



ISSN: 3135-3398 (Print)  
EISSN: 3135-341X (Online)

## Social Sciences & Humanities in Asia (SSHA)

DOI: <http://doi.org/10.65098/ssha.01.2026.42.49>



### RESEARCH ARTICLE

# FROM VEDIC TEXTS TO THE HINDU SUCCESSION ACT: WOMEN'S STRUGGLES FOR INHERITANCE RIGHTS IN INDIA

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### ARTICLE DETAILS

#### Article History:

Received 29 Dec 2025

Accepted 27 Jan 2026

Available online 30 Jan 2026

#### Online Article Code



### ABSTRACT

**Background and Purpose:** Women's inheritance rights in India have historically been shaped by religious doctrines, colonial interventions, and post-independence legal reforms. Despite constitutional guarantees of equality, women's access to property has remained uneven. This paper aims to examine the historical trajectory and legal evolution of women's inheritance rights in India, highlighting the tension between normative legal reforms and social practice.

**Methods:** The study adopts a doctrinal and historical legal analysis. It examines early Hindu legal texts, including the Mitakshara and Dayabhaga schools, colonial-era legislation during British rule, constitutional provisions, and post-independence statutory law, particularly the Hindu Succession Act of 1956. These sources are analyzed to trace shifts in legal principles governing women's inheritance.

**Results:** The analysis shows that classical Hindu legal traditions largely excluded women from joint family property, although some early jurists such as Yajñavalkya and Brihaspati recognized inheritance rights for daughters and widows. British-era reforms introduced limited recognition of women's property rights. After independence, the Hindu Succession Act sought uniformity but continued to restrict women's inheritance in several respects, reflecting persistent patriarchal norms.

**Conclusion:** The paper concludes that while legal reforms have progressively expanded women's inheritance rights in India, a significant gap remains between formal legal provisions and their implementation. This disparity continues to shape women's unequal access to property, underscoring the need for stronger enforcement and social transformation alongside legal change.

#### KEYWORDS

Inheritance Rights, Vedic Texts, Hindu Succession Act, Women's Rights, Property Rights and Feminism

## 1. INTRODUCTION

Access to property, especially land, plays a critical role in shaping socio-economic security and gender equality (Agarwal, 1994). In the Indian context, where patriarchal norms strongly influence family, kinship, and inheritance systems, the ownership of property by women is both a deeply contested and socially transformative issue (Rao, 2017; Patel, 2013; Basu, 1999; Agarwal, 1988). Among the various channels through which women may acquire land—such as government land reforms, market purchases, or resettlement schemes—inheriting property remains the most frequent and culturally embedded route. However, in a society historically structured around male lineage and patrilineal inheritance, women have been systematically excluded from accessing land through inheritance, thus reinforcing their economic vulnerability and social dependence.

This study focuses on the theological, historical, and legal evolution of inheritance property rights of women in India. It investigates the shifting discourses and normative orders, from ancient Vedic traditions

and classical Hindu law to colonial legislation and post-independence statutory reforms. The discussion centers on how different schools of Hindu jurisprudence—particularly the Mitakshara and Dayabhaga schools—conceptualised women's rights to inherit property, often limiting their access through complex gendered hierarchies. Later legal interventions, including the *Hindu Women's Right to Property Act of 1937*, the *Hindu Succession Act of 1956*, and its landmark amendment in 2005, progressively expanded women's legal entitlements but encountered resistance from customary laws and entrenched patriarchal norms.

The objectives of this paper are threefold. First, it traces the theological and historical development of women's inheritance rights as codified and interpreted in religious texts and legal frameworks. Second, it critically examines statutory reforms within the broader terrain of personal laws and customary practices, particularly those affecting marginalised communities such as tribal groups. Third, it assesses the contemporary implications of legal reforms for women's actual access to property, taking into account both structural limitations and instances of judicial progress.

Methodologically, the study adopts a historical–legal textual analysis, drawing on Smritis, Dharmaśāstras, legislative texts, case law, and epigraphical evidence. It also engages in an interpretive reading of juristic debates and social customs to reveal the layered and often contradictory discourses surrounding women’s property rights. The analysis is grounded in feminist legal theory and an intersectional framework that highlights how caste, community, and marital status intersect with gender to shape patterns of inheritance. Furthermore, it interrogates the tension between statutory codification and customary autonomy, particularly in tribal contexts, where constitutional protections of tradition may inadvertently perpetuate gender-based discrimination. By foregrounding these historical, legal, and normative debates, the paper seeks to contribute to a deeper understanding of the politics of inheritance in India and the ongoing struggle for gender-just property rights.

## 2. INHERITANCE AND GENDER IN EARLY HINDU THOUGHT

The question of women’s inheritance rights in India finds its roots in ancient Hindu thought, where religious, legal, and social norms were deeply intertwined. In the Vedic period, societal structures were predominantly patriarchal, and women’s rights to inherit property were largely denied or, at best, ambiguously recognised (Patel, 2013). The dominant norm excluded women particularly wives and widows from succession, reflecting a deeply ingrained bias that associated property ownership and lineage continuation with male heirs. However, early texts reveal certain conditional and exceptional provisions that complicate a blanket reading of complete exclusion.

### 2.1 Vedic Period Ambiguities

The Vedic literature suggests that the devolution of property upon female heirs was generally discouraged. Yet, some exceptions existed particularly in the case of daughters without brothers. The *Rigveda*, one of the earliest known Hindu scriptures, contains a hymn that implicitly acknowledges the possibility of a daughter inheriting her father’s property, though under very specific and restrictive conditions. For instance, a daughter could claim inheritance only if she agreed to give her firstborn son to her maternal family, particularly when there was no male heir in her natal household. This conditional provision reveals the hesitancy of early society to fully endorse women’s autonomous inheritance, and instead, ties her entitlement to the continuation of the male line through her offspring (Halder & Jaishankar, 2008).

Moreover, the status of daughters was relatively more favorable than that of wives or widows in terms of inheritance, but even this recognition was not a genuine social endorsement (Mandal, 2025). Rather, it was a negotiated concession that often required a trade-off. By 200 BCE, a discernible decline in the social and educational status of women became apparent, and early marriages became the norm. These developments further curtailed women’s access to inheritance and solidified their subordinate role within both the household and the legal order.

### 2.2 Dharmaśāstra Debates

The classical Hindu legal texts, or *Dharmaśāstras*, further codified gendered exclusions through elaborate legal reasoning (Agarwal, 1998). A range of jurists engaged with the question of women’s right to inherit, leading to a division between Orthodox and Reformist positions. Orthodox thinkers such as Apastamba and Baudhayana rejected the notion of a daughter’s or widow’s independent claim to inheritance, insisting that property should revert to male *sapindas*—kin who shared a common ancestor—if no direct male heir was available (Dutta, 2016). Widows, even in the absence of sons, were denied the right to inherit their husband’s property. Instead, they were often treated as temporary custodians or as dependents entitled only to maintenance.

In contrast, it is also argued that jurists like Yajñavalkya, Narada, and Brihaspati offered more progressive interpretations (Olivelle, 2016). Yajñavalkya asserted that a daughter should inherit after the son and widow, arguing that both sons and daughters originate from the same womb and thus deserve equal consideration. Brihaspati echoed this sentiment by questioning the moral grounds on which daughters were

excluded, given their equal biological origin from the mother. Narada went a step further, invoking a logic of fairness and parity—arguing that daughters were as much children of their father as sons and should not be deprived solely on the basis of gender.

Despite these reformist voices, the dominant legal interpretation that prevailed was one that granted women only limited rights. Concepts like *Stridhana*—movable property gifted to a woman at the time of marriage—emerged as a compromise, allowing women some form of economic resource without challenging the male-centric inheritance structure (Hera & Batcha, 2023). However, *Stridhana* was not equivalent to co-ownership or succession rights and did little to shift the broader framework of gendered property relations (Mandal, 2025).

### 2.3 Inheritance and Marriage Patterns

The intertwining of inheritance rights with prevailing marriage systems further reinforced patriarchal property norms (Braunstein & Folbre, 2001). In a society where marriage was considered compulsory for women by around 300 BCE, the dowry system began to function as a substitute for property rights. The expectation was that daughters would receive a share of family wealth through marriage settlements rather than through formal inheritance. If a father died before marrying off his daughters, sons were often obligated to cover the expenses of their sisters’ weddings from the family estate and sometimes quantified as a one-fourth share, but with no consensus on whether this constituted an inheritance or merely a social duty. In addition, it is argued that logistical concerns were used to justify the denial of landed property to daughters (Hirschon, 2023). Given that daughters would move to their marital homes, often at a considerable distance, the transmission of immovable property was seen as impractical. As a result, the preferred practice was to give movable property (*Stridhana*) at the time of marriage, reinforcing the notion that women’s economic identity and entitlements were to be defined through their roles as wives rather than daughters or heirs. Thus, early Hindu thought on inheritance reflected a deeply gendered worldview that prioritised male succession, relegated women to the margins of property ownership, and rationalised exclusions through appeals to lineage continuity, social order, and logistical feasibility. Although reformist jurists introduced more egalitarian perspectives, these remained largely subordinate to the dominant orthodox interpretations that continued to shape legal practice and social norms well into the later historical periods.

## 3. CLASSICAL HINDU LAW SCHOOLS ON WOMEN’S PROPERTY RIGHTS

The classical Hindu legal tradition is marked by the development of two principal schools of thought: Mitakshara and Dayabhaga. These schools laid the foundational framework for Hindu inheritance law and played a crucial role in shaping the legal and social positioning of women in relation to property (Rathore, 2020). While both systems operated within a predominantly patriarchal framework, their treatment of women’s rights to inheritance differed in scope and substance, reflecting broader regional and ideological variations.

### 3.1 Mitakshara School

The Mitakshara school, codified by the jurist Vijnaneshwara and widely followed across most of India (excluding Bengal and Assam), governed inheritance based on the principle of coparcenary, which restricted rights in ancestral property to male members of the family (Setlur, 1907; Jain, 2023). According to this system, property rights accrued to male descendants by birth, thereby making them coparceners with a direct and automatic claim to the joint family property. Women, by contrast, were entirely excluded from the coparcenary, thereby denying them any inherent or automatic right to ancestral land. Under Mitakshara law, the inheritance of property followed the rule of survivorship. Upon the birth or death of a male member, the shares of existing coparceners would increase or decrease accordingly.

In such a structure, women could hold and inherit separate or self-acquired property—property not part of the joint family estate—but their access to ancestral property remained extremely limited (Dave,

2024). Moreover, before the *Hindu Law of Inheritance (Amendment) Act of 1929*, even this limited scope was available only to a narrow class of female heirs, such as widows, mothers, and paternal grandmothers. Daughters were largely excluded unless explicitly included through regional or sub-school variations. Despite some progressive exceptions in sub-schools, such as those in Bombay and Madras, the overarching framework of Mitakshara law continued to reinforce the principle of male preference (Agarwal, 2022), institutionalizing gender-based exclusion from the most substantial source of property: the joint family estate (Singh, 2024).

### 3.2 Dayabhaga School

In contrast, the Dayabhaga school prevalent primarily in Bengal adopted a more individualistic and comparatively egalitarian approach to property succession. Unlike Mitakshara, the Dayabhaga school did not recognise coparcenary by birth (Agarwal, 1988). Instead, property rights were understood to arise only after the death of the owner, thereby delaying inheritance until succession became relevant through intestate devolution. This difference in temporal logic created more room for the inclusion of female heirs, especially widows and daughters. Dayabhaga jurists argued that a deceased male's property could be inherited equally by his widow and children, thus allowing women a recognised place in the succession line (Chakraborty & Kim, 2010). Widows were given the right to inherit their husband's property as a limited estate holder, with rights of enjoyment and management—though not full ownership or alienation. Importantly, in the absence of a male heir, daughters could also succeed to their father's property under Dayabhaga law, a notable departure from the practices under Mitakshara. The logic behind this more inclusive approach stemmed not from a feminist vision but from a philosophical emphasis on the performance of religious rites. Since widows and daughters could, under certain circumstances, fulfill ritual obligations such as funeral ceremonies (*śrāddha*), they were deemed eligible for inheritance. While still conditioned by patriarchal assumptions, Dayabhaga's interpretative framework opened up a greater legal space for women to claim property rights.

### 3.3 Comparative Insights

The divergence between the Mitakshara and Dayabhaga schools had significant implications for the regional configuration of women's property rights in India. While Mitakshara was dominant in northern, central, and western India (Singh, 2010), the Dayabhaga school offered a more liberal approach in Bengal (Agarwal, 1998). Within the Mitakshara framework itself, further regional sub-schools, such as those in Bombay, Madras, Benaras, and Mithila, reflected varying degrees of inclusivity. For instance, the Bombay school, considered relatively progressive, recognised a wider range of female heirs, including paternal aunts, sisters, and sons' widows, thereby expanding the list of eligible female inheritors beyond the immediate core. These regional and doctrinal variations influenced not only family structures and gender roles but also legal consciousness and judicial interpretation across colonial and postcolonial India. Over time, such discrepancies became points of contestation in efforts to codify a uniform succession law. The embedded patriarchal logic of the Mitakshara system continued to exert dominant influence well into the 20th century, restricting women's rights to property despite scattered regional exceptions and reformist interpretations (Kumar, 2017).

Together, these classical schools formed the jurisprudential foundation upon which colonial legislation and later constitutional reforms attempted to build a more gender-equal legal structure. Understanding the internal variations and contradictions between these schools is essential to appreciating the slow and contested journey of women's property rights in India.

## 4. COLONIAL INTERVENTIONS AND PRE-INDEPENDENCE LEGISLATIVE REFORMS

The colonial period marked a critical phase in the evolution of inheritance laws in India. The British colonial state, while keen on establishing a uniform administrative and economic order, consciously avoided interfering with the personal laws of native communities, particularly in

matters related to religion, family, and inheritance (Washbrook, 1981). Instead of initiating radical reform, the British pursued a strategy of legal codification and selective legislation, relying heavily on Sanskritic textual traditions and indigenous interpreters of Hindu law. This approach preserved many patriarchal norms embedded in classical legal schools, even as growing social reform movements increasingly demanded legal recognition of women's rights.

### 4.1 British Non-Interference in Personal Laws

In the 19th and early 20th centuries, the British colonial administration adopted a policy of non-interference in religious customs and personal laws, especially those related to Hindus and Muslims. While British courts gradually codified aspects of Hindu law based on Sanskritic sources and customary practices, they avoided imposing changes that could provoke religious opposition (Aloupi, 2015). As a result, the colonial legal framework largely reinforced the gender hierarchies inherent in the Mitakshara and Dayabhaga systems, under which women—particularly daughters and widows—remained marginal to inheritance structures. Despite this conservative legal posture, growing pressure from Indian social reformers, feminists, and nationalist thinkers led to a series of incremental legislative reforms intended to improve the status of women, especially in relation to property.

### 4.2 Legislative Milestones

One of the earliest legal recognitions of women's inheritance rights came through the *Hindu Law of Inheritance (Amendment) Act, 1929*. This act marked a modest yet symbolically important shift by granting inheritance rights to three female heirs previously excluded under Mitakshara law: the son's daughter, daughter's daughter, and sister (Basu, 1999). This intervention was significant not only in expanding the list of female heirs but also in signaling a broader willingness to question male-centric interpretations of inheritance. A more substantial reform followed with the enactment of the *Hindu Women's Right to Property Act, 1937*.

This Act introduced far-reaching changes across all schools of Hindu law by granting widows limited rights in the coparcenary property of their deceased husbands (Narayanan, 2016). Under this law, a widow was allowed to take her husband's share in the joint family property, enjoying it during her lifetime with limited rights akin to a life estate. However, she could not demand partition nor dispose of the property freely. Importantly, daughters continued to be excluded from inheritance under this Act, underscoring the gendered selectivity of the reform (Agarwal, 2022). These Acts—though significant in their own right—were primarily the result of pragmatic compromises between the demands of social reform and the colonial government's cautious respect for Hindu orthodoxy. They introduced new principles of female inheritance without fully challenging the patriarchal foundations of classical Hindu law.

### 4.3 Limits and Loopholes

Despite these reforms, women's inheritance rights during the colonial period remained highly constrained. The laws primarily focused on maintenance and temporary possession, rather than ownership and control. Widows, for instance, were allowed to enjoy the property of their deceased husbands but were not granted full ownership or the right to alienate such property (Agarwal, 1998). Daughters were either ignored entirely or offered rights contingent on the absence of male heirs. Moreover, these rights were not uniformly implemented across regions due to the continued subordination of legislation to customary law. Courts frequently deferred to local customs, many of which were conservative and resistant to female inheritance. In practical terms, even when the law recognised limited rights for women, social norms, family pressure, and logistical challenges prevented women from asserting and realizing those rights (Htun & Jensenius, 2020; Shachar, 2001). Thus, while the colonial period laid the groundwork for later reforms, it did so within a framework that upheld patriarchal values, treated women's property rights as exceptions rather than entitlements, and preserved male control over ancestral land (Chandra, 2008). These half-measures exposed the inherent limitations of colonial legal intervention and made

the case for more comprehensive reform in the post-independence era.

## 5. POST-INDEPENDENCE CONSTITUTIONAL REFORM AND THE HINDU SUCCESSION ACT, 1956

With India's independence in 1947, the newly formed nation embarked on an ambitious project of social transformation, guided by constitutional ideals of equality, justice, and non-discrimination. Recognizing the deep-seated inequalities embedded in personal laws—especially those governing property and inheritance—the architects of the Indian Constitution sought to reshape these frameworks to reflect the values of a democratic, secular, and egalitarian polity. Central to this endeavor was the challenge of reforming Hindu personal law, which had historically denied women equal rights to property. This culminated in the codification of Hindu inheritance law through the *Hindu Succession Act, 1956*, a landmark piece of legislation that attempted to balance tradition with the principles of constitutional gender justice (Majumdar, 2010).

### 5.1 Framing of Gender-Just Laws

The Indian Constitution provides a robust legal foundation for the advancement of women's rights (Tripathi, 2025). Article 14 guarantees equality before the law and equal protection of the law. Article 15(3) specifically authorises the State to make special provisions for women and children, acknowledging the need for affirmative measures in a historically unequal society. These constitutional provisions laid the groundwork for the reform of Hindu personal laws through a series of legislative efforts under the broader umbrella of the Hindu Code Bill (Sinha, 2024). The Hindu Code Bill, introduced by Dr. B. R. Ambedkar and others, sought to overhaul existing Hindu laws on marriage, inheritance, and succession (Mandal, 2022). However, it encountered strong resistance from orthodox sections of Hindu society and Parliament, many of whom opposed the expansion of women's rights on religious and cultural grounds (Kumari & Jain, 2025). The intense controversy that surrounded the Bill eventually led to its division into separate laws, passed incrementally. Among these, the *Hindu Succession Act, 1956*, emerged as a key legal instrument to address gender disparities in property rights.

### 5.2 Provisions of the Hindu Succession Act, 1956

The *Hindu Succession Act 1956* aimed to standardise and rationalise the inheritance rights of Hindus by replacing a complex patchwork of regional and doctrinal differences (Jain, 2003). It applied uniformly to those governed by Mitakshara and Dayabhaga schools, as well as other customary systems like Murumakkattayam, Aliyasantana, and Nambudri laws in South India. For the first time, the Act provided a comprehensive legal framework for intestate succession for both males and females. The Act granted women the right to inherit property as Class I heirs, alongside sons, widows, and mothers (Halder & Jaishankar, 2008). It also removed many of the limitations imposed by earlier laws, such as the restricted life estate previously granted to widows (Majumdar, 2010). A woman's share in inherited property was now considered her absolute property, which she could manage and dispose of independently. However, a major limitation of the Act was its failure to include daughters in the coparcenary—the joint family property governed by Mitakshara law (Halder & Jaishankar, 2008). While daughters could inherit separate property, they were still denied rights in ancestral property by birth, a privilege reserved exclusively for male heirs. This exclusion entrenched the notion that lineage and property transmission were inherently male domains, thereby perpetuating structural inequality under the guise of legal uniformity.

### 5.3 Gender Justice and Resistance

The passage of the *Hindu Succession Act*, though significant, was marked by compromise and concessions to conservative sentiment. The orthodox groups mounted stiff resistance to any reform that threatened the patriarchal control over family and property (Singh, 2010). As a result, key provisions advocating for complete gender equality were either diluted or entirely excluded from the final Act. The continued exclusion of daughters from coparcenary rights reflected the deep-

rooted discomfort within Indian society and lawmaking bodies regarding women's equal claim to family wealth. There was an evident preference for agnatic succession, which prioritised male relatives in inheritance hierarchies, especially in the absence of direct male heirs. Thus, the *Hindu Succession Act 1956*, while a progressive step in many respects, ultimately fell short of delivering substantive gender justice (Uma, 2022; Agarwal, 2022). Nevertheless, the Act laid an important foundation for future reform. By recognizing women as legal heirs and granting them absolute ownership over inherited property, it initiated a slow but crucial shift in legal consciousness. It also set the stage for more decisive interventions—most notably the *Hindu Succession (Amendment) Act, 2005*, which would later correct many of the gendered omissions of the 1956 legislation.

## 6. TURNING POINT: HINDU SUCCESSION (AMENDMENT) ACT, 2005

The passage of the *Hindu Succession (Amendment) Act, 2005* marked a decisive turning point in the legal recognition of gender equality in inheritance rights within Hindu personal law. She maintained that while the *Hindu Succession Act of 1956* introduced important reforms, it retained critical patriarchal exclusions—most notably the exclusion of daughters from the coparcenary system of joint family property under the Mitakshara law (Agarwal, 2022). The 2005 amendment rectified this foundational inequity by granting daughters equal status with sons as coparceners by birth, thereby reshaping the legal landscape of property rights in India.

### 6.1 Law Commission Recommendations (2000)

The amendment was driven by growing national and international pressures to harmonise personal laws with constitutional guarantees of equality. A major catalyst was the 174th Report of the Law Commission of India (2000), titled "*Property Rights of Women: Proposed Reforms under Hindu Law*", chaired by Justice B.P. Jeevan Reddy. This report strongly criticised the gender bias in the 1956 Act and called for its amendment to ensure that daughters are treated on par with sons in matters of succession. The Commission noted that the existing framework discriminated against daughters by denying them birthrights in joint family property, thereby contradicting Articles 14 (equality before law) and 15 (prohibition of discrimination) of the Indian Constitution (Law Commission of India, 2002). It also emphasised that meaningful socio-economic empowerment of women required legal recognition of their rights in ancestral property, beyond mere inheritance of self-acquired assets.

### 6.2 Key Amendments

The *Hindu Succession (Amendment) Act, 2005*, which came into effect on September 9, 2005, marked a significant shift in the Mitakshara coparcenary system by introducing gender parity in inheritance laws. One of its most transformative provisions was the declaration that daughters, like sons, would be coparceners by birth, thereby granting them equal rights and liabilities in the coparcenary property (Pal, 2016). This entitlement allowed daughters to demand partition, receive an equal share, and exercise independent control over their portion, including the right to dispose of it as they wished. Importantly, the amendment ensured that these rights extended to both ancestral and self-acquired property, thus institutionalising comprehensive legal equality (Chauhan & Yadav, 2025). Additionally, it abolished the doctrine of survivorship, which had previously excluded female heirs if a male coparcener was alive, thereby removing a critical gender-based barrier. This legislative change was radical not only in terms of legal reform but also in its cultural implications. It disrupted the traditional male-centric conception of inheritance by formally recognising daughters as legitimate bearers of lineage and property (Bates, 2004). Beyond the legal rights conferred, the amendment symbolically acknowledged daughters as full members of the family structure, endowing them with legal subjectivity and a rightful place within the kinship framework.

### 6.3 Legal Implications and Implementation Challenges

Despite its progressive intent, the implementation of the 2005

Amendment has faced multiple challenges (Bates, 2004). In many rural and conservative households, the idea of daughters asserting coparcenary rights is met with resistance, often due to deeply entrenched patriarchal values and fears of fragmenting family property. Social stigma, lack of legal awareness, and emotional pressures discourage women from claiming their rights, especially when it involves initiating legal action against parents or brothers. Further complications have arisen in judicial interpretations, especially with respect to the retrospective or prospective application of the law (Epstein, 1993). For several years, courts debated whether the amendment applied to daughters whose fathers died before 2005. While initial verdicts varied, the Supreme Court in *Vineeta Sharma v. Rakesh Sharma* (2020) clarified that daughters would have coparcenary rights by virtue of birth, irrespective of whether the father was alive on the date of the amendment. This ruling helped resolve the ambiguity and reaffirmed the gender-equal spirit of the legislation (Kumar, 2020). Nevertheless, the gap between legal entitlement and lived reality remains significant. The 2005 Amendment has not automatically translated into increased ownership of land or property by women on the ground. In several parts of the country, customary practices and informal arrangements continue to override formal laws, especially in contexts where property is considered a matter of family honour and male inheritance. In sum, while the Hindu Succession (Amendment) Act, 2005 represents a landmark in legislative reform, its transformative potential is yet to be fully realised. Bridging the gap between law and practice requires sustained efforts in legal education, community engagement, and institutional accountability to ensure that the promise of gender-equitable inheritance is upheld not just on paper but in practice.

## 7. CUSTOMARY LAWS AND THEIR GENDER IMPLICATIONS

The formal codification of Hindu succession laws has coexisted uneasily with a wide range of customary laws, particularly those practiced by tribal communities and specific caste groups across India (Mishra, 2024; Halder & Jaishankar, 2008). While statutory reforms like the *Hindu Succession (Amendment) Act, 2005* have aimed at standardizing inheritance rights and eliminating gender-based discrimination, customary practices often continue to shape property rights at the local level. These customs—rooted in regional histories, kinship systems, and social hierarchies—pose a significant challenge to the effective realization of women's inheritance rights, especially in tribal and rural contexts (Mishra, 2024).

### 7.1 Coexistence of Custom and Statutory Law

Historically, Smriti texts, regional religious interpretations, and caste- or tribe-based traditions have played a central role in governing matters of inheritance. While the colonial administration privileged scriptural Hindu law in its codification efforts, it also allowed considerable autonomy for communities governed by their own customs (Jain, 2022). This pattern persisted into the postcolonial period. Even today, large sections of India's population—especially among Scheduled Tribes and certain backward castes—continue to follow customary laws in practice, particularly in matters of land inheritance, marriage, and family governance (Shil & Jangir, 2021). Customary law is not a static or uniform category; it is dynamic and varies significantly across regions. Nevertheless, many such customs are rooted in patriarchal norms and continue to exclude women from inheriting land or other immovable property, despite statutory entitlements (Bardhoshi, 2013). The continued legal and administrative recognition of customary law in these contexts, including in tribal regions, complicates the enforcement of gender-equal property rights.

### 7.2 Case Studies from Tribal India

A vivid illustration of this complexity can be found in the state of Tripura, where tribal communities have attempted to codify their customs formally. The *Jamatia Customary Law Bill, 2017*, passed by the Tripura Tribal Areas Autonomous District Council (TTAADC), sought to articulate property, marriage, and inheritance norms based on tribal customs (Malsom, 2024). However, this codification process has also raised concerns about the entrenchment of gender-discriminatory practices, particularly in the inheritance rights of daughters and widows. The case

of Kajal Rani Noatia offers a powerful legal counter-narrative. Denied her rightful share in ancestral property under the guise of tribal custom, she approached the Tripura High Court, which ruled in her favor in 2015. The court declared that tribal women across Tripura's communities are entitled to inherit property from their fathers, husbands, brothers, or sons with equal rights, in line with the *Hindu Succession Act, 1956* and constitutional guarantees of equality (Mishra, 2016). This verdict effectively extended statutory inheritance rights to women in tribal communities, challenging the shield of customary law. More broadly, the Sixth Schedule of the Indian Constitution provides special administrative autonomy to tribal regions in Northeast India such as Assam, Meghalaya, Mizoram, and Tripura allowing their autonomous district and regional councils to legislate on matters including inheritance. While intended to protect cultural identity and autonomy, these provisions have sometimes created a tension between local governance and constitutional rights, especially when customary laws contradict national commitments to gender justice.

### 7.3 Judicial Interpretations and Constitutional Conflicts

This tension is most sharply illustrated in the landmark case of *Madhu Kishwar v. State of Bihar* (1996). Women belonging to the Ho and Oraon tribes challenged the gender-discriminatory provisions of the *Chotanagpur Tenancy Act, 1908*, which restricted inheritance to male lineage. They argued that this exclusion violated their fundamental rights under Articles 14 and 15 of the Constitution (Paul, 2021). The Supreme Court, however, upheld the validity of the customary law, deferring to tribal autonomy and local traditions. Although Justice K. Ramaswamy, in his concurring opinion, acknowledged the gender bias and called for its correction, the ruling ultimately allowed customary law to override constitutional principles of equality. This case underscores the jurisprudential dilemma in balancing cultural autonomy with gender justice. On the international front, India's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—ratified in 1993—mandate the elimination of gender-based discrimination in all legal and customary practices. However, the coexistence of multiple legal systems in India continues to produce contradictory outcomes, particularly in tribal and rural settings where customary law remains dominant.

### 7.4 Gendered Paradoxes

The codification of customary laws—as seen in Tripura or other northeastern states—does not necessarily lead to greater gender equality. In fact, it can sometimes formalise patriarchal norms, making them more resistant to reform (Gangte, 2016). The paradox lies in the fact that while customary laws are often portrayed as more community-oriented and flexible, their institutionalization can ossify exclusionary practices, particularly against women. On the other hand, legal pluralism also allows room for progressive reinterpretation and contestation. As cases like Kajal Rani Noatia demonstrate, women are increasingly challenging discriminatory customs through the courts, asserting their constitutional and statutory rights (Shil & Jangir, 2021). Moreover, as tribal societies modernise and interact with broader legal and political frameworks, there is scope for transformative change from within, particularly through education, legal awareness, and community engagement. Hence, customary laws present both an obstacle and an opportunity in the struggle for women's inheritance rights. The challenge lies in reconciling respect for cultural diversity with the imperative of gender equality, ensuring that tradition is not used to legitimise discrimination but becomes a space for inclusive reform.

## 8. WIDOW'S RIGHT TO INHERITANCE: RELIGIOUS, LEGAL, AND SOCIAL DEBATES

The question of a widow's right to inherit her deceased husband's property has historically been a subject of moral, religious, and legal contention (Adeleke & Diala, 2024). Unlike the debate on daughters' inheritance—often centered around questions of lineage and marriage—widowhood introduced complex layers of ritual purity, social duty, and familial obligation (Nyangweso, 2017). While there was eventual legal acknowledgment of widows' property rights, this recognition was often conditional and constrained, shaped by patriarchal expectations of

widowhood, including celibacy and subservience.

### 8.1 Early Denial and Conditional Acceptance

The Vedic period, the widow's right to inherit property was largely denied. Classical Hindu texts generally argued that in the absence of a male heir, the property of a deceased man should devolve upon his male Sapindas—blood relatives who shared the duty of ancestral rites (Halder & Jaishankar, 2008). Early Dharmasāstra writers like Baudhayana and Apastamba explicitly excluded widows from inheritance, assigning them only a subsidiary role in the familial order (Mandal, 2025). It was commonly believed that since widows were expected to remarry through the practice of Niyoga—a form of levirate marriage—their personal claim to property was redundant (Sahgal, 2012). Widows without sons were rare due to this practice, and their role was largely mediated through guardianship of their minor sons' property, not as autonomous heirs. Over time, Niyoga lost social acceptability and widow remarriage became increasingly stigmatised (Priyadarshini & Pande, 2021). As widows began to lead lives of religious renunciation and celibacy, new social norms emerged advocating for their maintenance from the husband's estate. Jurist Kautilya, for instance, recognised the widow's right to maintenance in the absence of male support. However, this recognition still fell short of full inheritance rights, and widows remained legal dependents rather than rights-bearing individuals.

### 8.2 Medieval Developments

A more favorable discourse began to emerge with certain medieval jurists and schools of thought. Yajñavalkya, followed by commentators like Vijñāneshwara in the Mitakshara tradition, recognised that in the absence of male heirs, widows could succeed to the deceased husband's estate (Dave, 2024). This marked a significant departure from earlier legal exclusions and formed the basis of what would later become a limited estate right—where the widow could enjoy the property during her lifetime but could not alienate or bequeath it. The Dayabhaga school, in particular, was more progressive in granting widows inheritance rights. Dayabhaga school emphasised the religious obligation of performing śrāddha (funerary rites) as a justification for women's succession, particularly in the absence of sons (Kaparwan et al., 2023). According to this logic, the widow was considered the spiritual heir and therefore entitled to inherit. Jurists like Gautama, Vishnu, and Brihaspati further expanded this reasoning, arguing that the husband and wife were joint proprietors of the family estate and that upon his death, the wife ought to be the natural successor (Brick, 2023). Prajapati, another authoritative source, went so far as to assert the widow's absolute rights over her husband's property, and even held that interfering with her peaceful enjoyment of property warranted punishment by the king (Mandal, 2025). Nonetheless, such recognition remained conditional. The widow's inheritance was often contingent on her chastity, religious observance, and the absence of remarriage. The social construction of the "virtuous widow" thus became a prerequisite for accessing even limited legal rights (Todd, 2014).

### 8.3 Colonial and Post-colonial Legal Shifts

The colonial period witnessed both the preservation of patriarchal norms and incremental legal reform (Chitnis & Wright, 2007). The first significant legal recognition came with the *Hindu Women's Right to Property Act, 1937*, which applied across all schools of Hindu law and extended the Dayabhaga principles nationally (Agarwal, 2022). The Act granted the widow a limited estate in her deceased husband's property, meaning she could enjoy the property during her lifetime but could not alienate it. The Act also allowed widows to claim a share in partition—a major advancement for that time—but daughters were still excluded (Halder & Jaishankar, 2008). Post-independence, the *Hindu Succession Act of 1956* recognised widows as Class I heirs, giving them stronger statutory rights over both separate and joint family property (Majumdar, 2010). This marked a significant shift from earlier legal traditions that treated widows as temporary custodians or spiritual surrogates. However, the coparcenary system under Mitakshara still excluded them from birthright claims, meaning they were not treated as coparceners but only as heirs through succession (Ayilyath, 2014). The *2005 Amendment to the Hindu Succession Act* further clarified

and expanded these rights, particularly by dissolving the doctrine of survivorship and allowing female heirs—including widows, daughters, and mothers—to inherit ancestral property equally. Yet, certain cultural residues continued to shape the scope and enforcement of these rights (Sarma, 2020). Social attitudes toward widow remarriage, female chastity, and religious duty continued to influence family decisions about property distribution, especially in rural and conservative regions. Therefore, the evolution of a widow's right to inheritance reflects a slow but discernible transformation—from exclusion and dependence to conditional inclusion and, eventually, statutory equality. However, even today, such rights are often mediated through social norms and moral expectations, underscoring the need for a broader cultural shift alongside legal reform.

## 9. CONCLUSION

The historical and legal trajectory of women's inheritance rights in India reveals a gradual yet uneven transformation—from outright exclusion in early religious texts to cautious inclusion through colonial legislation, and eventually toward formal equality with the enactment of the *Hindu Succession (Amendment) Act, 2005*. Across different periods, the rights of daughters and widows were subjected to layered justifications of ritual duty, social hierarchy, and patriarchal kinship, with significant variation across schools of law, regions, and communities. Although reformist voices existed even in ancient jurisprudence, they remained marginal to the dominant legal frameworks that systematically privileged male succession. Despite significant statutory reforms in the post-independence era—particularly the *Hindu Succession Act of 1956* and its landmark amendment in 2005—multiple challenges persist. Legal awareness among women remains low, especially in rural and tribal areas. Implementation of the 2005 amendment is uneven, often encountering resistance from deeply entrenched patriarchal norms and customary practices that continue to view property ownership as a male prerogative. Even when women are legally entitled, social stigma, familial pressure, and the emotional cost of asserting rights within patriarchal households deter many from pursuing inheritance claims. These structural and cultural barriers hinder the translation of formal legal equality into substantive justice. At a broader theoretical level, this study underscores how state policy, kinship structures, and customary law continue to shape gendered access to property. The tension between codified law and customary autonomy, particularly among tribal communities, remains unresolved. While the Indian Constitution promises equality and non-discrimination, legal pluralism and socio-religious sensitivities often result in inconsistent outcomes. The uneasy coexistence of modern legal principles with older patriarchal logics exposes the limitations of law as a tool of social transformation unless it is accompanied by shifts in cultural consciousness.

To advance women's inheritance rights meaningfully, there is a pressing need for policy and advocacy interventions. First, legal literacy must be strengthened through targeted community outreach, especially in regions governed by strong customary norms. Second, the implementation of the 2005 Amendment must be monitored with greater institutional accountability at local levels, including proactive roles for revenue officials, panchayats, and legal aid services. Third, scholars, jurists, and activists must promote a feminist re-interpretation of religious and customary laws, reclaiming reformist strands within indigenous traditions to align them with constitutional ideals of equality. Only through such a multi-pronged approach—grounded in law, informed by history, and responsive to social realities—can women's rightful access to property move from legal possibility to lived reality, strengthening their autonomy, dignity, and economic agency in Indian society.

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