession Act, along with its advantageous modifications, was now relevant to Hindu women about their agricultural holdings. The 2005 Act significantly undermined the patriarchal framework of HSA, leading to equity and parity. The omission of Section 4(2) has resulted in considerable confusion, since the Legislature failed to incorporate any specific provision affirming the applicability of the HSA to agricultural land, alongside any relevant State law addressing the same issue. Another source of uncertainty pertains to the clash between Central and State legislations, as inheritance falls within the concurrent list, while land is classified as a State subject. Article 254 of the Constitution prioritizes Central legislation in instances of conflict, provided that the Centre possesses the authority to legislate on the matter under Article 256.

The Court acknowledged these confusions in a writ petition submitted to the Delhi High Court in 2007, concerning the case of *Nirmala & Others v. Government of NCT of Delhi & Others*, which was ultimately resolved in 2010. This document challenges Section 50 of the Delhi Land Reform Act, 1954 (hence, DLRA, 1954), asserting that it has become void due to the deletion of Section 4(2), which indicates the applicability of the Hindu Succession Act following the 2005 modification.

The agricultural land in question belonged to the late Shri Inder Singh, who passed away on December 15, 2006, leaving behind the families from his two marriages. The petitioners consist of the widow and two minor daughters from the second marriage, whereas the respondents include two boys and one daughter from the first marriage. The petitioner, Nirmala Devi, had submitted an application to the Tehsildar on February 5, 2007, which was denied under Section 50 of the DLRA. On 12th February 2007, she presented her case before the Panchayat, which unanimously resolved that one-third of the land be allocated to the petitioner. Despite the Panchayat's judgment, the step-sons persisted in obstructing the petitioner. She submitted an application concerning this matter to the SDM and the Deputy Commissioner, but it was not acknowledged. After all attempts proved unsuccessful, she ultimately filed the writ suit in the High Court of Delhi. The primary question in the case was whether the Amendment Act effectively repeals Section 50 of the DLRA, as the removal of Section 4(2) of the HSA eliminates the immunity that the DLRA formerly held concerning succession laws for agricultural land. Section 50 of the DLRA stipulates that upon the intestate death of a Bhumidari or Asami, the order of succession grants inheritance rights in agricultural land primarily to the male members of the family. The female members were completely precluded from inheriting such property in the presence of male lineal offspring. The provision of Section 50 of the DLR Act contradicts the Hindu Succession Act. Section 4(1) of the HSA stipulates that any prior law applicable to Hindus should be rendered inoperative to the extent that it conflicts with the requirements of the HSA.

Consequently, the stipulation in the DLR Act would be become obsolete, ceasing to apply to Hindus concerning inheritance issues. Consequently, the previously accessible protection has been overshadowed, and the pertinent provision is directly affected by the explicit stipulation of the HAS.

The Court ultimately determined that the succession provision outlined in Hindu law, as specified in the HSA, shall prevail over the rule established in the DLR Act.

## **V. THE MODERN PERIOD**

### **A. *Stridhan, Sati and Dowry***

The Hindu religious rituals and social norms constituted the most significant socio-legal challenge encountered by colonial rulers in India with their Hindu people. All these behaviors stemmed from a singular issue: the denial of women's rightful rights. The Hindu socio-religious and cultural condition was at its worst during the British invasion of India. The demand for stridhan as a component of dowry became widespread. This led to female infanticide, the marriage of young girls to dying men, and the abhorrent practice of bride burning. Despite the

efforts of the Mughal rulers to suppress the practice of sati, or bride burning, this savage custom continued well into the eighteenth and nineteenth centuries. The Sati Regulation, XVII of 1827, was the inaugural abolition of the practice in Indian history. This was accomplished via the influence of social reformers such as Raja Ram Mohan Roy and Lord William Bentinck. The establishment of the Indian Penal Code in 1860 rendered sati punishable, as the practice constitutes murder and homicide. These actions established the legal entitlement of Hindu women to their property. However, the issue of dowry remained unresolved and was regarded as an aspect of stridhan.

### **Colonial Laws: Hindu Women's Right to Property Act (1937)**

Hindu customary laws and regulations persisted even after the arrival of the British in the nation. During the eighteenth and nineteenth centuries, British colonial authorities implemented standardized rules across several aspects of social life, including crime and commerce, while simultaneously acknowledging distinct Hindu family laws for various religious and cultural groups. Consequently, the principles of inheritance were governed by the Mitakshara and Dayabhaga legal frameworks until the onset of the twentieth century.

The colonial authorities initiated its inaugural effort to establish a standardized law of succession for Hindu women with the Hindu Women's Right to Property Act (1937), which underscored women's property rights. This Act was the inaugural legislation that resolved the contentious discourse surrounding the attributes of stridhan and affirmed Hindu women's rights to land inherited from male proprietors, particularly husbands, albeit to a restricted degree.

The 1937 Act acknowledged three categories of widows. 1) Widow of an intestate individual; 2) widow of a deceased son; and 3) widow of a deceased grandson, who is the offspring of a predeceased father. Widows were allocated a portion of the undivided stake of a Mitakshara coparcener.

The Hindu Women's Right to Property Act was lauded as a mechanism for enhancing the circumstances of Hindu women, particularly young widows. Both European and Indian social reformers, dating back to Raja Ram Mohan Roy, advocated for this type of social reform. This reforming effort, however, failed to abolish the antiquated Shastric laws. The principal flaw of the 1937 Act was its inability to guarantee rights to female successors if the decedent had bequeathed property through a will. The 1937 Act conferred restricted rights to Hindu women regarding the intestate property of their husbands. The Act also omitted any reference to women's ownership of agricultural land. [26]

#### ***B. Conversion of Women's Estate to Stridhan Hindu***

Women's limited interest in real estate persisted following India's independence in 1947.

In the 1948 deliberations of the Indian Constituent Assembly, Dr. B.R. Ambedkar identified the shortcomings in succession rules for Hindu women and amended the existing legislation through the new Hindu Code Bill. The modifications are:

The widow, daughter, and widow of a deceased son are regarded equally to the son for inheritance rights.

The daughter is entitled to a portion of her father's property, which is established at fifty percent of the son's part.

The number of acknowledged female heirs is set to significantly exceed that recognized under both the Mitakshara and the Dayabhaga systems.

Under the previous legal frameworks of Mitakshara or Dayabhaga, a differentiation was established for a female's financial status at the time of the testator's death, her marital status, and whether she had offspring. This Bill eliminates all considerations that lead to discrimination against female heirs. A woman entitled to inherit does so by virtue of being designated an heir, without any further stipulations.

Under the Dayabhaga, the father prevails over the mother; however, the current Bill modifies this hierarchy, placing the mother prior to the father.

It consolidates the various categories of stridhan into a singular category of property and establishes a consistent succession rule; there are no diverse heirs for the stridhan based on its numerous categories—all stridhan is unified, governed by a single succession rule.

The son is now granted a right of inheritance to the stridhan, receiving half the part allocated to the daughter. The Bill seeks to establish equality of status between sons and daughters. The Bill transforms the restricted estate of women into an absolute estate, analogous to the manner in which males obtain an absolute estate upon inheritance. Furthermore, it nullifies the reversioners' rights to the property following the widow's tenure. Consequently, the Hindu Code Bill represented the initial measure towards the eradication of the limited estate idea for women and the transition to full estate rights.

### *C. The Modernized Concept of Stridhan*

#### **The Hindu Succession Act (1956)**

The Hindu Succession Act (1956), enacted for Hindus in independent India, ultimately abolished the archaic practice of barring women from inheriting land from male heirs, as stipulated by the Hindu Code Bill. The Act ultimately abolished the notion of women's estate and broadened the definition of stridhan to encompass landed property with other moveable and immovable assets. Section 14 of the legislation has reclassified women's estates as stridhan, stipulating that any property acquired by a Hindu woman after June 17, 1956, will be her exclusive property.

According to the Act, "property" encompasses both movable and immovable assets that she receives as a gift, through maintenance or inheritance, or earns through her own skill, purchase, prescription, partition, etc. Subsection (1) of Section 14 of the Act delineates property. All categories of qualities listed in the ancient text *Vo'naneswar*, which identifies stridhan as comprising nine varieties. However, the Hindu Succession Act did not confer upon women full authority over property. Subsection 2 of Section 14 maintains the power of any individual or the court to confer a limited estate to a woman in the same manner as it may be conferred to any other individual.

Section 14 has therefore been retroactive. It transforms an existing women's estate into stridhan or absolute estate only when two conditions are met: 1. the property must be wholly owned by her, without any restrictions on ownership. She must have possessed the estate when the Act was enacted. The Act does not address the property of a deceased woman's husband. The property cannot be considered her sole ownership, except for the right to maintenance.

#### **Critique of Hindu Succession Act 1956**

Although section 14 of the Hindu Succession Act (1956) designated women's estate as stridhan, it was not comprehensive. The matter of female inheritance emerged in the context of inheritance subject to a limitation clause. Several more sections sustained the archaic inequality between male and female heirs.

The 1956 Act stipulates property inheritance rights for unmarried daughters. According to section 15 of the Hindu Succession Act, 1956, a daughter-in-law is entitled to inherit solely upon becoming a widow. Consequently, she is unable to inherit her rightful portion of her father-in-law's estate while her husband is alive. The Courts have determined the applicability of Section 15(b), which stipulates that "any property inherited by a female Hindu from her husband or father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter), not upon the other heirs mentioned in subsection (1) in the specified order, but upon the heirs of the husband."

The Court needed to elucidate the language of Section 15 (b) to ascertain the rightful successor of the property belonging to a widowed woman who acquired her portion from her father-in-law. In *Kailash v. Kishan*, the court determined that there is no defect in the factual application of the Section. The property bequeathed to the widow by her father-in-law will pass to her husband's heirs at her demise, regarding the widow's heir. If she remarries and her second husband subsequently dies, any property received from her second husband's father will pass to the heirs of the second husband, not to the heirs of the first marriage.

A significant challenge the women encountered was the partitioning of the residence. Section 14 indicates that stridhan property encompasses property acquired by partition; yet, Section 23, in addressing the partition of the residential house, plainly discriminates against female heirs. According to Hindu law, the living abode is accorded a unique status that prohibits partition as stipulated by the smritikaras. The dwelling house was bequeathed solely to male heirs (sons and grandsons), excluding female heirs. The issue of male and female succession rights could not emerge as it does today.

Section 23 of the Hindu Succession Act specifies that a female heir's entitlement to request partition of the dwelling place shall not arise until the male heirs opt to partition their respective parts therein.

Section 23 of the aforementioned Act delineates the rights of residency for married, unmarried, and widowed daughters. It does not grant the right to seek partition but provides a right of residency solely if the daughter is unmarried, deserted, or separated from her spouse.

Married daughters possess no entitlement to assert claims for either partition or residence. A married daughter who voluntarily departs from her husband and is not abandoned by him has no entitlement to reside in the family home. A married daughter who is widowed or abandoned by her husband is entitled solely to claim rights of residence in the family home.

Only the female heirs are subject to the partition limitation. The female heirs cannot prevent the male heir from dividing the living house, although they are entitled to their respective shares.

The Hindu Succession Act (1956) excludes married daughters from the right to live in the dwelling house and from a share in partition. The question of women's succession reemerges. The Act abolished the differentiation between stridhan and a woman's estate; yet, the issues of division and the right to live in the dwelling home highlighted the longstanding practice of discrimination against female children.

#### ***D. Efforts to End the Inequality***

Numerous state governments developed impartial succession regulations due to ongoing studies in the area of succession rights for Hindu women in India. The significant advancement was the enactment of the Hindu Succession (Andhra Pradesh) Amendment Act (1985). This legislation stipulates that, under all circumstances, the rights of daughters are equivalent to those of sons. This legislation deemed the Mitakshara system a contravention of the fundamental right to equality. The states of Tamil Nadu, Maharashtra, and Kerala have altered the law to incorporate women as coparceners. Regrettably, this law does not constitute a universal principle. "With the exception of the southern states adhering to Marumakkattayam and Aliyasantana laws, other Indian states resisted departing from patriarchal norms regarding property rights." Numerous laws exist prohibiting discrimination based on sex; yet, none are sufficiently effective to instigate a societal revolution or transformation. The primary impediment to achieving gender equality in succession among Hindus is the discrepancy between the two legal schools prevalent in various regions of the country.

The 174th Law Commission undertook the initiative to abolish this millennia-old practice that excludes women from property succession. The study concluded that social justice necessitates equal treatment of women in both economic and social domains. It is inequitable that daughters are barred from inheriting coparcenary property only due to their gender. The Commission considered the modifications made by State legislation on the idea of Mitakshara coparcenary property in five Indian States: Kerala, Andhra Pradesh, Tamil Nadu, Maharashtra, and Karnataka. The Commission articulated that the Mitakshara Law of Coparcenary need additional change to ensure equitable property allocation between men and women. The Law Commission initiated a groundbreaking proposal to reform the archaic succession rules of Mitakshara and Dayabhaga, consequently revising the Hindu Succession Act (1956) to ensure equal inheritance rights for Hindu women in ancestral properties.

## **VI. DOWRY AND STRIDHAN**

The Hindu Succession Act (1956) established succession rights for Hindu women, whilst the Dowry Prohibition Act (1961) addressed the coercive demand for stridhan under the guise of dowry and rendered it a criminal offense. The Act delineated dowry as any property or valuable security provided or promised at the time of marriage, prior

to the marriage, or subsequently by one party to the other, by the parents of either party, or by any other individual to either party or any person involved in the marriage. Section 2 of the Act delineates a subtle distinction between stridhan and dowry, asserting that when gifts are voluntarily bestowed upon the bride and groom, and such gifts are neither solicited nor recorded in the list mandated by The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules (1985), duly signed by both parties, they do not constitute "dowry."

Can these 'gifts' presented to the bride at the marriage be classified as stridhan? The Supreme Court of India ultimately resolved this issue in the matter of *Prativa Rani v. Suraj Kumar*, where it stated that "the stridhan property of a married woman, upon her entry into her matrimonial home, does not assume the nature of joint property between the spouses."

The court additionally determined that:

The status of stridhan as property belonging to a Hindu married lady during coverture is unequivocal and distinct. She possesses complete ownership of the property and may manage it as she wishes. She may utilize the entirety of it or bestow it as she desires through gift or testament without consulting her husband. The husband's custody of the stridhan property resembles a bank account that the wife can access and withdraw from at her discretion, without any obstacles or impediments. Typically, the husband possesses no rights or interests in it, except during periods of severe hardship, such as famine or illness, when he may utilize it but is ethically obligated to restore it or its equivalent value when feasible. This right is exclusive to the husband, and the property acquired by him through marriage cannot be subjected to execution for debt decrees.

This groundbreaking verdict precisely delineated stridhan, which consists of immovable property acquired as presents by Hindu women, so resolving any disputes concerning women's absolute ownership of such assets. Subsequent revisions to the succession rules fortified the status of women as equals to their male counterparts regarding succession and property rights.

### **The Hindu Succession (Amendment) Act 2005**

The modified Hindu Succession Act of 2005 granted Hindu women the right to become coparceners in ancestral property, akin to their male counterparts. Daughters are entitled to equal rights to ancestral possessions under Section 6 of the Hindu Succession (Amendment) Act (2005). Therefore, it may be seen that: The daughter, by virtue of her birth, is entitled to be a coparcener in her own right, analogous to the son. The daughter shall possess identical rights in the coparcener property that a son would have had. The daughter shall incur the same obligation in the specified coparcener property as a son; any mention of a Hindu Mitakshara coparcener shall be interpreted to encompass a daughter of a coparcener. The daughter shall receive an equal share to that of a son;

The portion belonging to the deceased son or daughter will be allocated to the surviving child of the respective deceased son or daughter.

The offspring of a deceased son or daughter shall get the inheritance designated for the deceased child of that son or daughter. The longstanding practice of allocating the complete property portion of a Hindu who died intestate solely to male heirs has finally been abolished. The New Succession Law grants female heirs equal eligibility with male heirs to inherit an equal share of property. The Hindu Succession Act (2005) has a dual effect:

The ladies obtained coparcenary property rights and became entitled to the split of the family residence. In other words, they assumed the role of Karta, which was previously limited to male heirs before to the enactment of the new Act.

Women are entitled to fully enjoy property rights, whether inherited from their parents or in-laws.

The Hindu Succession (Amended) Act 2005 has fundamentally transformed Hindu succession law by designating women as the Karta of joint family property. Consequently, women can manage the property like male heirs have done for centuries. Historically, the empowerment of women is not a novel phenomenon. The Dharma Shastra permits the wife of an absent or deceased family property manager to alienate assets belonging to several minors, who are incapable of entering into contracts themselves, provided it is necessary for the maintenance of dependents and the fulfillment of familial obligations.

This is further substantiated by Katyana, Smritichandrika, Bhavasvamin, and Yagnavalkya Smriti. Portions of the Sanskrit text state: "sishyantevasi-dasa-stri-vaiyavritttyakarais ca yat Kutumbahetor ucchinam vodhavyam tat Kutumbina." The manager, whether a current or future householder, is obligated to acknowledge any transfers executed for the benefit of the Family by a pupil, apprentice, slave, wife, agent, or bailiff. Narada said, "A husband shall not incur any debt on account of his wife, except in cases of emergency; for the welfare of the family is indeed expansive." A debt incurred by his wife does not obligate the husband, unless it was acquired during a period of distress. The financial responsibilities for the family's welfare are borne by males. Women were regarded solely as managers rather than as individuals capable of independently managing property for their own purposes during times of adversity. The revised Act conferred upon women the status of complete property owners.

## **VII. DISCUSSION**

The contentious aspect of stridhan, whether obtained through inheritance or allocation, and the validity of such property, has been debated from the inception of the stridhan concept. As previously mentioned, Yagnavalkya defines women's property as that which is bestowed upon a woman by her father, mother, husband, or brother, or obtained during the nuptial fire or similar ceremonies (Ya, II, 143). Vijnaneshwara elucidated the original version of Yajnavalkya's commentary, interpreting "and the like" as including property that includes inherited assets as well as those acquired by purchase or share. He was the inaugural ancient lawgiver to expand the definition of stridhan to encompass property obtained through inheritance, division, or purchase. However, later smritikaras diverged from this notion, and ultimately, the Manusmriti, regarded as the primary source of Hindu Law, stipulated that women were incapable of owning property due to their perceived inferiority to men. The Mitakshara and Dayabhaga schools of Hindu law adhered to the succession provisions of Manusmriti, whereby women remained secondary owners of landed property until the enactment of the Hindu Women's Right to Property Act in 1937. The implementation of this Act marked the initial measure undertaken by colonial authorities in India throughout the eighteenth and nineteenth centuries to partially guarantee a married woman's property rights. Property obtained via inheritance, share, or partition was designated as women's estate, granting spouses of Hindu males or Hindu widows the right to benefit from the property, although they were prohibited from alienating it. For an extended period, women were subjugated by the conventional norms and inflexible Hindu culture. The Hindu Women's Right to Property Act (1937) was succeeded by the Hindu Code Bill during India's independence and ultimately by the Hindu Succession Act (1956), which removed the notion of women's estate and recognized property as stridhan.

Consequently, contemporary Hindu succession laws evolved from the stringent male-centric succession principles of Manusmriti, using Vijnaneshvara's understanding of the broader notion of stridhan. Despite the modern Hindu succession laws affirming the rights of Hindu wives and widows regarding their husband's property or that of their in-laws in the event of a predeceased son's widow, the issue of unmarried girls' entitlement to partition the dwelling house or the residency rights of married daughters in the ancestral home remains unresolved. Nearly fifty years after the implementation of the Hindu Succession Act, 1956, these issues were resolved in the Hindu Succession (Amendment) Act, 2005. The ancient notion of stridhan encompassed nine categories of property, namely,

- private gifts and legacies from relatives,  
Gifts and legacies from strangers;
- property acquired by one's own labor and mechanical arts,
- property acquired with stridhan;
- property acquired by settlement
- property acquired through adverse possession,
- property received in satisfaction of maintenance,
- property acquired by inheritance and
- Share obtained by partition, finally recognized by the modern legislation. • Men and women, married or unmarried, were given equal rights to own property as their male counterparts.

Even after the introduction of the new Act in 2005, discrimination of women on succession has not been completely eliminated. The reasons are both sociological and historical, namely:

Hindu orthodox families discriminate female children in education, health and hygiene matters from birth. So most of the girls don't know their fundamental rights.

Though laws are made to prevent child marriages, such acts still prevail in many villages of India. Once a girl is married as a child, she does not return to claim her share of ancestral property and such claims are not entertained by her parental family. The root cause for this is she will bring a new member to the coparcenary property namely her husband.

Women are seen as assets to bring more property to the inlaws family through dowry. The language of the Dowry Prohibition Act (1961) provides ample scope for camouflaged ways to convert stridhan into dowry.

The new Succession Act (2005) gives women rights on parental property. But the possibilities of dowry harassment increase as women might be pestered to demand family property not for themselves but due to greed of their in-laws.

The new Law may encourage the in-laws to resort to the heinous custom of bride burning or Sati to remove women from the list of legal successors of the landed property. The new law allows women to become Karta of joint family properties. But many Hindu families where women are severely discriminated may not allow women to use the new law.

The question arises as to when a Hindu daughter marries a person of another faith and converts to the said religion whether she would have the same rights of partition, succession of ancestral property as she would have before such marriage.

#### **VIII. CONCLUSION**

Although the case has resulted in a pro-women judgment, it is important to recognize that the matter remains unresolved notwithstanding the ruling. The judgment presents several problems, specifically whether Parliament had the authority to change the requirements concerning agricultural property through modifications to the succession laws. The agricultural land is exclusively governed by the State, whereas succession is included in the concurrent list. In this scenario, it is challenging to ascertain which constitutional interpretation rule will apply. It would be intriguing to observe if the Courts will subsequently employ the pith and substance doctrine or the repugnancy rule of harmonious construction. The Apex Court will soon adjudicate these matters. The removal of the gender-biased language in the HSA has conferred ownership rights upon women growers, yielding some advantages for them. They may manage the property as they see fit; for instance, in the event of migration due to marriage, they can lease the property to family members or others for cultivation. This has provided women with a modicum of economic security. She can now return to her birthplace if the marriage deteriorates, no longer reliant on relatives. This will augment her self-confidence and social value, so providing her with increased negotiating leverage for herself and her children within parental and marital families. Thus, it can be asserted that the 2005 Amendment Act represents a significant advancement by the Legislature in improving the status of women. The execution has been inconsistent and incomplete; the task remains unfinished. The women either disregard their newfound rights or voluntarily relinquish their entitlements in favor of their brothers. Women seeking to assert their rights face obstruction due to pressures exerted by societal moral guardians. It is challenging to equate the patriarch with the female members of the family who have historically had a subordinate position. This is where the discourse on granting women equal "rights" falters. The legislature has fulfilled its function, and it is now incumbent upon society to advance towards the construction of an equitable community.

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- [32]. Diwan, supra n. 13, at 345 n. 2
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- [34]. 'Sakti' means the ultimate power. The Ancient Hindu mythology describes Sakti as a female goddess in the forms of Durga, Kali and Chandi